

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MARTIN F. SPIEGEL and DEPARTMENT OF HEALTH & HUMAN SERVICES, SOCIAL SECURITY ADMINISTRATION, Springfield, MO

*Docket No. 00-2420; Submitted on the Record;  
Issued December 27, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained a ruptured left biceps tendon in the performance of duty.

On May 5, 1999 appellant, then a 55-year-old administrative law judge, filed a claim alleging that on April 26, 1999 he lifted a large docket file with his left arm and hand and sustained a ruptured "right" biceps tendon.<sup>1</sup> Appellant noted that his delay in filing a claim was because he did not feel the injury was serious. Appellant's supervisor indicated that appellant was in the performance of duty at the time of injury and that the employing establishment did not controvert appellant's claim.

Appellant submitted April 26, 1999 paperwork from Dr. Thomas E. Dahlberg, a Board-certified family practitioner, at Cox Walnut Lawn Urgent Care which noted a diagnosis of "Bicep rupture" and referred appellant to Dr. Pierre L. Clothiaux, a Board-certified orthopedic surgeon, for further evaluation. Physical examination was noted graphically as revealing a lump in the left arm midway between the elbow and the shoulder.

An April 28, 1999 medical progress report from Dr. Clothiaux on referral from Dr. Dahlberg noted appellant's objective diagnosis of "Spontaneous rupture long head biceps tendon, left upper arm," and reported as history "Judge Spiegel was lifting a moderately heavy docket with his arm outstretched. He sustained a sharp tearing sensation in the proximal arm with retraction of the lateral aspect of the biceps muscle. This was associated with minimal pain. He was seen at the urgent care center at Cox Walnut Lawn and diagnosed with a long head of biceps tendon tear and referred."

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<sup>1</sup> On appeal appellant apologized for his mistake on the CA-1 claim form for incorrectly stating that the injury was to the right biceps tendon when it actually was a ruptured left biceps tendon.

Dr. Clothiaux noted examination findings as “The biceps muscle laterally is retracted distally with palpable proximal defect. No ecchymosis or tenderness. He has normal supination strength. With manual motor testing elbow flexor strength is normal. The shoulder joint is nontender. There is no crepitation.” Dr. Clothiaux recommended rehabilitation of the elbow flexors, and noted that, if appellant subjectively noted weakness in supination or elbow flexion as he returned to his weightlifting workout, then consideration of a tenodesis proximally of the long head of the biceps tendon to the bone could be given.

Subsequent medical progress reports from Dr. Clothiaux diagnosed “Tear, long head of the biceps tendon, left arm,” and discussed appellant’s progress with nonoperative management. Chronic left shoulder impingement syndrome was also diagnosed.

Appellant also submitted the report of a left shoulder arthrogram which demonstrated a possible Bankhart deformity.

By letter dated January 28, 2000, the Office of Workers’ Compensation Programs advised appellant that the information submitted was insufficient to establish his claim, and it requested further information from his treating physician including a rationalized opinion supporting causal relationship with his employment.

By decision dated March 3, 2000, the Office rejected appellant’s claim finding that he had failed to submit a rationalized medical opinion establishing causal relation with factors of his federal employment.

By letter dated March 20, 2000, appellant requested a review of the written record, and he argued that Dr. Clothiaux’s statement on causal relation was not properly considered.

By decision dated June 5, 2000 the hearing representative affirmed the March 3, 2000 decision finding that appellant had failed to submit rationalized medical evidence establishing causal relation with employment factors as alleged. The hearing representative noted several shoulder-related diagnoses and preexisting left shoulder symptomatology, and inferred that these diagnoses suggested preexisting impairment and diminished appellant’s claim.<sup>2</sup>

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

In this case, both Dr. Dahlberg and Dr. Clothiaux diagnosed a ruptured left biceps tendon, and Dr. Clothiaux provided a statement regarding causal relationship with appellant’s

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<sup>2</sup> The Board notes that a tendon rupture does not manifest in shoulder symptomatology, but rather in mid-upper arm symptoms as indicated in the Cox Walnut Lawn Urgent Care graphic depiction of appellant’s left upper arm.

employment. Further, there is no contradictory medical evidence of record, and the hearing representative's concern with various shoulder diagnoses is irrelevant to a mid upper arm biceps rupture, which would not manifest in shoulder symptomatology.

Proceedings under the Federal Employees' Compensation Act are not adversary in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.<sup>3</sup> In the instant case, although none of appellant's treating physicians' reports contain rationale sufficient to completely discharge appellant's burden of proving by the weight of reliable, substantial and probative evidence that he sustained a left biceps rupture on April 26, 1999 as alleged, they constitute substantial, uncontradicted evidence in support of appellant's claim and raise an uncontroverted inference of causal relationship between his ruptured biceps tendon and factors of his employment, that is sufficient to require further development of the case record by the Office.<sup>4</sup> Additionally, there is no opposing medical evidence in the record.

Therefore, the case must be remanded to the Office for further development including a compilation of a statement of accepted facts and specific questions to be addressed, to be followed by a referral to an appropriate medical specialist for a rationalized medical opinion on causal relation.

Accordingly, the decisions of the Office of Workers' Compensation Programs dated March 3 and June 5, 2000 are hereby set aside and the case is remanded for further development in accordance with this decision of the Board.

Dated, Washington, DC  
December 27, 2001

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Member

A. Peter Kanjorski  
Alternate Member

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<sup>3</sup> *William J. Cantrell*, 34 ECAB 1223 (1983).

<sup>4</sup> *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).