

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL E. SMITH and DEPARTMENT OF JUSTICE,
UNITED STATES MARSHALS SERVICE, Arlington, Va.

*Docket No. 97-1562; Submitted on the Record;
Issued March 26, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issue is whether appellant has met his burden of proof in establishing that he sustained an injury to his right elbow in the performance of duty on March 6, 1996.

On October 7, 1996 appellant, then a 33-year-old deputy U.S. marshal, filed a notice of traumatic injury and claim for continuation of pay/compensation, Form CA-1, alleging an employment-related injury while lifting weights in a fitness training program. Appellant submits that on March 6, 1996, during his fitness time he was lifting weights and was doing triceps extensions when his right elbow cracked, his joint swelled and he lost motion. Appellant states that he sustained a right elbow bone chip and loss of motion which lead to surgery in March 1996. The record shows that Mr. Patrick B. Smith, appellant's coworker, stated that "while working out with [appellant] in the family fitness room doing triceps I heard his elbow crack." The record also shows that appellant lost no time from work due to the alleged injury. On the reverse side of this form, the employing establishment indicated that its knowledge of the claimed injury or exposure was in agreement with the statements made by appellant.

In a letter dated November 12, 1996, the Office of Workers' Compensation Programs advised appellant of the type of factual and medical evidence needed to establish his claim and requested that he submit such evidence. The Office particularly requested that appellant provide a physician's opinion supported by medical rationale as to the causal relationship between appellant's claimed disability, the injury as reported and specific employment factors. Appellant was allotted twenty days within which to submit the requested evidence.

Appellant did not respond to the Office's November 12, 1996 letter, or submit evidence to support his claim.

By decision dated December 12, 1996, the Office denied appellant's claim for compensation benefits on the grounds that the evidence of record failed to support the fact of injury. In an accompanying memorandum, the Office noted that appellant was advised of the

deficiency in his claim on November 12, 1996, and afforded an opportunity to provide supportive evidence; however, no medical evidence of any kind was submitted to support the fact that appellant sustained an injury on March 6, 1996.

By correspondence dated December 18, 1996, appellant requested reconsideration of the December 12, 1996 decision and submitted various medical reports and documents from Dr. Ralph J. Venuto, a Board-certified orthopedic surgeon. This evidence included: a laboratory report dated March 28, 1996; a patient information data sheet dated March 28, 1996 and presenting a date of injury date "March 1993", and indicating that appellant's present problem started on March 1993 when he fell on his elbow and had not been capable of straightening his arm since; and medical and operative reports dated March 28, 29, April 8, May 2 and July 17, 1996, as well as an illegible operative note and illegible intraoperative care plan dated March 29, 1996.

In a letter dated January 9, 1997, the Office requested clarification of the medical notes and reports received from appellant. The Office indicated that there were several diagnosis provided in this case such as degenerative joint disease, arthritis and loose bodies of the right elbow and stated that it was unclear which, if any, of these conditions was due to the March 6, 1996 incident of lifting weights. The Office advised appellant to provide a supplemental report addressing which right elbow condition was caused by the March 6, 1996 incident of lifting weights and advised him to have his physician provide an opinion with medical reasons of his opinion regarding which condition was related to the March 6, 1996 incident of lifting weights. Appellant was allotted 30 days within which to submit the supplemental reports.

Appellant responded by forwarding a supplemental medical report from Dr. Venuto dated January 27, 1997. In this report, he noted that he had reviewed appellant's record and understands "that when appellant came to his office in March 1996, he felt that his present problem dated to an injury suffered in March 1993 when he fell." Dr. Venuto also noted that appellant stated that ever since that time he has had significant limitation of motion of his elbow. He then indicated that appellant told him "that he had prior problems with his elbow but that his significant limitation was present only since March 1993. We really did not get into a discussion of any injury on March 6, 1996, while lifting weights, and I cannot find any comment about it in my chart." Dr. Venuto opined "I realize that he had a preexisting problem with his elbow from his injury at age 13, but the serious injury apparently occurred in March 1993. I would apportion 90 [percent] of his symptoms to the March 1993 incident, and 10 [percent] to the preexisting problem that he had since he was 13. I cannot apportion anything to the 1996 incident as I have no knowledge of it."

