

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL M. MALLORY and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Boise, ID

*Docket No. 98-1275; Submitted on the Record;
Issued November 16, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant has met his burden in proof in establishing that his left shoulder condition was causally related to his use of a computer.

On March 2, 1995 appellant, then a 48-year-old revenue agent, filed a claim for compensation. In an accompanying February 6, 1995 statement, appellant indicated that for the prior eight years he had spent approximately 70 percent of his time in front of a computer. Appellant noted that for the prior nine months he had been using a laptop computer which had a screen that was difficult to read. He stated that in October 1994 he developed soreness, stiffness and lack of mobility in his left shoulder. Appellant indicated that, after trying home treatment, he saw a physician who asked him to speculate on the cause of the condition. Appellant recalled that in May 1994 he had used a posthole digger at his home to replace 12 fence posts and had sore shoulders for a few days after performing the work. Appellant commented that he now thought that this incident was not the cause of his shoulder condition because his shoulders had returned to normal without any problems until October 1994.

In an October 13, 1995 decision, the Office of Workers' Compensation Programs rejected appellant's claim on the grounds that he had not established fact of injury. In a November 10, 1995 letter, appellant requested a hearing before an Office hearing representative which was conducted on March 26, 1997. In an April 30, 1997 decision, the Office hearing representative found that appellant had not submitted any evidence to show that his left shoulder condition was causally related to his use of a computer. He therefore affirmed the Office's October 13, 1995 decision. In a September 4, 1997 communication, appellant submitted a medical report and requested reconsideration. In a December 11, 1997 merit decision, the Office denied appellant's request for modification on the grounds that the evidence submitted was part speculative and part cumulative and therefore insufficient to warrant modification of its prior decision.

The Board finds that appellant has not met his burden of proof in establishing that his left shoulder condition is causally related to factors of his employment.

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;¹ (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition² 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 the claimant.³ The medical evidence required to establish causal relationship, generally, is rationalized medical opinion 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 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,⁴ must be one of reasonable medical certainty⁵ 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.⁶

Appellant set forth at length the factors of his employment which he believed caused his left shoulder condition. However, the medical evidence submitted by appellant was insufficient to establish that his shoulder condition was causally related to his use of a computer. In a November 29, 1994 handwritten report, Dr. Glenn C. Bothwell, a Board-certified specialist in emergency medicine, indicated that appellant had chronic left trapezius pain since an overuse injury with a posthole digger. Appellant also submitted a December 27, 1994 report from a physical therapist discussing his left shoulder condition. A physical therapist, however, is not a physician as defined by the Federal Employees' Compensation Act.⁷ His report, therefore, cannot be considered medical evidence. In a May 16, 1997 report, Dr. Bothwell noted that he saw appellant on November 29, 1994 for a sore throat. While there, appellant mentioned he had been having left shoulder, neck and back pain for the prior three months. Dr. Bothwell related that he asked appellant if he remembered any strenuous activity that may have caused the condition. At that time appellant mentioned his work with a posthole digger. Dr. Bothwell indicated that, although he had not been able to include other information given by appellant in

¹ See *Ronald K. White*, 37 ECAB 176, 178 (1985).

² See *Walter D. Morehead*, 31 ECAB 188, 194 (1979).

³ See generally *Lloyd C. Wiggs*, 32 ECAB 1023, 1029 (1981).

⁴ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁵ See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁶ See *William E. Enright*, 31 ECAB 426, 430 (1980).

⁷ 5 U.S.C. § 8101(2); see *Barbara J. Williams*, 40 ECAB 649 (1988).

his report, appellant had stated at that time that he did not believe the use of the posthole digger was the cause of his condition because he was free of pain within a week to 10 days after using the posthole digger and he had only developed the current pain within the prior three months. Dr. Bothwell noted that appellant was tender over the left trapezius but not over the rotator cuff, which was the region more likely to be irritated by use of a posthole digger. While his report rejected the notion that appellant's left shoulder injury was due to use of posthole digger at home, he did not provide any discussion, description or rationale on whether appellant's left shoulder condition was related to his use of a computer over several years. Dr. Bothwell, therefore, did not provide a medical report that related appellant's left shoulder condition to computer use, the crux of appellant's claim. As a result, appellant has not met his burden of proof.

The decisions of the Office of Workers' Compensation Programs, dated December 11 and April 30, 1997, are hereby affirmed.

Dated, Washington, D.C.
November 16, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member