

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL C. SMITH and DEPARTMENT OF JUSTICE,
UNITED STATES MARSHALS, Washington, DC

*Docket No. 97-2814; Submitted on the Record;
Issued December 3, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs properly denied appellant's claim for continuation of pay; and (2) whether appellant has established that his shoulder surgeries were causally related to his federal employment.

On March 20, 1996 appellant, then a 29-year-old deputy marshal, filed a notice of traumatic injury alleging that he tore his rotator cuff or right shoulder tendon and suffered pain and a loss of mobility in both shoulders as a result of his federal employment. Appellant attributed the cause of his injury to excessive stress on his shoulders during a close quarters battle training course. In this regard, he stated that he was repeatedly thrown onto his back and shoulder during excessive hours of this training. The employing establishment indicated that it received notice of the injury on March 13, 1996 and that appellant stopped working on May 13, 1996.

On May 13, 1996 Dr. David J. Manske, appellant's treating physician and a Board-certified orthopedic surgeon, diagnosed impingement syndrome, right shoulder. He indicated that he performed an arthroscopic subacromial decompression of the right shoulder.

On May 29, 1996 Dr. Manske diagnosed impingement syndrome of both shoulders.

On June 28, 1996 Dr. Manske again treated appellant for impingement syndrome of his shoulders.

On July 22, 1996 Dr. Manske diagnosed stage two impingement syndrome of the left shoulder. In presenting the history, Dr. Manske indicated that appellant injured both shoulders with repetitive training exercises in February 1996. He also stated that he performed an arthroscopic subacromial decompression on appellant's left shoulder.

On August 6, 1996 Dr. Manske diagnosed left shoulder impingement syndrome.

On August 19, 1996 Dr. Manske diagnosed upper back strain and noted that appellant was status post arthroscopy for both shoulders for impingement syndrome. Dr. Manske checked a box to indicate that appellant's condition was "industrial."

On September 12, 1996 appellant filed a notice of traumatic disease claiming that he suffered extreme pain and soreness in the left shoulder due to repetitive, stressful training exercises.

On September 14, 1996 Dr. Manske diagnosed impingement syndrome, right shoulder and indicated that appellant could return to full duty on September 18, 1996. Dr. Manske indicated that appellant was improving following surgery and instructed appellant to continue with exercises.

On October 8, 1996 the Office requested additional information, including a detailed narrative report addressing whether the diagnosed conditions were related to appellant's federal employment.

On November 27, 1996 Dr. Manske diagnosed bilateral shoulder impingement syndrome. Dr. Manske recorded a history that during close quarters battle training appellant's shoulders became very painful and that his mobility decreased after numerous take down drills in which he was thrown to the ground. Dr. Manske indicated that appellant told him that numerous drills placed extreme stress on his shoulders.

By decision dated January 10, 1997, the Office denied appellant's claim for a left shoulder condition finding there was insufficient medical evidence to establish a relationship between the condition and appellant's employment. The Office indicated that the checking of a box to indicate that a condition was caused or aggravated by employment is not sufficient to establish causal relationship.

On January 30, 1997 appellant requested reconsideration. In support, he submitted a statement indicating that his injury occurred during an intense close quarters training course. Appellant stated that during training he was thrown to the ground numerous times, often landing on his left shoulder and arm. He stated that he was also required to complete hours of repetitive training drills, which required him to keep his arms extended for long periods of time while holding weapons. Appellant indicated that he was subject to intensive physical training, which further intensified the pain in his left shoulder.

On February 20, 1997 the Office requested additional medical evidence including a physician's rationalized opinion addressing how the claimed work activity caused the diagnosed condition.

By decision dated April 10, 1997, the Office indicated that it reviewed appellant's claim on its merits and denied modification of its January 10, 1997 decision. In an accompanying memorandum, the Office indicated that the record was devoid of evidence establishing a causal relationship between factors of employment and the diagnosed condition related to appellant's left shoulder. The Office further noted that continuation of pay would not be allowed because

appellant filed his written notice of injury more than 30 days following the injury and because this claim involved an occupational disease.

On April 21, 1997 Dr. Manske diagnosed bilateral impingement syndrome of the shoulders.

By decision dated June 12, 1997, the Office indicated that appellant was not entitled to continuation of pay because appellant's claim was being developed as an occupational disease claim because his injury resulted from cumulative trauma.

