

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONALD R. HODGES and DEPARTMENT OF THE NAVY,
PUGET SOUND NAVAL SHIPYARD, Bremerton, Wash.

*Docket No. 97-1118; Submitted on the Record;
Issued February 2, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that his right shoulder condition is causally related to factors of federal employment.

The Board has duly reviewed the case record and finds that appellant has not established that his right shoulder condition is causally related to factors of federal employment.

On August 15, 1996 appellant, then a 47-year-old sail maker, filed an occupational claim, Form CA-2, alleging that he sustained severe shoulder pains and arm pain as a result of his work activities which included lifting, pushing, pulling and carrying heavy objects. Specifically, appellant stated that he had to lift heavy containments and tarps, install them on board ships and submarines and pack 100-pound rolls of material on board the various vessels. Appellant explained that the heavy containment consist of reactor core disposal tarps which weight approximately 1,200 pounds. He stated he must roll and fold up the tarps and place them on a pallet. To use the containments and tarps on ships and submarines it was necessary to pack them up or down ladders or use ropes to lower them down to different levels. Appellant stated that he first noted pain in his right shoulder when he underwent surgery in May 1994 for pain in the front area of his shoulder which failed to eliminate all of the shoulder pain. When he returned to work, the shoulder pain worsened. He stated that he did not recall any similar problems with his shoulder prior to his current situation. Appellant indicated that he became aware he had a right shoulder problem on March 1, 1993 and learned that it was work related in September 1995.

By letter dated October 7, 1996, the Office of Workers' Compensation Programs informed appellant that additional information was required to establish his claim including a narrative report from his treating physician explaining how the factors of his federal employment contributed to his condition. Appellant subsequently submitted medical evidence to establish his claim.

By decision dated November 15, 1996, the Office denied the claim stating that the evidence of record did not establish that appellant's right shoulder condition was causally related to his federal employment.

To establish that an injury was sustained in the performance of duty, an appellant must submit the following: (1) medical evidence establishing the presence or existence of the condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the 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 claimant. The medical evidence required to establish causal relationship, generally, is rationalized medical 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 appellant'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 appellant.¹

In the instant case, the medical evidence appellant submitted either does not address causation or does not contain a rationalized medical opinion explaining how his right shoulder condition resulted from his employment. There is also some ambiguity as to whether appellant had a preexisting, nonwork-related right shoulder condition. In a report dated January 14, 1994, Dr. Larry M. Gorman, a Board-certified orthopedic surgeon, noted that, about five years prior to the date of his examination, appellant was injured while working at Payless when his right arm was jerked quite hard when a pallet cart got out of control. He diagnosed probable partial tear of the right rotator cuff in the right shoulder.

A magnetic resonance imaging (MRI) scan dated January 14, 1994 showed an old partial tear of a rotator cuff. Dr. Frank A. Erickson, a Board-certified radiologist, who performed the MRI scan, diagnosed a high probability of glenoid labral tear extending almost completely through the superior portion of the labrum from the articular surface. An x-ray film dated April 5, 1994 showed no acromioclavicular joint separation or instability under stress. The report noted that appellant had been injured several years ago and had recurrent pain. In his report dated February 9, 1994, Dr. Brian P. Wicks, a Board-certified orthopedic surgeon, stated that appellant's symptoms were more suggestive of acromioclavicular arthritis than impingement or stability but he did not address causation. In a report dated April 5, 1994, Dr. Wicks stated that appellant's shoulder "was about as bad" as it was in October 1993 and appellant had recurrent acromioclavicular joint arthritis. In a report dated April 19, 1996, Dr. Wicks stated that two years prior to the date of his examination appellant had undergone a right distal clavicle excision for acromioclavicular joint arthritis and over the past few months had developed increasing pain in the right shoulder which was especially bad with overhead activity. He diagnosed moderate right shoulder subacromial bursitis and moderate left shoulder subacromial

¹ See *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

bursitis. In a progress note dated April 19, 1996, Dr. Joe D. Herre stated that appellant stated that his job involved work with his arm and shoulder and that he had arthritis in his collar bone. He diagnosed possible bilateral shoulder bursitis and restricted appellant's activities. In a progress note dated July 26, 1996, Dr. Wicks described an incident where appellant reported tossing something that caused him a lot of pain in his right shoulder but he does not mention appellant's employment. None of this medical evidence addresses causation and therefore is not probative. Appellant submitted progress notes dated from May 10 through July 29, 1996 but they also do not address causation.

In a report dated August 8, 1996, Dr. Michael S. McManus, a specialist in occupational health, considered appellant's history of injury, performed a physical examination and diagnosed rotator cuff tendinitis, status post resection of distal clavicle for acromioclavicular arthritis and "rule-out partial tear of rotator cuff (work related on a more probable than not basis)." He did not provide any rationalized explanation as to how appellant's right shoulder condition is causally related to factors of his federal employment. His reference to appellant's rotator cuff being probably work related is vague and speculative and therefore not probative.² In his attending physician's report dated August 19, 1996, Dr. McManus reiterated his diagnosis in his August 6, 1996 report and checked the "yes" box that appellant's condition was caused or aggravated by his employment. He stated that after surgery appellant's anterior shoulder pain resolved but appellant experienced continued worsening of lateral and posterior anterior shoulder pain. Dr. McManus' explanation does not address how appellant's employment caused or aggravated his right shoulder condition and therefore it is not probative.³

Dr. McManus did not provide a rationalized medical opinion addressing the cause of appellant's right shoulder pain in any of his reports and therefore they are not probative.⁴ As appellant has not submitted the requisite medical evidence to establish that his right shoulder condition is causally related to factors of his federal employment, he has not met his burden of proof.

² See *William S. Wright*, 45 ECAB 498, 503-04 (1994); *Connie Johns*, 44 ECAB 560, 570-71 (1993).

³ See *Ruby I. Fish*, 46 ECAB 276, 279-80 (1994).

⁴ See *Lourdes Davila*, 45 ECAB 139, 143 (1993); *Arlonia B. Taylor*, 44 ECAB 591, 596 (1993).

The decision of the Office of Workers' Compensation Programs dated November 15, 1996 is hereby affirmed.⁵

Dated, Washington, D.C.
February 2, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

⁵ Appellant filed his appeal on January 27, 1997. Therefore the Office's decision dated May 15, 1997 is void because the Board and the Office may not have simultaneous jurisdiction over the same case; *see Arlonia B. Taylor*, 44 ECAB 591, 597 (1993). Further, as the Board may only review evidence that was before the Office at the time of its final decision, evidence appellant submitted subsequent to the issuance of the Office's November 15, 1996 decision cannot be considered on this appeal; *see Carroll R. Davis*, 46 ECAB 361, 364 (1994).