

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KENNETH BYLER and DEPARTMENT OF THE NAVY,
MILITARY SEALIFT COMMAND PACIFIC, Oakland, CA

*Docket No. 98-527; Submitted on the Record;
Issued November 24, 1999*

DECISION and ORDER

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

The issue is whether appellant has established that he sustained a Persian Gulf Syndrome, emotional, left knee, pulmonary or gastroenterologic conditions in the performance of duty.

After a thorough review of the case record and the relevant issues, the Board finds that appellant has not established that he sustained Persian Gulf Syndrome, left knee, emotional, pulmonary or gastroenterologic conditions in the performance of duty.

The procedural history of the case is as follows. Beginning on January 11, 1996 appellant, then a 44-year-old able seaman-watch, filed three claims for conditions allegedly sustained from September 1996 to March 1997 while stationed in the Persian Gulf at Jebel Ali aboard the oiler and refueler ship U.S.N.S. Yukon: Claim 42726-13-1128842, filed January 11, 1996, for a pulmonary condition/Persian Gulf Syndrome,¹ denied by June 11, 1997 decision on the grounds that fact of injury was not established; Claim 42726-13-1128954, filed January 11, 1997 for an emotional condition,² denied by September 8, 1997 decision on the grounds that fact of injury was not established; Claim 42726-13-1128866, filed February 18, 1997, for a left knee injury, denied by June 6, 1997 decision on the grounds that fact of injury was not established.³

¹ On December 31, 1996 appellant also filed a Form CA-1 for "Persian Gulf -- irritant vapors aboard, surrounded ship, breathing complications occurred while on duty -- watch -- internal complications dev[eloped]," "headaches, larynx, swollen glands, heartburn, tonsillitis [and] abdominal complications."

² Appellant alleged that he sustained "breathing complications, headache, swollen glands, larynx, hoarseness of voice, cough, heartburn, tonsillitis, intestinal complications, stress -- physical, emotional, psychologic complications." He attributed these conditions to exposure to irritating vapors while on duty in the Persian Gulf. Appellant was last aboard in March 1996 and stopped work April 2, 1996.

³ While the Office of Workers' Compensation Programs accepted that appellant did have to stand and walk for long periods of time on a rolling deck, the medical evidence did not support that appellant sustained an injury resulting therefrom. The Office noted that knee pain and inflammation were not diagnoses.

affirmed by decision of an Office hearing representative dated September 10, 1997 and finalized September 19, 1997.⁴

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;⁵ (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;⁶ and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁷ The medical opinion must be one of reasonable medical certainty,⁸ 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.⁹ The burden of proof is similar for emotional condition claims, in that to establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.¹⁰ When the matter asserted is a compensable factor of employment, and the evidence of record establishes the truth of the matter asserted, then the Office can base its decision on an analysis of the medical evidence of record.

In this case, appellant did not submit sufficient factual evidence establishing the claimed chemical exposures or rationalized medical evidence supporting a pathophysiologic causal relationship between the alleged employment factors and the claimed medical and emotional conditions.

In support of his allegations of chemical exposure, appellant submitted a June 1997 Department of Veterans' Affairs Persian Gulf Registry Code Sheet. He claimed exposure to smoke from oil fires, passive cigarette smoke, diesel or petrochemical fumes, burning trash, skin exposure to petrochemical fuels and substances, and having to eat and drink chemically contaminated food and water. Appellant also noted that he had witnessed "chemical alarms."

⁴ The record indicates that appellant had two prior claims accepted for left knee injuries: a May 7, 1984 left knee injury under Claim No. A02-529098; and, a January 27, 1985 left knee injury under Claim No. A02-539180. The record contains January 27 and 28, 1985 reports regarding an April 1984 left knee strain sustained when appellant fell off a ladder, with follow-up reports through March 1987. Unsigned 1987 and 1988 chart notes mention appellant's complaints of low back and left knee pain, and that appellant sustained a back and neck injury in an April 19, 1988 motor vehicle accident. On February 18, 1997 appellant filed two claims for recurrence of disability due to a left knee injury, beginning January 11, 1996. The Office advised appellant that the claims for recurrence of disability would not be developed as the record indicates that he was, in fact, claiming a new left knee injury.

⁵ See *Ronald K. White*, 37 ECAB 176, 178 (1985).

⁶ 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).

