

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ARTURO A. ADAME and DEPARTMENT OF THE ARMY,
CORPUS CHRISTI ARMY DEPOT, Corpus Christi, Tex.

*Docket No. 96-38; Submitted on the Record;
Issued March 24, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has established that he sustained a respiratory, orthopedic, or emotional condition in the performance of duty.

On May 18, 1994 appellant, then a 39-year-old sheet metal mechanic, filed a claim for occupational disease alleging that he sustained a set of medical conditions known as "Gulf War Syndrome" while on temporary-duty assignment in Jabyal, Saudi Arabia, during military operations in Desert Shield and Desert Storm from late January through March 1991. Appellant stated that he experienced nervousness, insomnia, anxiety, sinus congestion, hypertension, dizziness, fatigue, joint pains, and mood changes. In an accompanying statement, appellant noted that while stationed in Saudi Arabia, he experienced frequent missile attacks, was only a mile and a half from a reserve unit struck by a SCUD missile, experienced sinus congestion and breathing problems after being exposed to smoke from burning oil wells, and was given medications and x-rays by a dispensary physician. Appellant noted that on his return from Saudi Arabia, he continued to experience anxiety, insomnia, joint pain and shortness of breath.

Appellant submitted employing establishment dispensary chart notes dated March to May 1991, noting appellant's complaints of nasal congestion and discharge, diagnosing a deviated nasal septum and recommending septoplasty. He also submitted nonmedical records relating to counseling visits for anxiety from February to April 1994.

Appellant submitted chart notes from Dr. Gilberto Sosa, Jr., an attending family practitioner, dated May 10, 1991 to April 4, 1994, describing his symptoms of fatigue, congestion, sore throat, joint aches, anxiety and claustrophobia. Dr. Sosa diagnosed armpit rashes as monilla dermatitis, and appellant's throat and nasal symptoms as pharyngitis, sinusitis

and allergic rhinitis. These reports do not mention appellant's assignment to the Persian Gulf or other employment factors.¹

In a September 26, 1994 report, Dr. Sosa noted treating appellant in January and February 1994 for anxiety attacks with claustrophobia and tremors. Dr. Sosa prescribed antianxiety medication and referred appellant to a psychiatrist for evaluation and treatment.²

By decision dated November 29, 1994, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that fact of injury was not established. The Office accepted that the alleged exposures occurred at the times and places and in the manners alleged, but not that a medical condition resulted from those exposures. The Office noted that the medical record did not provide a definitive diagnosis of appellant's symptoms, present a cause for appellant's symptoms, or provide sufficient medical rationale.

Appellant disagreed with the decision, and by a December 12, 1994 letter requested a hearing before a representative of the Office's Branch of Hearings and Review, which was held on June 7, 1995. At the hearing, appellant attributed his symptoms to smoke from burning oil wells, being bitten by contaminated fleas while lifting barrels of sand to be shipped to the United States for analysis, and exposure to SCUD missile attacks in the Persian Gulf. Appellant submitted additional medical evidence.

In a March 14, 1995 report, Dr. John H. Patterson, an attending Board-certified psychiatrist, noted appellant's assignment to Saudi Arabia during Desert Storm, related appellant's complaints of joint pain, headaches, insomnia, mood swings, depression, gastrointestinal distress, memory problems, dermatitis, severe fatigue, and anxiety attacks. Dr. Patterson noted that appellant "denied having any traumatic experiences during the Gulf War," but that he was "concerned about the long-term effects of some of the medications he took while in the Gulf area." On examination, Dr. Patterson noted a weak recent memory, depressed mood, weak attention and concentration, and somewhat tangential speech. Dr. Patterson diagnosed a severe, recurrent major depressive disorder, panic disorder without agoraphobia, and "rule/out Gulf War Illness." Dr. Patterson recommended continued psychiatric treatment.

In an April 12, 1995 report, Dr. Pamela F. Clement, a clinical neuropsychologist, related appellant's symptoms of "headaches, aching joints, shortness of breath, skin rashes,

¹ In a May 6, 1994 report, Mr. Julian P. Collier, appellant's supervisor since May 1988, noted that he had no direct knowledge of appellant's working conditions while on assignment in Saudi Arabia. He noted that appellant was sent to the employing establishment dispensary "for treatment of back and neck pain, high blood pressure, and sinus problems prior to his temporary duty in Saudi Arabia," and had been disciplined both before and after his temporary duty "for exhibiting outbursts of anger" at work.

