

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BLANCH LIEBEL and DEPARTMENT OF VETERANS AFFAIRS,
HUDSON VALLEY MEDICAL FACILITY, Montrose, NY

*Docket No. 00-1465; Submitted on the Record;
Issued May 23, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant met her burden of proof in establishing that she sustained a left shoulder injury causally related to the accepted injury of August 10, 1997.

On August 10, 1997 appellant, then a 76-year-old nurse, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1), alleging that on August 10, 1997 she was lifting a patient out of bed and she injured her right upper arm. She stopped work on August 10, 1997 and returned to duty on January 31, 1998. The Office of Workers' Compensation Programs accepted appellant's claim for a ruptured right bicep. Appellant retired from federal employment in 1998.

Appellant submitted progress notes from Dr. Barry S. Hyman, a Board-certified orthopedic surgeon, from August 25, 1997 to September 23, 1998, a magnetic resonance imaging (MRI) scan dated September 30, 1997 and physical therapy notes from December 1997 to April 1998. Dr. Hyman's August 25, 1997 note documented a history of appellant's injury to her right arm. He noted appellant's history of fibromyalgia. Dr. Hyman diagnosed appellant with a right bicep tendon rupture with possible rotator cuff tear. His progress note of September 15, 1997 noted appellant's continued pain in the right shoulder and indicated appellant was experiencing pain in the left shoulder. Dr. Hyman noted appellant had a positive impingement sign of the left shoulder. His note of November 10, 1997 revealed the results of the MRI scan of the right shoulder and indicated that appellant sustained a rupture of her right bicep and a rotator cuff tear of the right shoulder. Dr. Hyman noted appellant showed signs of bilateral impingement syndrome. His note of May 13, 1998 indicated that appellant's left shoulder had worsened and revealed a positive impingement sign. Dr. Hyman diagnosed appellant with bilateral impingement syndrome. His progress note of July 22, 1998 revealed that appellant had been in an automobile accident whereby she sustained injuries to her right side. Dr. Hyman's September 23, 1998 note indicated that appellant's right shoulder had worsened since the July 1998 automobile accident. He recommended surgery for the right shoulder and an MRI scan for

the left shoulder. The MRI scan of the right shoulder dated October 30, 1997 indicated a partial tear of the right bicep tendon with a complete tear of the supraspinatus tendon.

Appellant submitted additional medical evidence including medical notes from Dr. Hyman from November 2, 1998 to February 1, 1999, after the Office became aware of her automobile accident. Dr. Hyman's November 2, 1998 note indicated that appellant's work-related injury was responsible for 75 percent of the right shoulder injury and 25 percent was attributable to the automobile accident in July 1998. His December 28, 1998 note indicated that appellant had positive impingement sign of her left shoulder and right shoulder. Dr. Hyman's February 1, 1999 report noted that appellant sustained a rotator cuff tear prior to appellant's automobile accident causally related to her employment. He again recommended surgery to repair the injury.¹ In his July 24, 1999 report, Dr. Hyman indicated that appellant's left shoulder injury was work related and resulted from lifting a patient and repetitive activities performed as a nurse.

By decision dated July 29, 1999, the Office authorized arthroscopic surgery for the right shoulder.

In a letter dated September 20, 1999, the Office authorized an MRI scan of the left shoulder.

On November 18, 1999 appellant submitted two CA-7 forms requesting a schedule award and wage-loss compensation for disability for the period August 10, 1997 to January 31, 1998.

In a letter dated December 13, 1999, the Office advised appellant's treating physician, Dr. Hyman, of the type medical evidence needed to establish appellant's claim and requested he submit such evidence. The Office particularly requested that Dr. Hyman submit a reasoned opinion addressing the relationship of her claimed left shoulder condition and specific employment factors.

Appellant submitted additional medical evidence from Dr. Hyman, which included progress notes from September 15, 1997 to November 17, 1999. This evidence was duplicative of evidence already in the record.

In a decision dated March 7, 2000, the Office denied appellant's claim, finding that the evidence submitted was insufficient to establish that the left shoulder condition was caused by factors of employment.

The Board finds that appellant has failed to establish that she sustained a left shoulder injury causally related to the accepted injury of August 10, 1997.

Appellant has the burden of establishing by the weight of reliable, probative and substantial evidence that the period of claimed disability was caused or adversely affected by the employment injury. As part of this burden, she must submit rationalized medical opinion

¹ In a letter dated April 8, 1999, the Office authorized surgery for appellant's right shoulder injury, specifically, an arthroscopic subacromial decompression with mini-open rotator cuff repair.

evidence based on a complete factual and medical background showing a causal relationship between her disability and the federal employment. The fact that the condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.²

In this case, the Office accepted appellant's claim for a ruptured right bicep. However, the medical evidence is insufficient to establish that the employment incident on August 10, 1997 caused an injury to her left shoulder. The February 1, 1999 report from Dr. Hyman noted appellant's complaints of left shoulder symptoms starting on September 15, 1997. He indicated that "appellant's left shoulder is caused by her work injury;" however, Dr. Hyman did not provide a specific and rationalized opinion as to the causal relationship between appellant's employment and her diagnosed condition. He did not explain how and why specific activities would have caused or aggravated the claimed condition. This is particularly important where the most contemporaneous medical evidence indicated that there was no known injury to the left shoulder but that right shoulder was injured. The medical records from the date of first treatment for appellant's August 10, 1997 employment injury indicated appellant was being treated for a right shoulder injury. The first mention of left shoulder pain was in a September 15, 1997 progress note, nearly five weeks after the alleged injury. This document did not mention a work-related injury to the left shoulder only that appellant was experiencing pain and showed signs of impingement of the left shoulder.

Dr. Hyman submitted a medical report dated July 24, 1999, in which he indicated appellant's "left shoulder injury is related to work, both the work injury and lifting the patient but also related to repetitive disorder from work as a nurse for the [Veterans Administration] hospital". Dr. Hyman did not provide a complete history of the August 10, 1997 injury, nor did he provide a diagnosis or a well-reasoned discussion explaining how he arrived at the opinion that appellant's left shoulder condition was causally related to appellant's employment. Without any explanation or rationale for the conclusion reached, such report is insufficient to meet appellant's burden of proof.³

In a letter dated December 13, 1999, the Office requested that Dr. Hyman submit a rationalized medical opinion specifically addressing appellant's left shoulder condition and the relationship between appellant's left shoulder condition and the original employment injury or factors of employment. In response to this request the Office received duplicative medical records of those already in the case record. The progress notes indicated that appellant had a left shoulder condition, however, did not explain how the employment injury or appellant's work as a nurse contributed to appellant's left shoulder condition. An employee seeking compensation benefits has the burden of proof to establish the essential elements of the claim. Appellant has failed to do this. In a case such as this, proof must include supporting rationalized opinion of qualified medical experts, based on complete and accurate factual and medical backgrounds, establishing that the implicated factors of employment caused or materially adversely affected

² See *Nicolea Brusco*, 33 ECAB 1138 (1982).

³ *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

the ailments producing the work disablement.⁴ The Board finds that appellant has not met this burden with respect to her claim.

The decision of the Office of Workers' Compensation Programs dated March 7, 2000 is hereby affirmed.

Dated, Washington, DC
May 23, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

⁴ See *Margaret A. Donnelly*, 15 ECAB 40 (1963).