⁷ See generally *Lloyd C. Wiggs*, 32 ECAB 1023, 1029 (1981).

⁸ See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁹ See *William E. Enright*, 31 ECAB 426, 430 (1980).

¹⁰ *Ruthie M. Evans*, 41 ECAB 416 (1990).

However, the form does not indicate the frequency or duration of the alleged exposures, or list the particular chemicals to which appellant was exposed.

In several factual statements, appellant attributed his pulmonary and gastroenterologic conditions to exposure to vapors, fumes and chemicals.¹¹ Appellant addressed his claimed emotional condition in January, May 12 and 26, 1997 letters, asserting that the “isolation” of being stationed aboard ship in a hazardous environment was “physically, emotionally, psychologically stressful.” He alleged that the \$150.00 per month hazardous duty pay he received while in the Gulf¹² was due to exposure to fumes from oil refinery and chemical fires. Appellant noted using a respirator whenever possible as he was on deck on patrol for most of each day, but that it could not be used 24 hours a day. In a June 23, 1997 factual statement, appellant explained that being “sent to the other side of the world, ... trapped within a small body of water ... filled and surrounded by natural gas, oil refineries, fires, chemical warfare,” and being “trapped” aboard ship “24 hours a day, 7 days a week ... from September 1996 to March 1997 (seven months of breathing from the tank deck - Naval ship fuel - oil and diesel, as well as jet aircraft fuel - JP-5 and JP-6), clearly indicates employment that was hazardous, dangerous, and presents a great risk” of contracting Persian Gulf Syndrome.¹³

Thus, appellant did not submit factual evidence corroborating the alleged exposures. The factual record is thus insufficient to establish appellant’s allegations of chemical exposure.

Regarding the left knee condition, the Office accepted in its June 6, 1997 decision that appellant was required to stand and walk for long periods of time on a rolling deck, but found the medical evidence insufficient to establish a causal relationship between those factors and the knee condition. Appellant submitted medical evidence in support of his claims from Dr. George C. Stege, III, an attending family practitioner. Dr. Stege mentioned in February 18 and 19, 1997 form reports that appellant had a history of April 1983, February 1984 or 1985 and January 1996 left knee injuries, noted findings of “left knee inflammation, pain,” and diagnosed “injury, aggravation of left knee.” March 1997 left knee x-rays showed mild degenerative changes which Dr. Stege did not attribute to a specific cause. Dr. Stege made reference to appellant’s federal employment in January 24 and 28, 1997 reports, mentioning “shipboard injuries -- Navy” to left knee, and opined that the left knee pain and inflammation were “aggravated while watch standing aboard ship. He reiterated this opinion in a June 10, 1997 report, stating that appellant’s left knee “became aggravated by duties aboard a ship.” However, Dr. Stege did not provide the requested medical rationale explaining how and why standing watch, or other aspects of appellant’s federal duties, would cause any pathology in the left knee such as the diagnosed inflammation and degenerative changes. Therefore, his opinion on causal

¹¹ The Board notes that appellant submitted substantially the same packet of medical and factual evidence for all three claims.

¹² Time sheets show imminent danger pay for unspecified periods in pay periods ending on January 6 and February 3, 1996.

¹³ Appellant also submitted literature about Persian Gulf Syndrome and workers’ compensation law. However, the Board has held that newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing the causal relationship between a claimed condition and an employee’s federal employment as such materials are of general application and are not determinative of whether the specific condition claimed is related to the particular employment factors alleged by the employee. *William C. Bush*, 40 ECAB 1064, 1075 (1989).

relationship is of insufficient probative value to establish a medical causal relationship between factors of appellant's federal employment and a left knee condition.¹⁴

There are similar difficulties with Dr. Stege's opinion regarding the etiology of appellant's respiratory and gastroenterologic complaints. In a January 24, 1997 chart note, Dr. Stege noted appellant's complaints of wheezing and that he "was in Persian Gulf last year, exposed to fumes." Dr. Stege checked boxes on a January 24, 1997 form report for abdominal, low back and chest pain, headache, and upper respiratory infection, noting "shipboard injuries -- Navy" to "abdomen, headache/lungs." In a January 28, 1997 report, Dr. Stege stated that appellant's shortness of breath and diarrhea "did not occur until after he was exposed to fumes while aboard a naval vessel in the Persian Gulf last year." Although Dr. Stege mentioned appellant's temporary duty station in the Persian Gulf, he did not provide medical rationale explaining how and why that tour of duty would cause the claimed conditions.

