

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of GEORGE B. TOLIVER, SR. and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL CENTER, Houston TX

*Docket No. 01-2260; Submitted on the Record;  
Issued May 22, 2002*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
A. PETER KANJORSKI

The issue is whether appellant sustained an occupational disease causally related to his federal employment.

The Board finds that appellant has not submitted sufficient medical evidence to establish that he sustained an occupational disease in the performance of his federal duties.

On May 23, 2001 appellant, then a 47-year-old detective for the employing establishment submitted a notice of occupational disease (Form CA-2), alleging that he experienced neck pain and stiffness, left forearm pain and pain, numbness and tingling in his hand and fingers. He explained that in 1991 he injured his left shoulder while restraining an unruly patient in the emergency room. Appellant had reconstructive surgery on the shoulder and received temporary total disability. During rehabilitation he began to notice pain in his neck that in 1993 was diagnosed as degenerative discs at C5-6. As a result of the accepted shoulder condition appellant was reassigned as a dispatcher in police and security full time. The dispatch area consisted of an "L" shaped console approximately eight feet tall with a desk four feet from the floor. The console contained multiple television monitors overhead and alarm and door access panels, which were also overhead. Appellant's duties as dispatcher required that he monitor and operate this equipment.

In October 2000 appellant had a second surgery on his left shoulder and received total temporary disability until he returned to his dispatching duties on February 19, 2001. During his rehabilitation appellant experienced pain in his shoulder, forearm and hand. After his first day back at work appellant felt left shoulder pain, forearm pain and tingling in his fingers with some numbness. According to appellant, his treating physician, Dr. Thomas Melhoff, informed him that the problem was with the discs in his neck, not the shoulder. Appellant filed a recurrence (Form CA-2a) but was told he needed to file a Form CA-2 for an occupational disease.

In a June 11, 2001 letter to appellant, the Office of Workers' Compensation Programs informed appellant that he needed to submit additional medical evidence, including a

comprehensive medical report with a doctor's opinion, with medical reasons on the cause of his condition.

Appellant submitted Dr. Mehloff's medical treatment notes that includes notes from an April 5, 2001 visit which stated:

“[Appellant] is still having neck pain, with paresthesias radiating across the left shoulder down to the left hand and arm. This is still consistent with cervical radiculopathy, aggravated while at work February 21, 2001. He was previously treated for this degenerative disc disease of the cervical spine, C5-6 with left C6 radiculopathy as a work injury in 1993. He continues to have an aggravation and recurrence of this work injury. I had recommended five hours of work a day, rather than eight hours a day to minimize repetitive stress on his neck and seems to be of help.”

In a July 13, 2001 decision the Office denied appellant's claim finding the medical evidence of record lacks a rationalized opinion on how work activities created appellant's medical condition.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing the essential elements of his or her claim including the fact that the individual is an “employee of the United States” within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>2</sup> These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>3</sup>

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. The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>3</sup> *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>4</sup>

The Board finds that appellant has not met his burden of proof.

The only medical evidence in the record addressing appellant's medical condition are Dr. Melhoff's treatment notes. These notes provide a diagnosis, show knowledge of appellant's medical history and employment factors and suggest a causal relationship between them. However, they lack a rationalized opinion explaining how the employment factors caused appellant's medical condition. Such explanation is especially significant to meeting appellant's burden of proof because appellant has a 10-year history of medical attention for conditions both accepted, the shoulder injury, and not accepted, the degenerative disc disease. Absent a medical explanation of how appellant's employment duties caused, aggravated or exacerbated appellant's medical condition the Board must find that appellant has not met his burden of proof.

The July 13, 2001 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC  
May 22, 2002

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>4</sup> *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).