² In a September 1, 1994 letter, the Office of Workers' Compensation Programs advised appellant of the type of additional factual and medical evidence needed to establish his claim. The Office requested that appellant submit a comprehensive medical report containing findings on examination and laboratory studies, and a rationalized medical opinion regarding whether those findings were related to appellant's federal employment. By an October 5, 1994 letter, the Office advised appellant that additional evidence was still required to establish his claim, as explained during a telephone conversation. The Office afforded appellant 20 days in which to submit such evidence. The record indicates that appellant did not submit additional evidence prior to November 29, 1994.

gastrointestinal distress, sleep disturbance, and chronic sinusitis ... problems with memory, anxiety attacks, and depression.” Dr. Clement noted that appellant had become unable to tolerate “being around groups of people,” causing him to curtail his activities. She described several incidents in which appellant lost his temper and became violent following his return from Saudi Arabia. On examination, Dr. Clement found “high levels of emotional distress characterized by marked emotional lability, anxiety and depression.” She noted that appellant “served in the Gulf from January 21 to March 27, 1991 ... as an assistant in a welding shop. He reports that he could see and hear the SCUD and Patriot missiles during the conflict, and was about a mile away from the site where the SCUD missile hit a U.S. barracks.” Dr. Clement noted that appellant was exposed to pyridostygmine bromide, an anthrax vaccination, and smoke from burning oil wells. She related that appellant reported “anxiety attacks beginning about a year and a half after his return from the Gulf, but he [did] not relate these symptoms directly to the anxiety he experienced in the Gulf.” Dr. Clement diagnosed a moderate cognitive disorder with a moderate-to-severe memory impairment and a depressive disorder. She noted a “subtle deficit in higher level logical reasoning skills,” with concentration and memory problems “interfering significantly with his job functioning.”

In a March 21, 1995 hospital discharge report, Dr. Michael A. Berry, an attending internist, noted that appellant was hospitalized from March 8 to 17, 1995. Dr. Berry noted appellant’s assignment to the Persian Gulf in 1991, and related appellant’s symptoms of depression, emotional lability, skin rashes, sinusitis, joint aches, insomnia and headaches. He noted that laboratory studies of appellant’s blood and urine were within normal limits and that pulmonary function studies showed no evidence of airway disease. Dr. Berry diagnosed fibromyalgia, osteoarthritis, dry eyes requiring a lubricating solution, contact dermatitis, chronic sinusitis and allergic rhinitis. Dr. Berry prescribed continued medications and noted that appellant had been scheduled for sinus surgery.

In a May 30, 1995 report, Dr. U.R. Maruvada, an attending Board-certified psychiatrist, noted appellant’s complaints of “Persian Gulf Syndrome,” and prescribed medications to counter appellant’s depression and violent outbursts.³

By decision dated and finalized August 2, 1995, the Office hearing representative affirmed the Office’s November 29, 1994 decision, finding that fact of injury was not established. The hearing representative found that the medical record did not contain a physician’s report displaying “knowledge of the [appellant’s] employment environment, provid[ing] a definitive diagnosis, and unequivocal opinion regarding causal relationship between the diagnosis provided and the employment environment described, supported by medical rationale.” The hearing representative accepted as factual that appellant was detailed to Saudi Arabia from January 21 to April 9, 1991, that upon his arrival his plane had to circle the airport for an hour “due to the launching of 3 SCUD missiles,” that appellant was exposed to smoke from burning oil wells, “was required to fill approximately 55 barrels of sand for analysis, and was frequently bitten by fleas.” The hearing representative also accepted that appellant was

³ Appellant also submitted an undated statement by Mr. Ladislado Molina, Jr., a coworker of appellant’s in Saudi Arabia, who described a lack of bathing water, small black particles in the air, and that he and appellant were working in close proximity to sites attacked by SCUD missiles.

approximately one-and-a-half miles from where a SCUD missile struck an army reserve unit, frequently heard sirens and Patriot missiles, and occasionally witnessed missiles in flight.

The Board finds that appellant has not established that he sustained a respiratory, sinus, ocular, dermatologic, orthopedic, or emotional condition in the performance of duty.

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;⁴ (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;⁵ and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁶ The medical opinion must be one of reasonable medical certainty,⁷ 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.⁸

The Office has accepted that appellant was exposed to smoke from burning oil wells, was bitten by fleas while filling barrels of sand, experienced missile attacks within close proximity to where he worked, and was a mile and a half from where a reserve unit was hit by a SCUD missile. In this case, appellant has the burden of establishing that his claimed conditions were caused by the accepted exposures in Saudi Arabia during January to April 1991, or other factors of his federal employment.

