

**United States Department of Labor
Employees' Compensation Appeals Board**

DENNIS W. BAKER, Appellant

and

**DEPARTMENT OF DEFENSE, AIR FORCE
PLANT, Columbus, OH, Employer**

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**Docket No. 04-272
Issued: June 7, 2004**

Appearances:
Dennis W. Baker, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member

JURISDICTION

On November 12, 2003 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated October 22, 2003. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that his left olecranon bursitis was causally related to his June 8, 1994 employment injury.

FACTUAL HISTORY

The Office has accepted that on June 8, 1994 appellant, then a 46-year-old electrician, sustained the following injuries in the performance of duty: high voltage electric shock; left ankle fracture; bilateral hip bursitis; and right knee medial meniscus tear. Appellant stopped work following the employment injury and returned to full-time work on August 15, 1994. In November 1994, the Office expanded appellant's claim to include adjustment disorder and authorized psychiatric treatment. The Office later accepted that on December 7, 1994 appellant

sustained another work-related injury, which resulted in a right shoulder dislocation, and he underwent an open reduction/fixation of the right shoulder on December 10, 1994. The Office subsequently authorized a left hip replacement on September 14, 1995 and a total left knee replacement in May 1997. Appellant immediately stopped work following the December 7, 1994 employment injury and received total disability compensation and ongoing medical treatment for his employment-related conditions.

Appellant was treated by several physicians for his work-related conditions but primarily by Dr. Charles Lowrey, a Board-certified orthopedic surgeon, and Dr. Michael Orzo, a Board-certified anesthesiologist who treated appellant for pain management.¹ Dr. Lowrey was appellant's treating physician of record since the initial injury; however, the Office authorized Dr. Orzo as appellant's designated physician on January 30, 2002. Both physicians continued to treat appellant for his work-related injuries.

In a report dated October 25, 2002, Dr. Lowrey indicated that he saw appellant for a follow up of the employment injury and that appellant presented with persistent pain and swelling in the left elbow which he wished to treat with a cortisone shot. In a facsimile dated October 28, 2002, Dr. Lowrey requested that the Office expand appellant's claim to include olecranon bursitis of the left elbow and authorize a series of cortisone injections for the left elbow condition.

Appellant alleged that his left elbow condition was related to his June 8, 1994 employment injury. On December 4, 2002 the Office advised Dr. Lowrey that he needed to submit a report within 30 days with objective findings and a rationalized medical opinion explaining how appellant's diagnosed left olecranon bursitis was caused, aggravated, accelerated or precipitated by the June 8, 1994 work injury. On January 7 and February 5, 2003 the Office made additional requests to Dr. Lowrey for medical evidence causally relating the diagnosed left elbow condition to the accepted employment injury.

In a letter dated February 4, 2003, Dr. Lowrey renewed his request that appellant's claim be expanded to include a diagnosis of olecranon bursitis of the left elbow. He further stated: "In my opinion this diagnosis is directly and proximately related to his electrical injury of June 8, 1994. Amendment of this claim is appropriate. Please process this request in a timely manner as not to delay patient's treatment."

On February 24, 2003 the Office advised appellant that a second opinion evaluation was necessary to address the issues related to his claim. The Office thereafter referred appellant to Dr. James Rutherford, a Board-certified orthopedic specialist, along with the record containing information on the employment injuries and subsequent treatment and a statement of accepted facts.

In a report dated March 24, 2003, Dr. Rutherford reviewed appellant's medical record and the statement of accepted facts and discussed appellant's history of the accepted employment

¹ On January 28, 2003 Dr. Orzo submitted a Form CA-9 request for medical service for a trial implantation of a spinal cord stimulator for possible pain reduction of the work-related conditions. In a letter dated November 17, 2003, the Office advised that the spinal cord stimulator trial could not be authorized at that time and requested additional medical evidence in support of the claim. There is no final decision on this issue of record.

injuries. The referral physician then outlined answers to the Office questions regarding appellant's active residuals, work-related disability and necessary treatment related to the employment injuries. Regarding whether appellant developed left olecranon bursitis diagnosed by appellant's physician, Dr. Rutherford reported that the medical record and clinical findings establish that appellant did have effusion and olecranon bursitis of the left elbow which was treated. In response to the Office question as to whether the left elbow condition was causally related to the accepted employment injury, Dr. Rutherford stated:

“No. [Appellant's] electrical shock affected primarily his right arm and his left leg and there is no indication of clinical findings about the left elbow in the initial medical records. [Appellant] stated that the symptoms of the left elbow olecranon bursitis began to occur about a year ago, with the original injury occurring in June 1994. [Appellant] also could not identify any additional stress on his left elbow or pressure on his left elbow. It is thus my medical opinion that one could not state with any medical probability the etiology of the olecranon bursitis of the left elbow.... It is my medical opinion that the olecranon bursitis of [appellant's] elbow is of undetermined etiology and the medical records did not support that the onset of his olecranon bursitis approximately one year ago is related to his injury of June 8, 1994....”

