

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAUL H. PEREZ and DEPARTMENT OF THE NAVY,
NAVAL WEAPONS STATION, Concord, CA

*Docket No. 99-1569; Submitted on the Record;
Issued October 24, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
VALERIE D. EVANS-HARRELL

The issue is whether appellant has established that he sustained an injury causally related to radiation exposure in the performance of duty.

On April 20, 1998 appellant filed a nonoccupational disease claim alleging that he sustained injuries causally related to radiation exposure while handling depleted uranium (DU) munitions in Saudi Arabia from February 21 to April 29, 1992. Appellant stated that he suffered from medical conditions that included skin infections, rashes, fatigue, stomach problems and cognitive impairment. He reported that his medical conditions were similar to the "Gulf War Syndrome" symptoms reported by military personnel during this period.

In a decision dated March 30, 1999, the Office of Workers' Compensation Programs denied the claim on the grounds that the medical evidence was insufficient to establish causal relationship between a diagnosed condition and any radiation exposure.

The Board finds that appellant has not met his burden of proof to establish an employment injury in this case.

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.¹ The evidence required to establish causal relationship is rationalized medical opinion evidence,

¹ Victor J. Woodhams, 41 ECAB 345 (1989).

based upon a complete and accurate factual and medical background, showing a causal relationship between the claimed conditions and his federal employment.² Neither the fact that the condition became manifest during a period of federal employment, nor the belief of appellant that the condition was caused or aggravated by his federal employment, is sufficient to establish causal relation.³

Appellant has alleged that he was exposed to uranium radiation while working in Saudi Arabia from February 21 to April 29, 1992. The employing establishment does not contest that appellant was employed during this time loading and unloading DU projectiles. The employing establishment reported that a typical pallet load of DU munitions would have a gamma reading of from 0.8 to 1.5 mR per hour at the surface and 0.1 to 0.3 mR per hour at a 1 meter distance. According to the employing establishment, based on appellant's working approximately 9 weeks as an explosives worker, his potential exposure would be 12 mR per week or 108 mR for the time period.⁴

The record therefore does establish that appellant handled DU munitions and was exposed to potential uranium radiation. The employing establishment asserted that appellant's radiation exposure did not pose a significant health risk, but this is a medical issue that must be resolved by probative medical evidence. It is, as noted above, appellant's burden of proof to submit sufficient evidence to establish his claim. In this case, appellant has not met his burden of proof because he did not submit a reasoned medical report, based on an accurate factual and medical background, establishing causal relationship between a diagnosed condition and radiation exposure in 1992. With respect to a skin condition, Dr. Leo J. Sifflet, an internist, reported a work-related dermatitis /eczema in an August 13, 1992 report, but his statement on causal relationship was that the condition resulted from a laceration wound infection.⁵ In a report dated October 17, 1996, Dr. Donald A. Wroblewski, an internist, noted that appellant "continues to exhibit symptoms suggestive of Operation Desert Storm Syndrome which up to this point has actually defied specific etiologic diagnosis although intense research in this area continues."⁶ Dr. Wroblewski did not discuss appellant's specific work duties or radiation exposure, nor does he provide a reasoned medical opinion on causal relationship between a diagnosed condition and federal employment. A hospital admission report dated December 6, 1997, notes in its history that appellant was exposed to various chemical agents while in Saudi Arabia, without providing further detail or a reasoned opinion on causal relationship with a diagnosed condition.

² See *Walter D. Morehead*, 31 ECAB 188 (1979).

³ *Manuel Garcia*, 37 ECAB 767 (1986).

⁴ The employing establishment indicated that an employee would not be exposed no more than one half a typical workday, since there was travel time to the work site and other times when no exposure occurred during the workday.

⁵ Appellant had an employment-related leg injury on January 26, 1992 that was accepted for right leg abrasion, eczema and pyoderma. That claim is not before the Board on this appeal.

⁶ The specific criteria for the diagnosis of "Operation Desert Storm Syndrome" are not clear from Dr. Wroblewski's report.

The record does not contain a medical report containing an accurate and complete factual and medical background, with a reasoned medical opinion that relates a diagnosed medical condition with uranium radiation exposure from February 21 to April 29, 1992. In the absence of such evidence, the Board finds that appellant has not met his burden of proof in this case.

The decision of the Office of Workers' Compensation Programs dated March 30, 1999 is hereby affirmed.

Dated, Washington, DC
October 24, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

Valerie D. Evans-Harrell
Alternate Member