Appellant submitted medical reports dated from March 1991 through May 1995, in which his physicians consistently acknowledge appellant's temporary assignment to Saudi Arabia, his exposure to smoke from burning oil wells and his proximity to missile attacks. His physicians used diagnoses of "Gulf War Illness" and "Persian Gulf Syndrome" to attribute a diverse set of medical conditions, involving the eyes, lungs, nasal sinuses, skin, as well as several psychiatric disorders, to those exposures. Therefore, it is unclear as to whether appellant's physicians attribute individual conditions to specific exposures, or if there is a constellation of illnesses comprising the diagnostic criteria of "Gulf War Syndrome," caused by a dynamic relationship of more than one of the exposures. A particular difficulty with the lack of medical rationale in this case is that such diverse pathologies are attributed to the same set of exposures, while the medical reasoning for that attribution is not apparent from the record. As the facts of the case are somewhat unusual, the need for medical rationale addressing causal relationship is

⁴ See *Ronald K. White*, 37 ECAB 176, 178 (1985).

⁵ See *Walter D. Morehead*, 31 ECAB 188, 194 (1979). The Office, as part of its adjudicatory function, must make findings of fact and a determination as to whether the implicated working conditions constitute employment factors prior to submitting the case record to a medical expert; see *John A. Snowberger*, 34 ECAB 1262, 1271 (1983); *Rocco Izzo*, 5 ECAB 161, 164 (1952).

⁶ See generally *Lloyd C. Wiggs*, 32 ECAB 1023, 1029 (1981).

⁷ See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁸ See *William E. Enright*, 31 ECAB 426, 430 (1980).

particularly crucial, and its absence makes it that much more difficult for appellant to meet his burden of proof.

Appellant submitted several reports addressing respiratory, ocular, dermatologic and musculoskeletal conditions. Dispensary chart notes dated March to May 1991 relate appellant's complaints of nasal congestion and discharge and diagnose a deviated nasal septum. Dr. Sosa, an attending family practitioner submitted treatment notes dated May 10, 1991 to September 26, 1994 diagnosing monilla dermatitis, pharyngitis, sinusitis, allergic rhinitis and anxiety attacks. In a March 21, 1995 report, Dr. Berry, an attending Board-certified internist, noted appellant's assignment to the Persian Gulf in 1991, diagnosed fibromyalgia, osteoarthritis, dry eyes, contact dermatitis, chronic sinusitis and allergic rhinitis. While these reports acknowledge appellant's duties in Saudi Arabia and the accepted exposures, they do not contain sufficient medical rationale explaining the pathophysiologic mechanisms by which those exposures would cause the diagnosed disorders of the eyes, respiratory tract, skin or musculoskeletal system. Therefore, these reports are of diminished probative value in establishing causal relationship.⁹

Appellant also submitted medical evidence related to several diagnosed psychiatric disorders.

In a March 14, 1995 report, Dr. Patterson, an attending Board-certified psychiatrist, noted appellant's assignment to Saudi Arabia during Desert Storm, and diagnosed severe, recurrent major depression, panic disorder, and "rule/out Gulf War Illness." However, Dr. Patterson did not explain how the diagnosed conditions were related to the accepted employment factors. Also, Dr. Patterson did not explain if "Gulf War Illness" could be clinically distinguished from the diagnosed depression and panic disorder, or if "Gulf War Illness" was a distinct diagnosis of psychiatric disorders common to personnel present in the Gulf Region during Desert Shield and Desert Storm.

In an April 12, 1995 report, Dr. Clement, a clinical neuropsychologist, provided a detailed description of appellant's duties and exposures in Saudi Arabia, and diagnosed a moderate cognitive disorder with memory impairment, and a depressive disorder. Although Dr. Clement demonstrates a thorough knowledge of the accepted exposures, she did not explain how and why those exposures would cause depression, memory impairment or cognitive impairment. Moreover, Dr. Clement did not state directly that the diagnosed conditions were in any way related to the accepted exposures or other employment factors.

In a May 30, 1995 report, Dr. Maruvada, an attending Board-certified psychiatrist, noted appellant's depression, violent outbursts and "Persian Gulf Syndrome." However, Dr. Maruvada did not set forth medical rationale explaining which of the accepted exposures could cause a psychiatric illness or disorder, and how and why such a causal relationship could be established. Also, Dr. Maruvada did not explain the clinical presentation and features of "Persian Gulf Syndrome," and why appellant's disorders would meet those diagnostic criteria.

⁹ *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).

In the absence of sufficient medical rationale explaining the pathophysiologic link between the diagnosed psychiatric conditions and accepted factors of appellant's federal employment, the reports of Drs. Clement, Maruvada and Patterson are of diminished probative value and are insufficient to meet appellant's burden of proof in establishing causal relationship.

Consequently, appellant has failed to meet his burden of proof, as he submitted insufficient medical rationale to establish a causal relationship between his claimed conditions and factors of his federal employment.

The decision of the Office of Workers' Compensation Programs dated and finalized August 2, 1995 is hereby affirmed.

Dated, Washington, D.C.
March 24, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member