

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAUL K. WILLIS and DEPARTMENT OF TRANSPORTATION,
FEDERAL AVIATION ADMINISTRATION, Anchorage, Alas.

*Docket No. 97-946; Submitted on the Record;
Issued January 19, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant's left impingement syndrome is causally related to the employment incident of June 2, 1995.

On June 2, 1995 appellant, an aviation safety inspector, sustained an injury in the performance of his duties when the airplane, in which he was flying struck turbulence. After developing the factual evidence, including statements from witnesses and appellant's own testimony at an August 14, 1996 hearing, the Office of Workers' Compensation Programs found that the evidence established the following: When the turbulence occurred appellant was thrown up against a circuit breaker panel, striking his neck and upper back. He then found himself on the floor on one knee and was assisted by the flight engineer, who tightly held appellant's right arm. The evidence did not establish that there was a forceful impact with the floor or that appellant's neck or shoulder made any contact with the floor.

The Office accepted that appellant sustained contusions of the upper back and neck. After further development of the medical evidence, the Office also accepted that he sustained a right rotator cuff tear, which was surgically repaired and a permanent aggravation of cervical degenerative disc disease at C5-6 and C6-7, for which he underwent anterior discectomy and fusions.

Appellant advised the Office that he might need some form of orthoscopic surgery to repair his left shoulder. Although he denied any left shoulder problems in his lifetime, the medical record shows that he had a previous left shoulder injury: On August 23, 1995 Dr. Robert E. Gieringer, a Board-certified orthopedic surgeon and appellant's attending physician, reported that when he saw appellant in March 1994 appellant had a left shoulder injury that was recovered after exercise for impingement. A report from February 1994 shows that appellant indeed had subacromial impingement in the left shoulder.

On October 25, 1995 Dr. Gieringer reported, that appellant's left shoulder was troubling him a little bit and that he had some impingement symptoms. On December 8, 1995 he reported that appellant would probably need arthroscopic treatment of his left shoulder. He reported that appellant related his left shoulder condition to the injury that occurred on June 2, 1995. The Office referred appellant, together with a copy of the medical record and a statement of accepted facts, to Dr. Thad Stanford, a Board-certified orthopedic surgeon, for an opinion on, among other things, whether the incident of June 2, 1995 caused an injury to appellant's left shoulder.

In a report dated February 9, 1996, Dr. Stanford described appellant's history of injury and clinical course. Appellant related that he had received no treatment for his left shoulder problem, that he was not using exercise for that shoulder or using heat or ice. He also very specifically denied to Dr. Stanford that he ever had any left shoulder problems in the past. After reporting his findings on physical examination and the results of x-rays, Dr. Stanford diagnosed, among other things, degenerative processes in the right and left shoulder with an impingement syndrome in the left. On the issue of whether appellant's left shoulder condition was causally related to the June 2, 1995 incident, Dr. Stanford reported the following:

"The significance of his left shoulder discomfort is curious to this examiner. It is well documented that he has prior problems and yet he rather pointedly states he has never had left shoulder problems. Also, he has had no treatment for his left shoulder. This is also curious to this examiner, in that he has seen Dr. Gieringer and also the physical therapist. It does not make sense to this examiner that people would just wait until the right shoulder was better before any treatment was instituted on the left.

"One assumes that he has had some chronic intermittent impingement syndrome at the left shoulder. Looking at the record and the time frames, I cannot implicate his action of June 2, 1995 in a significant manner as regards his left shoulder problem."

In a decision dated March 19, 1996, the Office found, among other things, that the evidence of record failed to establish that appellant's left shoulder condition was related to the incident that occurred on June 2, 1995.

Appellant requested an oral hearing before an Office hearing representative. He submitted an August 7, 1996 report, from Dr. Gieringer, who described what happened on June 2, 1995:

"[Appellant] was involved in an aircraft accident on June 2, 1995, when he was flying in an L382 aircraft. The aircraft encountered severe turbulence and he was thrown around the cockpit of the plane, impacting his head and neck on the cabin roof and in an attempt to brace himself severely injuring his right shoulder and causing a rotator cuff tear. As he was thrown back down to the floor, he impacted the instrument panel, causing an injury to his left shoulder also.

