

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GILBERT MARRERO and DEPARTMENT OF THE NAVY,
STRATEGIC WEAPONS FACILITY, Silverdale, WA

*Docket No. 02-1400; Submitted on the Record;
Issued December 2, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant established that he sustained an injury on January 10, 2001.

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

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his or her claim² including the fact that the individual is an "employee of the United States" within the meaning of the Act,³ that the claim was timely filed within the applicable time limitation period of the Act,⁴ 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 are causally related to the employment injury.⁵ These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁶

Causal relationship is a medical issue⁷ and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there

¹ 5 U.S.C. §§ 8101-8193.

² See *Daniel R. Hickman*, 34 ECAB 1220 (1983); see also 20 C.F.R. § 10.110.

³ See *James A. Lynch*, 32 ECAB 216 (1980); see also 5 U.S.C. § 8101(1).

⁴ 5 U.S.C. § 8122.

⁵ See *Melinda C. Epperly*, 45 ECAB 196 (1993).

⁶ See *Delores C. Ellyett*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁷ *Mary Briggs*, 37 ECAB 578 (1986).

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, must be one of reasonable medical certainty 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 Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁹

On January 12, 2001 appellant, then a 46-year-old crane operator, alleged that while undergoing a work-related physical examination on January 10, 2001 he sustained an injury to his right shoulder.

The Office of Workers' Compensation Programs denied appellant's claim on May 1, 2001. Appellant requested an oral hearing on May 23, 2001 which was held on November 19, 2001. In a decision dated and finalized on February 11, 2002 the hearing representative affirmed the Office's May 1, 2001 decision.

Appellant had prior right shoulder surgery and was in physical therapy at the time of the examination on January 10, 2001. He alleged that the examination aggravated or caused a right shoulder injury.

In a report dated March 14, 2001, Dr. Joseph E. Noonan, appellant's treating physician and a Board-certified orthopedic surgeon, stated that appellant's right shoulder symptoms had decreased since his October 1999 surgery performed by Dr. Larry Iverson, but since a January 10, 2001, work-related physical examination performed by a Navy physician's assistant, appellant related pulling and tearing sensations and shoulder lock since that time.¹⁰ Dr. Noonan noted that his condition was deteriorating. He noted that a postoperative magnetic resonance imaging (MRI) scan which revealed postsurgical worsening of his supraspinatus tendon and evidence of additional impingement. Upon examination, Dr. Noonan noted pain associated with supraspinatus testing and pain in "winding the shoulder up." He diagnosed residual impingement syndrome, a ruptured biceps tendon and a Grade 4 chondromalacia of the head of the humerus.

On April 4, 2001 the Office referred appellant's medical record to Dr. Richard McCollum, the Office medical adviser and a Board-certified orthopedic surgeon, for an opinion as to whether the January 10, 2001 physical examination could have caused his current condition.

In a report dated April 12, 2001, Dr. McCollum stated that he reviewed appellant's records that day and reviewed the March 9, 2001 MRI scan, which revealed a labral tear and a small undersurface tendon tear. He noted a familiarity with the history of appellant's right

⁸ Gary L. Fowler, 45 ECAB 365 (1994); Victor J. Woodhams, *supra* note 6.

⁹ Minnie L. Bryson, 44 ECAB 713 (1993); Froilan Negron Marrero, 33 ECAB 796 (1982).

¹⁰ Appellant related abduction and strength tests which caused a pulling and tearing in his shoulder.

shoulder condition including the arthroscopic procedure in 1999 and a subsequent rupture of the biceps tendon several days after the surgery. Dr. McCollum related that appellant's symptoms decreased after the October 1999 right shoulder surgery until a stress test by the employing establishment on January 10, 2001 at which time appellant noted subjective complaints of pain. Dr. McCollum noted that a March 2001 arthrogram revealed no evidence of a full thickness tear of the rotator cuff. The physician noted that he could "not see any findings on the MRI scan or arthrogram that could be attributed to this physical examination (on January 10, 2001)." The physician added that he was not able to review that examination report because it was not available to him. Dr. McCollum also added that he could not "see the correlation without that additional input from the person who did the actual examination."

In a report dated May 1, 2001, Thomas Prieskorn, the physician's assistant who performed the January 10, 2001 examination, stated that he performed a basic range of motion and strength testing on appellant "just as I do on all physical examinations."

In a report dated November 13, 2001, Dr. Noonan stated:

"[T]he potential for injury from the patient's physical examination [on] January 10, 2001, is genuine and that findings at his surgical procedure of July 3, 2001, were different from that at his previous procedure and may have resulted from the incident occurring January 10, 2001, in which the patient felt a tearing and pulling in his shoulder with a subsequent definitive and permanent change in his symptoms."

In this case, there was a conflict in opinion between Dr. Noonan, appellant's physician, who stated that appellant's right shoulder condition had worsened after January 10, 2001 and Dr. McCollum, an Office medical adviser, who stated that he found no medical evidence of an injury based on appellant's January 10, 2001 examination. However, Dr. McCollum also noted that he did not review the physician assistant's January 10, 2001 report because it was not available to him and that he needed additional input from the examiner. The Board notes that the physician's assistant submitted a report on May 1, 2001 in which he noted that he performed basic range of motion and strength testing on appellant. The record does not disclose if the Office medical adviser reviewed this report. Because there is a conflict between appellant's treating physician and the second opinion physician regarding whether the January 10, 2001 physical examination caused or aggravated appellant's right shoulder condition, a conflict in medical opinions existed.

On remand the Office should refer appellant, together with the statement of accepted facts and the case record, to an appropriate impartial medical specialist for an examination. The impartial medical specialist should be requested to make a full description of findings from examination and tests and provide his diagnosis of appellant's condition. He should indicate whether appellant's right shoulder condition was caused or aggravated by the January 10, 2001 examination. After further development as it may find necessary, the Office should issue a *de novo* decision on whether appellant's right shoulder condition is causally related to factors of his employment.

The February 11, 2002 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further development consistent with the above opinion.

Dated, Washington, DC
December 2, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member