In a merit decision on reconsideration dated February 12, 1997, the Office accepted that appellant was in the performance of his duties when he was lifting weights on March 6, 1996 and felt pain in his right elbow. The Office, therefore, modified its December 12, 1996 decision only to the extent that the reasons for the denial be changed to appellant's failure to establish that his claimed right elbow condition is causally related to the March 6, 1996 work-related incident. Appellant's claim for benefits, however, remained denied.

The Board finds that the Office properly determined that appellant failed to meet his burden of proof in establishing that he sustained an injury to his right elbow in the performance of duty on March 6, 1996.¹

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing that 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.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

In order to determine whether a federal employee has sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.⁵

The second component of fact of injury is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event, incident or exposure, the employee must submit rationalized medical opinion, based on a complete factual and medical background, supporting such a causal relationship.⁶

In the instant case, the Office found that the claimed event, incident or exposure occurred at the time, place and in the manner alleged; however, a medical condition resulting from the accepted trauma or exposure had not been supported by the medical evidence of file.

The Board finds that appellant has not established that the March 6, 1996 employment incident resulted in an injury. None of the medical evidence of file presented a detailed description of appellant employment duties; a history of injury, an awareness of the March 6, 1996 incident, or a physician's reasoned medical opinion attributing appellant's

¹ The Board notes that the official record in this case consists of 66 pages. However, pages 62 through 65 are from the claim filed by Rosalinda Beltran, claim number, 90640-13-1132197 and do not belong to the above-captioned claim.

² 5 U.S.C. §§ 8101-8193.

³ *Joe Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *David J. Overfield*, 42 ECAB 718 (1991); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *Elaine Pendleton*, *supra* note 3.

⁶ *Kathryn Haggerty*, 45 ECAB 383 (1994); *see also* 20 C.F.R. § 10.110(a).

complaints to a right elbow injury or condition sustained as a result of the March 6, 1996 accepted employment incident, or an opinion addressing whether any medical condition arose out of the incident, or give a rationalized medical opinion on causal relationship.⁷ In fact, Dr. Venuto stated in contrast to appellant's contentions that "I realize that he had a preexisting problem with his elbow from his injury at age 13, but the serious injury apparently occurred in March of 1993. I would apportion 90 [percent] of his symptoms to the March 1993 incident, and 10 [percent] to the preexisting problem that he had since he was 13. I cannot apportion anything to the 1996 incident as I have no knowledge of it." There is no explanation explaining how or why the findings made by Dr. Venuto was a result of the March 6, 1996 incident, and no rationalized medical opinion on causal relationship. For example, none of the evidence of file provided a rationalized medical opinion explaining how and why lifting weights in a fitness training program on March 6, 1996, while doing triceps extensions when appellant's right elbow

⁷ *Lillian M. Jones*, 34 ECAB 379, 381 (1982).

cracked, his joint swelled and he lost motion in the claimed condition or disability, which resulted in surgery.⁸ Dr. Venuto merely discussed appellant's preexisting right elbow condition or disability and not his new alleged injury of March 6, 1996. The Board therefore finds that appellant has failed to meet his burden of proof in establishing that he suffered a right elbow injury or disability causally related to any workplace factors.

The Board has held that an award of compensation may not be based on surmise, conjecture or speculation, or appellant's belief of causal relationship. The mere fact that a disease or condition manifests itself or worsens during a period of employment⁹ or that work activities produce symptoms revelatory of an underlying condition¹⁰ does not raise an inference of causal relationship between the condition and the employment factors. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship. Causal relationship must be established by rationalized medical opinion evidence.¹¹ As appellant has not submitted rationalized medical evidence explaining how and why the March 6, 1996 incident could have caused or aggravated appellant's right elbow condition or disability, the Office properly denied appellant's claim for compensation.

The decisions of the Office of Workers' Compensation Programs dated February 12, 1997 and December 12, 1996, are hereby affirmed.

Dated, Washington, D.C.
March 26, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

⁸ *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship); *see also George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

⁹ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

¹⁰ *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981).

¹¹ *Victor J. Woodhams*, *supra* note 4.

Michael E. Groom
Alternate Member