

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GLYNDON D. ROSE and DEPARTMENT OF THE ARMY,
BLUE GRASS ARMY DEPOT, Richmond, KY

*Docket No. 00-2770; Submitted on the Record;
Issued September 6, 2001*

DECISION and ORDER

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

The issue is whether appellant sustained an injury on June 9, 1999 in the performance of duty causally related to factors of his employment.

The Board has duly reviewed the case record in this appeal and finds that this case is not in posture for a decision.

An employee who claims benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his or her claim.² The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition 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.³ However, it is well established that proceedings under the Act are not adversarial in nature, and while the claimant has the burden to establish entitlement to compensation, the Office of Workers' Compensation Programs shares responsibility in the development of the evidence.⁴

On June 29, 1999 appellant, then a 45-year-old packer (forklift operator), filed an occupational disease claim alleging that he sustained a cervical and shoulder strain due to working in uncomfortable positions, continuous lifting and pulling on heavy boxes and

¹ 5 U.S.C. §§ 8101-8193.

² See *Ruthie M. Evans*, 41 ECAB 416, 423-24 (1990); *Donald R. Vanlehn*, 40 ECAB 1237, 1238 (1989).

³ See *Brian E. Flescher*, 40 ECAB 532, 536 (1989); *Ronald K. White*, 37 ECAB 176, 178 (1985).

⁴ See *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

continuous stooping and bending. He indicated that he first became aware of his condition on June 9, 1999.⁵ Appellant was referred for physical therapy.

By decisions dated October 25 and December 7, 1999 and July 24, 2000, the Office denied appellant's claim on the grounds that the evidence of record failed to establish that he sustained a medical condition causally related to factors of his employment.

In a report dated June 10, 1999, Dr. John Y. Barbee, Jr., an employing establishment physician, stated that appellant had neck and arm pain and tingling of unknown cause. He indicated that appellant could perform light-duty work.

In notes dated June 16, 1999, Dr. Frank A. Burke, appellant's attending physician, stated that appellant was examined by an employing establishment physician "secondary to his complaints which appear to be work related."

In a report dated September 22, 1999, Dr. Burke stated that appellant had been treated since June 9, 1999. He stated that appellant, "at the time of the initial evaluation, was unsure of previous accident or injury that were the cause of his symptoms, but he did later recall an incident that did occur at work which was reported and which he was seen by medical personnel." Dr. Burke stated that appellant worked "in a very physical capacity in his job with significant upper body utilization required." He further stated:

"[Appellant's] presentation in clinic along with his history and findings from a recent MRI [magnetic resonance imaging] [scan] would be very congruent with his injury having occurred at work. It is unlikely that the bulging noted on the MRI [scan] was caused secondary to natural aging versus work in a physical capacity."

In a report dated April 21, 2000, Dr. Burke stated that appellant had a cumulative trauma injury involving his shoulder and developed tendinobursitis of his shoulder. He stated that appellant could have flares of discomfort when he inadvertently put his arm over his head with any type of vigor or with lifting.

The reports of Drs. Barbee and Burke, coupled with appellant's history of employment-related back strains in 1997 and 1998 and the physical nature of his employment duties, constitute sufficient medical evidence to require further development of the evidence by the Office.⁶

On remand, the Office should prepare a statement of accepted facts to include a history of appellant's accepted injuries in 1997 and 1998 and his allegations regarding the claimed injury on June 9, 1999. The Office should then refer appellant and the statement of accepted facts to an appropriate second opinion physician with questions regarding whether appellant sustained an injury on June 9, 1999 causally related to factors of his employment, the nature of any injuries

⁵ The record shows that appellant sustained work-related back strains in 1997 and 1998.

⁶ See *John J. Carlone*, 41 ECAB 354, 358 (1989).

sustained, whether the physical therapy he was directed to undergo was appropriate for his diagnosed condition, and the dates of any periods of disability. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

The July 24, 2000 and December 7 and October 25, 1999 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further action consistent with this decision of the Board.

Dated, Washington, DC
September 6, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member