

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL D. TILLMAN-LONERGAN and DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Denver, CO

*Docket No. 01-1095; Submitted on the Record;
Issued February 20, 2002*

DECISION and ORDER

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

The issue is whether appellant has established that he sustained a hepatitis C infection in the performance of duty.

On February 2, 2000 appellant, then a 47-year-old registered nurse, filed a notice of occupational disease and claim for compensation (Form CA-2), alleging that as a result of a needle stick sustained while giving a patient an intramuscular injection on October 14, 1989, he contracted hepatitis C.¹ He noted that he became aware that he had hepatitis C when he donated blood in December 1999. The employing establishment controverted the claim. In its controversion, the employing establishment noted that the incubation period for viral hepatitis C ranges from two weeks to six months and that appellant's claim that he sustained a needle stick on October 14, 1989 did not agree with the incubation period.

In support of his claim, appellant submitted a letter from Dr. W.C. Dickey, the chief executive officer and medical director of the Bonfils Blood Center, dated January 4, 2000. Dr. Dickey informed appellant that he was contacting him regarding his blood donation of December 28, 1999, that blood was routinely tested before it was released for numerous infectious diseases and that his blood testified positive for the hepatitis C virus.

By letters dated February 18 and March 10, 2000, the Office of Workers' Compensation Programs requested further information from appellant.

Appellant submitted a copy of the notice of traumatic injury/claim for continuation of pay/compensation (Form CA-1) that he submitted on October 14, 1988, wherein he noted the needle stick of October 14, 1988.

¹ A review of the record indicates that appellant was stuck with the needle on October 14, 1988 rather than October 14, 1989.

In support of its controversion of this claim, the employing establishment submitted a letter by Dr. Steven Oboler, a Board-certified physician, dated February 20, 2000, wherein he evaluated appellant's medical record while with the employing establishment. He noted that laboratory studies performed on appellant on March 5, 1983 showed a slight, unexplained elevation in the serum glutamate pyruvate transaminase and the serum glutamate oxalocetate transaminase, with the albumin, total protein, total and direct bilirubin and alkaline phosphatase results within the normal limits. Dr. Oboler noted that, when appellant reported a needle stick on October 14, 1988, he was started on the hepatitis B vaccine, due to the fact that appellant's test was negative for hepatitis B. On April 23, 1993 Dr. Oboler noted an "unexplained elevation in SGOT." He noted that a screening test for hepatitis C was not generally available until 1992, and that the employing establishment's records indicated that the source patient was hepatitis C antibody positive on January 11, 1998. Dr. Oboler indicated that if the October 14, 1988 needle stick was responsible for appellant's recently diagnosed hepatitis C infection, he would have expected that appellant would have seroconverted sometime within six months of the October 14, 1988 exposure. He noted that if appellant gave blood between 1992 (when the hepatitis C test first became widely available) and 1999 (the date of his diagnosis), the hepatitis C would have been picked up by routine blood test screening. He recommended obtaining further information about appellant's liver function studies.

On March 7, 2000 appellant submitted a letter wherein he indicated that he stuck himself with a needle on October 14, 1988, that he reported this injury, that he gave blood for the first time in December 1999, that as a result he was notified that he had hepatitis C and that the medicine he takes for this has caused fatigue, insomnia, weakness, loss of concentration, fever and diarrhea.

In a medical report dated March 17, 2000, Dr. Louis A. Morris, a Board-certified internist, noted that appellant was currently under his care for hepatitis C, that he "most likely became infected from an on-the-job needle stick injury in 1989," that he was currently on treatment with Interferon and Ribavirin and that he had significant fatigue, insomnia and lethargy as a result.

On May 9, 2000 the Office issued a decision wherein it denied appellant's claim as it found that the medical evidence was not sufficient to establish that his condition was caused by the employment factor.

By letter dated June 6, 2000, appellant requested an oral hearing.

At the hearing held on December 5, 2000, appellant testified that he was employed as a registered nurse for the employing establishment, that in October 1998 he inadvertently stuck himself with a needle he had used to give a patient an intramuscular injection, that this was a deep needle stick, that at that time he was tested and determined to be HIV negative and was vaccinated for hepatitis B. Appellant also noted that he donated blood for the first time in December 1999 and that it was at this time he learned that he had hepatitis C, that he had no symptoms of hepatitis C and that he had no other risk factors for hepatitis C other than the needle stick.

