

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CLARENCE E. BURROWS and DEPARTMENT OF THE ARMY,
DIRECTORATE OF HUMAN RESOURCES, Fort Rucker, AL

*Docket No. 98-1023; Submitted on the Record;
Issued January 21, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof in establishing that he sustained an employment-related injury to his shoulder, neck and arms prior to December 5, 1995.

On October 28, 1996 appellant, then a 47-year-old hydraulic specialist, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that he sustained an employment-related injury to his shoulder, neck and arms prior to December 5, 1995. Appellant stated that the continuous lifting of heavy objects on his job caused an aggravation of his shoulder, neck and arms. He noted that he suffers from general weakness, fatigue, tiredness, extreme discomfort and pain for which he is undergoing treatment. Appellant then indicated that he first became aware of his disease or illness, and first realized his disease or illness was caused or aggravated by his federal employment on December 5, 1995; that he first sought medical treatment for his alleged condition on October 4, 1993; stopped work and was last exposed to the conditions alleged to have caused his disease or illness on December 5, 1995. The record shows that appellant did not return to work after the alleged exposure and his pay stopped on May 5, 1996. Appellant retired on disability.

On the reverse side of the form the employing establishment indicated that its knowledge of the claimed injury was in agreement with the statements made by appellant. Appellant's supervisor stated: "This injury could have been caused by his work condition lifting extinguishers, etc. over the years, however, it was not noted until doctors started running test during his illness that medical[ly] retired him."

In a December 5, 1996 letter, 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 submit physician's reasoned opinions addressing the relationship of his claimed condition and specific

employment factors. Appellant was allotted 30 days within which to submit the requested evidence.

Appellant responded to the Office's December 5, 1996 letter, by submitting a December 13, 1996 medical report from Dr. Karen J. Mockler, a general practitioner. In the report, Dr. Mockler noted that appellant had been under her care since August 24, 1993 for complaints of left shoulder discomfort and loss of sensation in the left arm, finger and hand. She noted that appellant's "shoulder difficulties are now bilateral and he has bilateral elbow pain (more severe on the right), back discomfort and left leg pain with cramping. In addition, he has bilateral hip discomfort." Dr. Mockler went on to indicate:

"Shoulder x-rays show[ed] degenerative change along the AC [acromioclavicular] joint but no fracture or dislocation. He has mild cervical spondylosis on C spine x-ray. MRI [magnetic resonance imaging scan] of the left shoulder confirms mild impingement of the supraspinatus muscle. MRI of the lumbar spine shows degenerative disc disease at L2-3, L5-S1 and a small interannular disc bulge and interannular herniation at L5-S1. X-ray of the right elbow reveals a bony spur or some calcification at the insertion of the triceps tendon near the olecranon with a marked subacromial spur formation on the left.

"On examination the shoulders reveal elevation of 180 degrees, normal motor strength and pulses in both upper extremities but very tender over the right elbow, and positive impingement sign on the left. Range of motion appears to be well maintained. Pain in the shoulder is definitely aggravated when [appellant] raises the arm up and does any overhead work. Sleeping on his side definitely causes exacerbation of the pain.

"As far as his occupational history is concerned, he was employed for 16 years as a firefighter and part of his job description required that he lift very heavy cylinders, some weighing as much as 200 pounds. He was responsible for the repair and maintenance of fire extinguishers and the maintenance of breathing apparatus within the department. He did a lot of reaching and working in awkward, cramped spaces. It is my opinion that this repeated activity, especially the frequent reaching and frequent heavy lifting, contributed to the low back difficulties (probably his hip pain as well) in addition to his shoulder and elbow problems. Without any specific injury in his past, I feel this is the only conclusion one can reach."¹

By decision dated January 23, 1997, the Office denied appellant's claim for compensation benefits on the grounds that the evidence of record failed to establish a causal relationship between the diagnosed condition and specific workplace factors. The Office found that, while appellant sustained an incident or exposure in the performance of duty, the medical

¹ Dr. Mockler also notes, in her December 13, 1996 report, a history and etiology of appellant's alleged respiratory difficulties. The issue of whether appellant has any respiratory difficulties, causally related to his federal employment has not been raised in this claim. The Board, therefore, will not address this issue on appeal.

evidence did not establish that the accepted conditions or disabilities were causally related to factors of his federal employment.

The Board finds that this case is not in posture for decision.

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his or her claim, including the fact 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 is causally related to the employment injury.³

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; (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or 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 the claimant.⁴ The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.⁵ 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,⁶ must be one of reasonable medical certainty,⁷ 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.⁸

In the present case, the Office found that the claimed event, incident or exposure occurred at the time, place and in the manner alleged.

Appellant submitted a medical report from Dr. Mockler dated December 13, 1996. Dr. Mockler has provided some support for causal relationship between appellant's accepted conditions and employment factors.

² 5 U.S.C. §§ 8101-8193.

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *Jerry D. Osterman*, 46 ECAB 500 (1995); *see also Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁵ The Board has held that in certain cases, where the causal connection is so obvious, expert medical testimony may be dispensed to establish a claim; *see Naomi A. Lilly*, 10 ECAB 560, 572-73 (1959). The instant case, however, is not a case of obvious causal connection.

⁶ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁷ *See Morris Scanlon*, 11 ECAB 384-85 (1960).

⁸ *See William E. Enright*, 31 ECAB 426, 430 (1980).

While Dr. Mockler's December 13, 1996 report is insufficient to establish a causal relationship between appellant's conditions and employment factors, the report constitutes sufficient evidence to require further development of the record by the Office.⁹

The Office should refer appellant, along with the case record and a statement of accepted facts, to an appropriate medical specialist for a well-rationalized opinion, based on a complete and accurate factual and medical background, regarding the causal relationship between appellant's shoulder, neck and arm conditions to factors of his employment. The Office should thereafter issue a *de novo* opinion on appellant's entitlement to compensation under the Act.

The Office of Workers' Compensation Programs decision dated January 23, 1997 is hereby set aside and the case remanded for further development to be followed by a *de novo* opinion in accordance with this decision of the Board.

Dated, Washington, D.C.
January 21, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

⁹ See *John J. Carlone*, 41 ECAB 354 (1989). The Board notes that in this case the record contains no medical opinion contrary to appellant's claim.