

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN BARRIENTOS and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Long Beach, CA

*Docket No. 97-974; Submitted on the Record;
Issued October 13, 1999*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's claim for disability compensation benefits for the period beginning May 26, 1995 on the grounds that the evidence of record was insufficient to establish any disability causally related to appellant's March 10, 1994 employment injury.

The Board has duly reviewed the case record in this appeal and finds that the Office properly denied appellant's claim for disability compensation benefits for the period beginning May 26, 1995 on the grounds that the evidence of record was insufficient to establish any disability causally related to appellant's March 10, 1994 employment injury.

On March 11, 1994 appellant, then a 45-year-old material handler, filed a traumatic injury claim (Form CA-1) assigned number A13-1048947 alleging that on March 10, 1994 he pulled muscles behind his left arm on March 10, 1994 while pulling items from a pallet.¹ Appellant did not stop work. Subsequent to receiving medical treatment, appellant returned to light-duty work on March 11, 1994 and to full-duty work on June 20, 1994.

The Office accepted appellant's claim for left arm and shoulder strain.

On September 26, 1995, appellant filed a Form CA-7 alleging that he was totally disabled during the period May 26, 1995 through the present.

¹ Appellant has filed several claims for work-related injuries. Claim number A13-717367 involved a back injury sustained on September 13, 1983 which was accepted by the Office for a lumbosacral strain and a laminectomy was authorized by the Office. Claim number A13-541755 involved a back injury which was accepted for a herniated disc with left sciatica. Claim number A13-1055478 involved a June 6, 1993 injury which was accepted for carpal tunnel syndrome and a release was authorized by the Office.

By decision dated February 1, 1996, the Office found the evidence of record insufficient to establish that appellant was totally disabled during the claimed period.²

An employee seeking benefits under the Federal Employees' Compensation Act³ 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, and that the claim was filed within the applicable time limitation of the Act.⁴ The claimant also has the burden of establishing by the weight of the reliable, probative and substantial evidence that the disability for which compensation is sought is causally related to a specific employment incident or to specific conditions of the employment. As part of this burden, the claimant must present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, establishing causal relationship.⁵

In this case, appellant submitted an August 22, 1995 medical report of Dr. Guy Gottschalk, a rheumatologist, revealing his employment history with the employing establishment, March 10, 1994 employment injury and complaints on examination. Dr. Gottschalk provided a description of appellant's job duties and medical history, his findings on physical examination, and a review of medical records. Dr. Gottschalk diagnosed several conditions, including: (1) a strain and sprain of the cervicothoracic spine in both shoulders and associated musculoligamentous structures; (2) a recurrence of old acromioclavicular separation, and strain and sprain of the right shoulder; (3) recurrence of strain, sprain and impingement of the left shoulder; (4) radiculopathy of the right upper extremity considered cervical disc syndrome; (5) bilateral carpal tunnel syndrome; (6) right ulnar neuropathy at the elbow; and (7) a recurrence of strain and sprain of the lumbosacral spine, and left lower extremity radiculopathy. Dr. Gottschalk noted appellant's March 10, 1994 employment injury, as well as appellant's previous injuries, and concluded that there was evidence of repetitive trauma to the arms ultimately resulting in disability beginning May 26, 1995. Dr. Gottschalk indicated appellant's medical treatment and that appellant's employment-related temporary disability was indefinite. He further indicated that his opinion was based on appellant's history and subjective complaints, objective findings, the nature and responsibility of appellant's type of employment, and the need for further diagnostic and therapeutic activity. Dr. Gottschalk, however, failed to provide any medical rationale explaining how or why appellant's disability beginning May 26, 1995 was caused by his March 10, 1994 employment. Therefore, his report is insufficient to establish appellant's burden.

Further, appellant submitted a September 5, 1995 medical report of Dr. Cuong Tran, an internist, indicating his medical history and work duties after he sustained various injuries.

² The Board notes that subsequent to the Office's February 1, 1996 decision, the Office received additional medical evidence. The Board, however, cannot consider evidence that was not before the Office at the time of the final decision. See 20 C.F.R. § 501.2(c)(1).

³ 5 U.S.C. §§ 8101-8193.

⁴ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *Victor J. Woodhams*, 41 ECAB 345 (1989).

Dr. Tran stated that appellant was last seen at the orthopedic clinic on June 19, 1995, and that he had multiple complaints of pain in both lower and upper extremities. Dr. Tran further stated that appellant had been off duty due to the persistence of his condition. He opined that appellant could not go back to his regular duties and that his condition was probably indefinite. Dr. Tran concluded that appellant should be referred for rehabilitation. Dr. Tran's medical report is insufficient to establish appellant's claim because he failed to provide any medical rationale explaining how or why appellant's disability was caused by his March 1994 employment injury.

Additionally, appellant submitted an October 20, 1995 report from Dr. Michael J. Emmi, a chiropractor, indicating that his prognosis was fair, he had shown 20 percent relief of his symptoms and he was currently being treated three times per week. Under section 8101(2) of the Act,⁶ "[t]he term 'physician' includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation of the spine as demonstrated by x-ray to exist and subject to regulation by the Secretary."⁷ If a chiropractor's reports are not based on a diagnosis of subluxation as demonstrated by x-ray to exist, they do not constitute competent medical evidence to support a claim for compensation.⁸ Inasmuch as Dr. Emmi did not diagnosis a subluxation as demonstrated by x-ray, his report is insufficient to establish appellant's burden.

Finally, appellant submitted a January 10, 1996 attending physician's report (Form CA-20) from Dr. Ronald Wilson, a general practitioner and an employing establishment physician, revealing that appellant had a sprained shoulder. Dr. Wilson indicated that appellant's condition was caused or aggravated by his employment by placing a checkmark in the box marked "yes." The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's disability was related to the history is of diminished probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.⁹ Inasmuch as Dr. Wilson failed to provide any explanation or rationale to support his conclusion, the Board finds his report insufficient to establish appellant's burden.

Because appellant has failed to provide sufficient medical evidence establishing that his disability beginning May 26, 1995 was causally related to his March 10, 1994 employment injury, the Office properly denied appellant's claim for disability compensation benefits for the period beginning May 26, 1995.¹⁰

⁶ 5 U.S.C. §§ 8101-8193.

⁷ 5 U.S.C. § 8101(2); *see also* 20 C.F.R. § 10.400(a); *Robert J. McLennan*, 41 ECAB 599 (1990); *Robert F. Hamilton*, 41 ECAB 431 (1990).

⁸ *Loras C. Dignann*, 34 ECAB 1049 (1983).

⁹ *Lucrecia M. Nielson*, 42 ECAB 583, 594 (1991).

¹⁰ On appeal, appellant's representative alleges that appellant's claim files should have been doubled. The Office exercised its discretion and advised appellant by letter dated July 24, 1996, that appellant's claim files would not be doubled.

The February 1, 1996 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
October 13, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member