On April 22 and 29, 2003 the Office advised both Dr. Orzo and Dr. Lowrey that based on Dr. Rutherford's second opinion report it could not accept appellant's left olecranon bursitis as a part of his claim at that time. The Office furnished the physicians with a copy of the second opinion report and requested that Dr. Orzo and Dr. Lowrey respond and indicate whether or not they disagreed with Dr. Rutherford's opinion regarding the claimed work-related elbow bursitis. The Office requested that the physicians further cite any supporting objective medical evidence. Dr. Lowrey submitted an April 29, 2003 treatment note which outlined that appellant was awaiting the additional diagnosis of left elbow olecranon bursitis; he did not address the issue of causal relationship. No additional reports were received by appellant's treating physicians on this issue.

By decision dated October 22, 2003, the Office rejected appellant's claim that the left olecranon bursitis was causally related to the accepted work-related injury of June 8, 1994. The Office found that while Dr. Lowrey failed to provide detailed medical rationale as to how the condition was causally related to his work-related injury of June 8, 1994, Dr. Rutherford provided sufficient medical opinion in his March 24, 2003 report that the left olecranon bursitis was of unknown etiology and could not connect it to the work injury.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² 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

² 5 U.S.C. §§ 8101-8193.

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.³ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

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 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.⁵

ANALYSIS

To support his claim, appellant relies on the opinion of Dr. Lowrey that he has developed left olecranon bursitis as a result of the accepted June 8, 1994 employment injury. The Board, however, notes that Dr. Lowrey simply noted in an October 25, 2003 report that appellant presented with persistent pain and swelling in the left elbow which he wished to treat with a cortisone shot and requested on October 28, 2003 that the Office expand appellant's claim to include olecranon bursitis of the left elbow for treatment. Although the physician notes an increase in appellant's symptoms which he connects to the employment injury that does not equate with a reasoned opinion on causality. In a subsequent letter dated February 4, 2003, Dr. Lowrey provides only generally that he believed the condition was directly and proximately related to the accepted employment injury, despite the fact that the Office made numerous requests that Dr. Lowrey submit rationalized medical opinion evidence supporting his claim for causal relationship between the left elbow condition and the employment injury. Medical reports consisting solely of conclusory statements without supporting rationale are of little probative value.⁶ In view of the inadequate rationale provided by Dr. Lowrey on the issue of causal relationship, the Board finds that his opinion fails to establish appellant's entitlement to compensation and treatment for the claimed condition.

In contrast, Dr. Rutherford, a second opinion Board-certified orthopedic specialist, provided a well-reasoned opinion indicating that appellant's left olecranon bursitis of the left elbow could not be causally connected to the June 8, 1994 employment injury. Dr. Rutherford noted that appellant's electrical shock injury primarily affected his right arm and his left leg and that there was no indication of clinical findings about the left elbow in the initial medical records. Further, in reaching this conclusion, Dr. Rutherford relied on a review of the medical records which revealed that appellant had only experienced the onset of his left elbow symptoms

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

⁴ *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

⁵ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

⁶ *William C. Thomas*, 45 ECAB 591 (1994); *Marilyn D. Polk*, 44 ECAB 673 (1993).

a year prior, although the original injury occurred in 1994 and noted that appellant had not reported any additional stress or pressure affecting the elbow. He concluded that the left olecranon bursitis of appellant's elbow was of undetermined etiology and could not be causally related to the June 8, 1994 employment injury. Dr. Rutherford's opinion is therefore supported by his physical findings and the medical records.

For these reasons, appellant did not submit medical evidence showing that his left elbow condition was related to the June 8, 1994 employment injury.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that his left olecranon bursitis was causally related to his June 8, 1994 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 22, 2003 is affirmed.

Issued: June 7, 2004
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member