"One can never be sure of the exact events of these kinds of incidences, they occur in such a brief space of time, but [appellant's] body left the floor, impacting

the roof and then was violently thrown back onto the floor with enough force to cause these injuries, an indication of how violent the turbulence and the force of the accident was.”

Dr. Gieringer reported that to the best of his knowledge appellant had no trouble with either shoulder or his neck prior to this accident and had enough symptoms to require surgery for all three of the body parts since the accident. “This is conclusive proof,” he stated, “along with the description of the accident that there can be no question that the accident on June 2, 1995, is the cause of his present difficulties.”

In a decision dated October 9, 1996, the Office found that Dr. Gieringer’s rationale for relating appellant’s left shoulder condition to the June 2, 1995 incident was of little probative value. The Office noted that the evidence did not support his description of what occurred and that the evidence did not support appellant’s assertion that he never had a prior problem with his left shoulder.

The Board finds that the weight of the medical opinion evidence fails to support that appellant’s left impingement syndrome is causally related to the June 2, 1995 employment incident.

A claimant seeking benefits under the Federal Employees’ Compensation Act¹ has the burden of proof to establish the essential elements of his claim by the weight of the evidence,² including that he sustained an injury in the performance of duty and that any specific condition or disability for work, for which he claims compensation is causally related to that employment injury.³

The Office accepts that appellant sustained an injury in the performance of duty on June 2, 1995. It initially approved his claim for contusions of the upper back and neck. After further development of the evidence, the Office approved his claim for the conditions of right rotator cuff tear and permanent aggravation of cervical degenerative disc disease at C5-6 and C6-7. Appellant now seeks coverage of his left shoulder condition. It is, therefore, his burden of proof to establish by the weight of the evidence that his left impingement syndrome is causally related to the incident of June 2, 1995.

The evidence generally required to establish causal relationship is rationalized medical opinion evidence. The claimant must submit a rationalized medical opinion that supports a causal connection between his current condition and the employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of

¹ 5 U.S.C. §§ 8101-8193.

² *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

the claimant's employment injury and must explain from a medical perspective how the current condition is related to the injury.⁴

To support his claim, appellant submitted the August 7, 1996 report from Dr. Gieringer. He pointed to the absence of left shoulder trouble prior to the accident, the need for surgery after the accident and the description of the accident itself as conclusive proof that the accident on June 2, 1995 was the cause of appellant's current difficulties. Although this tends to support appellant's claim of an employment-related left shoulder condition, Dr. Gieringer's opinion is of little probative value because the description of the accident upon which he relied has not been established by the weight of the factual evidence.

The Office well developed the factual evidence in this case in an attempt to clear up possible inconsistencies in the history appellant reported in the months following the incident. Considering his various statements, his testimony, the statements of witnesses and the history given contemporaneously to medical care providers, the Office found that the evidence failed to establish that there was a forceful impact with the floor or that appellant's neck or shoulder made any contact with the floor. Dr. Gieringer did not accept this finding. He based his opinion not on the statement of accepted facts but on the somewhat description appellant provided well after the incident occurred. Relying on the later history, Dr. Gieringer reported that appellant was thrown back to down to the floor, impacting the instrument panel and causing an injury to the left shoulder. The Board notes that appellant's claim form and contemporaneous descriptions of what occurred make no mention of being thrown to the floor. It is only later that this critical piece information makes its way into the history of injury. The Board has held that a contemporaneous statement describing an incident is entitled to greater weight than a different description by the same person made after an interval of several months or years.⁵

The Board has also held that medical conclusions based on inaccurate or incomplete histories are of little probative value.⁶ Because Dr. Gieringer relied on a history of injury that was at odds with the accepted facts of the case, his opinion relating appellant's left impingement syndrome to the June 2, 1995 employment incident is of little probative value and is insufficient to discharge appellant's burden of proof with respect to his left shoulder condition.

⁴ *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

⁵ *Herman Pischel*, 26 ECAB 280 (1975).

⁶ *See James A. Wyrick*, 31 ECAB 1805 (1980) (physician's report was entitled to little probative value because the history was both inaccurate and incomplete).

The October 9, 1996 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
January 19, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member