In a separate decision dated June 12, 1997, the Office accepted appellant's claim for bilateral shoulder strain. The Office indicated that appellant filed a separate claim for a left shoulder condition and that fact of injury in both cases was attributed to his participation in training courses. The Office found, however, that the medical evidence failed to establish that the surgical procedures appellant underwent in both shoulders for impingement syndrome and his upper back strain were related to his duties at the training course

The Board initially finds that the Office properly denied appellant's claim for continuation of pay.

An employee is not entitled to continuation of pay unless the employee has sustained a traumatic injury.¹ The initial analysis must thus determine whether a traumatic injury rather than an occupational disease, has been sustained.

The terms "traumatic injury" and "occupational illness" are defined by regulation. Traumatic injury is defined as follows:

"Traumatic injury means a wound or other condition of the body caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. The injury must be caused by a specific event or incident or series of events or incidents within a single workday or work shift."²

Occupational disease is defined as follows:

"Occupational disease or illness means a condition produced in the work environment over a period longer than a single workday or shift by such factors as systemic infection; continued or repeated stress or strain; or exposure to hazardous elements such as, but not limited to, toxins, poisons, fumes, noise, particulates or radiation or other continued or repeated conditions or factors of the work environment."³

¹ *Richard D. Wray*, 45 ECAB 758 (1994); 20 C.F.R. § 10.201(a).

² 20 C.F.R. § 10.5(15).

³ 20 C.F.R. § 10.5(16).

In the present case, appellant consistently stated in his notices of traumatic injury, Form CA-1s, dated March 20 and September 12, 1996 that his shoulder injuries resulted from repeatedly being thrown on his back during hours of close quarter battle training. Appellant restated that his injury resulted from repetitive trauma to his shoulder during hours of this training course in his statement filed with his January 30, 1997 request for reconsideration. Moreover, the July 22 and November 27, 1996 reports of Dr. Manske, appellant's treating physician and a Board-certified orthopedic surgeon, indicate that appellant informed him that the injuries to his shoulders resulted from repeatedly being thrown on his back during hours of training. Because all the evidence of record, including appellant's own statements, establish that his shoulder injuries resulted from repetitive trauma over days of training, appellant's injury constitutes an occupational disease as it occurred over a period longer than a single workday or shift by continued or repetitive stress. Appellant is therefore, not entitled to continuation of pay.

The Board, however, finds that this case is not in posture for a decision on the issue of whether appellant established that his shoulder surgeries were causally related to his federal employment and that, therefore, the case must be remanded for further evidentiary development.

An employee seeking benefits under the Federal Employees' Compensation Act⁴ 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.⁵

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;⁶ (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;⁷ and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed⁸ or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁹

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁶ *See Ronald K. White*, 37 ECAB 176, 178 (1985).

⁷ *See John A. Snowberger*, 34 ECAB 1262, 1271 (1983); *Walter D. Morehead*, 31 ECAB 188, 194 (1979); *Rocco Izzo*, 5 ECAB 161, 164 (1952).

⁸ *See Georgia R. Cameron*, 4 ECAB 311-12 (1951); *Arthur C. Hamer*, 1 ECAB 62, 64 (1947).

⁹ *See generally Lloyd C. Wiggs*, 32 ECAB 1023, 1029 (1981).

The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.¹⁰ 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.¹¹

In the present case, Dr. Manske noted in an August 19, 1996 report that the arthroscopy in both of appellant's shoulders for his impingement syndrome resulted from "industrial" causes. Dr. Manske recorded in both his July 22 and November 27, 1996 reports that appellant's impingement injuries and subsequent surgeries resulted from the repetitive stress appellant endured from his training exercises in February 1996.

While not sufficient to meet appellant's burden of proof, the Board finds that this evidence is sufficient to require further development of the record.¹² Although the medical evidence submitted by appellant is not sufficient to meet his burden of proof, the medical evidence of record raises an uncontroverted inference of causal relationship between the surgeries on appellant's shoulders and his specific employment duties.

On remand the Office should further develop the medical evidence by obtaining a rationalized medical opinion on whether appellant's bilateral shoulder surgeries are causally related to identified factors of his federal employment. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

¹⁰ See *Naomi A. Lilly*, 10 ECAB 560, 572-73 (1959).

¹¹ *James Mack*, 43 ECAB 321 (1991).

¹² *John J. Carlone*, 41 ECAB 354 (1989).

The decisions of the Office of Workers' Compensation Programs dated June 12 and April 10, 1997 are affirmed with regard to the denial of continuation of pay. The decisions are set aside as to the denial of appellant's claim pertaining to his shoulder surgeries and remanded for further development consistent with this opinion.

Dated, Washington, D.C.
December 3, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member