

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of KENNETH A. EINBINDER and DEPARTMENT OF HEALTH & HUMAN SERVICES, HOUSING & URBAN DEVELOPMENT, Phoenix, AZ

*Docket No. 02-337; Submitted on the Record;  
Issued July 12, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
A. PETER KANJORSKI

The issue is whether appellant met his burden to establish that he sustained parotitis, bells palsy and adno-virus conditions in the performance of duty.

On March 18, 2001 appellant, a 70-year-old community builder, filed a Form CA-2 claim for benefits based on occupational disease, alleging that he had sustained parotitis, bells palsy and adno-virus conditions which were causally related to factors of his employment. Appellant stated that he believed he contracted these conditions when he attended a homeless veterans' event from January 19 through 21, 2001.

In a report dated May 2, 2001, Dr. James W. Steiner, Board-certified in family practice, stated:

“[Appellant] suffered from parotiditis (sic) after attending an event at work in which he was required to stay at the Homeless Veterans Standdown Event at the Carl T. Hayden [Veterans Administration] Medical Center. Shortly ... thereafter, he traveled to Nogales for a meeting of his work. Approximately nine days later his symptoms started. He was diagnosed with parotiditis and subsequently developed a left facial palsy. This illness made him extremely fatigued. He experienced blurred vision and tingling of his face.

“[Appellant] has been unable to work on a full-time basis since the onset of his illness. He has attempted to return to work on several occasions but his illness has precluded him from working full time. He should be considered for a work-related disease which currently is not allowing him to work full time. This should be considered a workman's compensation case.”

By letter dated July 27, 2001, the Office of Workers' Compensation Programs advised appellant that it required additional evidence in support of his claim. The Office asked appellant to submit a comprehensive medical report from his treating physician describing his symptoms

and the medical reasons for his condition, and an opinion as to whether factors or incidents, *i.e.*, specific employment factors, at his employing establishment contributed to his condition. The Office also requested a detailed description of the specific employment-related conditions or incidents he believed contributed to his claimed conditions.

Appellant submitted reports dated July 25 and August 20, 2001 from Dr. Stephen S. Flitman, who stated findings on examination but did not submit an opinion as to whether appellant's conditions were causally related to his employment.

Dr. Steiner submitted an August 24, 2001 report in which he essentially reiterated his previous findings and conclusions and opined that the resultant infection that appellant contracted at the homeless veterans' event was directly related to his current condition.

By decision dated September 22, 2001, the Office denied appellant's claim on the grounds that he did not submit medical evidence sufficient to establish that the claimed medical conditions were causally related to his federal employment.

The Board finds that appellant did not meet his burden of proof to establish that he sustained parotitis, bells palsy and adno-virus conditions in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing that the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, 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 and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>2</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>3</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed, or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there 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

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

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.<sup>4</sup>

In the present case, appellant failed to submit medical evidence demonstrating a causal relationship between his claimed conditions and factors of his employment. The medical evidence consists of reports from Drs. Steiner and Flitman, neither of whom provided a probative, rationalized medical opinion indicating that appellant's attendance at the homeless veterans' event from January 19 to 21, 2001 resulted in his diagnosed parotitis, bells palsy and adno-virus conditions. Dr. Steiner stated findings on examination, diagnosed the conditions of parotitis, bells palsy and adno-virus, but did not provide medical evidence or explain the process through which appellant's attendance at the veterans' event could have caused these conditions. Dr. Flitman did not indicate whether or not appellant's symptoms were caused by factors of his federal employment. Appellant, therefore, has failed to submit any rationalized, probative medical evidence establishing that the diagnosed conditions are causally related to employment factors or conditions.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.<sup>5</sup> Causal relationship must be established by rationalized medical opinion evidence. The Office advised appellant of the type of evidence required to establish his claim; however, appellant failed to submit such evidence. Appellant, therefore, did not provide a medical opinion to sufficiently describe or explain the medical process through which factors of his employment would have been competent to cause his claimed conditions.

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<sup>4</sup> *Id.*

<sup>5</sup> *See id.*

The September 22, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
July 12, 2002

Michael J. Walsh  
Chairman

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member