Appellant also submitted a January 25, 2001 report wherein Dr. Morris noted:

“Appellant is a patient of mine whom I have been treating for chronic hepatitis C infection. According to his VA [Veterans Administration] medical records, he sustained a needle stick injury on October 14, 1988 to his left index finger after giving a patient a skin test. The source patient had a history of intravenous drug abuse, a past history of hepatitis and had mildly elevated liver function tests prior to the needle stick incident. The source patient subsequently tested positive for hepatitis C in 1998.

“[Appellant] tested positive for hepatitis C after he tried to donate blood in the latter part of 1999. He had not donated blood in the ten years prior to this; therefore, he had no prior blood test for hepatitis C. He had no symptoms up to the time of diagnosis. This is quite common as most patients diagnosed with hepatitis C are asymptomatic at the time of diagnosis.

“In my opinion, it is highly likely that the source patient was positive for hepatitis C at the time of the needle stick injury. There is a very high prevalence (80 [percent]) of hepatitis C in intravenous drug abusers. Because [appellant] had no prior exposure or risk factors for hepatitis C, this needle stick injury is the *probable* source of the infection. The fact that he had very mild liver function test abnormalities prior to the needle stick injury is non-specific and does not necessarily imply he was infected prior to the needle stick injury.” (Emphasis in original).

By decision dated February 7, 2001, the hearing representative affirmed the Office’s decision, finding that the record did not contain conclusive evidence which established that the source patient was positive for hepatitis C at the time of the needle stick incident in 1988.

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

An employee seeking benefits under the Federal Employees’ Compensation Act² has the burden of establishing the essential elements of his claim, including the fact 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.³

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that his condition was caused or adversely affected by his employment. As part of this burden, he must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relation. The mere fact that a disease manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the disease became apparent during a period of

² 5 U.S.C. § 8101 *et seq.*

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

employment, nor the belief of appellant that the disease was caused or aggravated by employment conditions, is sufficient to establish causal relation.⁴

In the instant case, appellant timely filed notice of a needle stick injury occurring on October 14, 1988 and other evidence indicated that appellant suffered from a physically traumatic injury at that time that required immediate medical attention and testing. In appellant's 1988 claim, his supervisor indicated that the patient whom appellant was injecting at the time of the accident had a history of hepatitis and was an intravenous drug user. At the time of the needle stick injury in 1988, both appellant and the patient tested negative for hepatitis B; there was no known test at that time for hepatitis C. The patient tested positive for hepatitis C on January 11, 1998 and appellant's first positive test for hepatitis C occurred when he donated blood on December 28, 1999. Appellant's physician noted, "Because [appellant] had no prior exposure or risk factors for hepatitis C, this needle stick injury is the *probable* source of his infection." Dr. Morris' opinion should be given consideration due to the fact that he indicated that the probable source of appellant's infection was the needle stick and there is no contrary evidence. Although Dr. Oboler indicated that, if appellant had contracted hepatitis C as a result of the needle stick and had given blood between 1992 and 1999, the routine blood screening would have discovered the hepatitis C, appellant's testimony that the first time that he gave blood was in December 1999 is uncontroverted. Although Dr. Morris' report may not contain sufficient rationale to discharge appellant's burden of proving by the weight of the reliable, substantial and probative evidence that his hepatitis C is causally related to his October 14, 1988 injury, the report raises an uncontroverted inference of causal relationship sufficient to require further development of the case record by the Office.⁵

Accordingly, the hearing representative's decision dated February 7, 2001 is set aside. The Office must further develop the record to ascertain whether the medical evidence of record establishes that appellant's hepatitis was causally related to the traumatic injury of October 14, 1988. The Office must determine whether appellant met his burden of furnishing evidence from a qualified physician who concludes, on the basis of a complete and accurate factual and medical history, that the condition is causally related to the employment injury.⁶ If the claim is not accepted, the Office must prepare an accurate statement of accepted facts and refer appellant, the case record and the statement of accepted facts to a second opinion physician to address the question of whether appellant contracted hepatitis C in the performance of duty.

⁴ *Froilan Negron Marrero*, 33 ECAB 796 (1982).

⁵ See *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

⁶ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship* Chapter 2.805.2 (June 1995).

The decisions of the Office of Workers' Compensation Programs dated February 7, 2001 and May 9, 2000 are hereby set aside and the case is remanded for further proceedings consistent with this opinion.

Dated, Washington, DC
February 20, 2002

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member