

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LARRY D. NEAL and DEPARTMENT OF THE NAVY,
PUGET SOUND NAVAL SHIPYARD, Bremerton, Wash.

*Docket No. 97-229; Submitted on the Record;
Issued November 12, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether appellant established a recurrence of disability due to his accepted employment injury, left lateral epicondylitis; and (2) whether appellant has established that he suffered a bilateral elbow condition causally related to factors of his federal employment.

The Board has duly reviewed the case record and concludes that appellant has not established a recurrence of disability due to his accepted employment injury, left lateral epicondylitis.

In the present case, the Office of Workers' Compensation Programs accepted that appellant suffered left lateral epicondylitis as a result of his federal employment and disability compensation was awarded. Appellant returned to his regular work on July 13, 1994. On September 6, 1995 appellant filed a notice of recurrence of disability indicating that the pain in his arms had returned. On September 18, 1995 the Office advised appellant to submit rationalized medical evidence addressing the relationship between his alleged recurrence of disability and his accepted employment condition.

In support, appellant submitted a September 29, 1995 letter from Dr. Brian P. Wicks, a Board-certified orthopedic surgeon. Dr. Wicks indicated that his initial examination of appellant in 1994 revealed left lateral epicondylitis related on a more probable than not basis to his work. Dr. Wicks reported that, at an examination on August 22, 1995, appellant revealed that he had right elbow problems dating back to 1993 which remained resolved until June 1995 when he was throwing horseshoes and suffered a recurrence of his previously quite severe right lateral epicondylar pain. Dr. Wicks indicated that he treated appellant with a cortisone injection. He further stated that on September 20, 1995 appellant had a reinjection of the left lateral epicondyle for a recurrence of symptoms.

By decision dated October 11, 1995, the Office denied the claim for compensation because appellant's claim was never accepted for right elbow epicondylitis and because

Dr. Wicks failed to provide an opinion regarding the relationship of appellant's left elbow problems to his accepted injury.

Where an employee claims a recurrence of disability to an accepted employment-related injury, he has the burden of establishing by the weight of the reliable probative evidence that the recurrence of the condition for which he seeks compensation is causally related to the accepted employment injury.¹ As part of this burden, the employee must submit rationalized medical opinion evidence based on a complete and accurate factual and medical background showing a causal relationship between the current condition and the accepted employment-related injury.

In this case, Dr. Wicks failed to provide his opinion regarding whether appellant's elbow conditions were related to his accepted employment-related injury. The Office, therefore, properly rejected appellant's claim for a recurrence of disability in its October 11, 1995 decision.

The Board also finds that appellant failed to establish that he suffered a bilateral elbow condition causally related to factors of his federal employment in a separate claim he filed on February 6, 1996.

On February 6, 1996 appellant filed a notice of traumatic injury alleging that on February 2, 1996 he hurt both his arms at the elbows while lifting heavy equipment in the course of his federal employment.

On February 5, 1996 Dr. Laura E. Peter diagnosed appellant with bilateral epicondylitis. Appellant was advised to remain in sick quarters until February 6, 1996 and then to remain on light duty until February 19, 1996. The physician recorded appellant's statement that the injury occurred while he was installing a ball seat and bonnet for a missile gas valve. Dr. James D. Krueger, an internist, diagnosed bilateral epicondylitis on February 8, 1996. Dr. Rolando P. Dulay, a specialist in occupational medicine, also made this diagnosis on February 22, 1996. Dr. Wicks, examined appellant on February 26, 1996 and he also diagnosed bilateral epicondylitis. He also recommended that appellant undergo a left lateral epicondylar release.

On March 14, 1996 the Office requested that Dr. Wicks provide an opinion supported by medical rationale addressing the causal relationship between appellant's current condition and the injury reported on February 2, 1996. The Office also informed appellant on that same date of this deficiency in the medical evidence.

On March 22, 1996 Dr. Joseph L. Johnson, a Board-certified internist specializing in oncology, indicated that he treated appellant for a nodular mixed lymphoma and that this condition was unrelated to appellant's bilateral epicondylitis.

Dr. Dulay again diagnosed bilateral epicondylitis on March 27 and April 3, 1996.

On April 2, 1996 Dr. Wicks reviewed appellant's medical history and noted that he treated appellant for bilateral epicondylitis. Dr. Wicks again requested that the Office grant appellant surgical clearance for a left lateral epicondylar release.

¹ See *Henry L. Kent*, 34 ECAB 361 (1982); *Dennis E. Twadzik*, 34 ECAB 536 (1983).

By decision dated May 1, 1996, the Office denied appellant's claim because the evidence failed to establish that appellant's condition was causally related to the February 2, 1996 work incident. In an accompanying memorandum, the Office indicated that it accepted that the work incident on February 2, 1996 occurred as alleged, but that there was no medical evidence providing a statement that the diagnosed condition was causally related to the work incident.

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his 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 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.³

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place, and in the manner alleged.⁴ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁵

In the instant case, there is no dispute that appellant was an "employee" within the meaning of the Act, nor that appellant filed a timely claim for compensation. Moreover, the Office accepted that the February 2, 1996 work incident occurred as alleged. Appellant, however, failed to submit any medical opinion evidence addressing whether the work incident caused or aggravated any particular condition or disability. The medical evidence presented by Drs. Peter, Krueger, Dulay, Wicks, and Johnson only indicated that appellant suffered from bilateral epicondylitis. The physicians failed to address whether the condition was related to the February 2, 1996 work incident. Appellant was advised of the deficiency of this evidence and failed to submit additional medical evidence. Appellant, therefore, failed to meet his burden of proof of establishing that the employment incident caused a personal injury.

² 5 U.S.C. §§ 8101-8193.

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

⁴ *John J. Carlone*, 41 ECAB 354 (1989).

⁵ *Id.*

The decisions of the Office of Workers' Compensation Programs dated May 1, 1996 and October 11, 1995 are affirmed.

Dated, Washington, D.C.
November 12, 1998

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member