Regarding the claimed emotional condition, Dr. Stege noted "anxiety" in a January 24, 1997 form report. In February 18 and 19, 1997 form reports, Dr. Stege opined that appellant's "stress, anxiety, headaches," was caused by his left knee pain and inflammation, and diagnosed "mental, emotional trauma" rendering appellant "fully disabled" and "unable to work aboard Naval Ships." Again, Dr. Stege did not provide medical rationale supporting the proffered causal relationship. Also, as appellant has not established a work-related left knee condition, Dr. Stege's opinion that appellant's "stress" and "anxiety" were due to left knee symptoms indicates that the claimed emotional condition was not work related.

Appellant also submitted reports from three physicians who did not mention factors of appellant's federal employment, or provide medical rationale linking the diagnosed conditions to any particular cause.¹⁵ Their reports are therefore of very little probative value in establishing causal relationship in this case.¹⁶

The Board notes that in three May 5, 1997 letters, the Office advised appellant of the type of additional medical and factual evidence needed to establish his claims for a left knee injury, emotional condition, "pulmonary condition, headaches, nausea, abdominal complications, tonsillitis, swollen glands and heartburn," including a rationalized physician's statement supporting a causal relationship between each of the claimed conditions and the alleged employment factors. The Office also requested that appellant identify the substances to which he

¹⁴ *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).

¹⁵ In November 18, 1996 reports, Dr. Lewis Rowe, an attending physician specializing in emergency medicine, related appellant's complaints of stress, anxiety, nausea, upset stomach and an abdominal mass, noted appellant's history of "multi soft tissue tumor benign," diagnosed a lipoma of the right upper quadrant abdominal wall, and recommended a surgical consultation. In December 10, 1996 reports, Dr. Rowe noted appellant's complaints of headaches and insomnia, diagnosed a "headache," and found appellant indefinitely disabled for work. He checked a box "yes" indicating his support for causal relationship, but did not mention any factors of appellant's federal employment. In a January 16, 1997 report, Dr. L. Mondin, a clinic physician, noted appellant's complaints of abdominal discomfort, burning in the throat, loss of appetite, and an abdominal mass since March 1996. Dr. Mondin also noted a history of a 1972 head injury with headaches since that time. Dr. Mondin diagnosed gastroesophageal reflux disease and prescribed medication. In a May 13, 1997 report, Dr. Victor F. Duvall, an attending internist, noted appellant's history of a left knee injury, headaches and dizziness, that appellant was taking prescribed tranquilizers, antianxiety and antitussive medications and opined that appellant was disabled.

¹⁶ *Lucrecia M. Nielsen*, *supra* note 14.

was exposed in the Persian Gulf, and the duration and frequency of such exposures.¹⁷ Appellant did not submit the requested rationalized physicians statements, or sufficient factual information regarding chemical exposures.¹⁸ Thus, he had not met his burden of proof regarding any of the claimed conditions, and the Office's denials of his claims were proper.

The decisions of the Office of Workers' Compensation Programs dated September 10, 1997 and finalized September 19, 1997, and dated September 8 and June 11, 1997 are hereby affirmed.¹⁹

Dated, Washington, D.C.
November 24, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

¹⁷ The Office also asked the employing establishment to provide information regarding the substances to which appellant was exposed while in the Persian Gulf.

¹⁸ Appellant also submitted a March 21, 1997 determination from an administrative law judge awarding supplemental security income benefits under the provisions of the Social Security Act (SSA). However, an administrative law judge's decision that appellant was disabled under the SSA is not dispositive as the Board has held that entitlement to benefits under one act does not establish entitlement to benefits under the Federal Employees' Compensation Act (FECA). In determining whether an employee is disabled under the FECA, the findings of the Social Security Administration are not determinative of disability under the FECA. The SSA and FECA have different standards of medical proof on the question of disability. Under the FECA, for a disability determination, appellant's injury must be shown to be causally related to an accepted injury or factors of his federal employment. Under the SSA, conditions which are not work related may be considered in rendering a disability determination. *Daniel Deparini*, 44 ECAB 657 (1993).

¹⁹ On appeal, appellant requested that the Office provide him with a \$50,000.00 "settlement" for the three claims. There is no provision under the Act or its implementing regulations for such a payment or settlement.