

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of REGENAL F. SCOTT and DEPARTMENT OF THE NAVY,  
PEARL HARBOR NAVAL SHIPYARD, Pearl Harbor, HI

*Docket No. 00-2658; Submitted on the Record;  
Issued June 14, 2001*

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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 a right shoulder condition in the performance of duty.

Appellant, a 67-year-old pipefitter, filed a notice of occupational disease on July 13, 1998 alleging that he developed a right shoulder condition due to factors of his federal employment. Appellant stated that he first became aware of his condition on October 8, 1980 and first related this condition to factors of his federal employment on October 21, 1983. The employing establishment noted that appellant retired on July 1, 1994.

By decision dated April 26, 1999, the Office of Workers' Compensation Programs denied appellant's claim finding that he failed to submit sufficient medical evidence to establish a causal relationship between his current condition and his employment. Appellant requested reconsideration on May 5, 1999 and resubmitted medical evidence already included in the record. By decision dated May 20, 1999, the Office declined to reopen appellant's claim for consideration of the merits.

Appellant requested reconsideration on April 26, 2000 and submitted additional new medical evidence. By decision dated June 21, 2000, the Office stated that the evidence submitted was immaterial and insufficient to require review of appellant's claim.

The Board finds that appellant failed to meet his burden of proof to establish that he sustained a right shoulder condition in the performance of duty.

As appellant filed his appeal with the Board on August 4, 2000, the only decision before the Board on appeal is the June 21, 2000 decision.<sup>1</sup> The Board notes that in this decision the Office stated that it was not reviewing appellant's claim on the merits as the evidence submitted

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<sup>1</sup> 20 C.F.R. § 501.3(d)(2).

was immaterial. However, the Office did not apply the standards of section 8128(a) of the Federal Employees' Compensation Act to the evidence submitted by appellant with his request for reconsideration.<sup>2</sup> Instead, the Office addressed the merits of appellant's claim and found that he had not submitted sufficient medical evidence to meet his burden of proof. Therefore, the Board will treat the June 21, 2000 decision as a review of the merits of appellant's claim.<sup>3</sup>

An employee seeking benefits under the Act<sup>4</sup> has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an "employee of the United States" within the meaning of the Act and that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>5</sup>

In this case, appellant alleged that he sustained a right shoulder injury in the performance of duty. In support of his claim, appellant submitted medical records and reports dating from 1986 through 1999. While many of these reports note that appellant is currently experiencing a right shoulder condition for which surgery is recommended, the medical evidence does not include a positive opinion on the causal relationship between appellant's right shoulder conditions of lipoma, degenerative changes of the acromioclavicular joint and superior glenoid labral tear and his federal employment.

On March 10, 1998 Dr. Masao Takai, a Board-certified orthopedic surgeon noted that he first examined appellant in 1986 due to a back injury. He stated that appellant sustained an employment-related left shoulder condition in 1991 for which he underwent surgery. Dr. Takai stated that appellant first mentioned right shoulder pain in 1997, that he had no records of any significant injury and that he recommended surgery for this condition. He stated, "His right shoulder problem is not related to his job."

As appellant has not submitted the necessary medical opinion evidence to establish that his right shoulder condition resulted from his federal employment, he has failed to meet his burden of proof and the Office properly denied his claim.

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<sup>2</sup> 5 U.S.C. §§ 8101-8193, § 8128(a).

<sup>3</sup> Compare *John Fettig*, 47 ECAB 277, 280 (1996).

<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

The June 21, 2000 decision of the Office of Workers' Programs is hereby affirmed as modified.

Dated, Washington, DC  
June 14, 2001

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Member

Bradley T. Knott  
Alternate Member