

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALLEN C. HUNDLEY and DEPARTMENT OF THE INTERIOR,
FISH & WILDLIFE SERVICE, Fredericksburg, VA

*Docket No. 02-107; Submitted on the Record;
Issued May 17, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
MICHAEL E. GROOM

The issue is whether appellant contracted rheumatoid arthritis from an employing establishment administered vaccine.

On April 10, 2000 appellant, then a 47-year-old special agent, filed an occupational disease claim, alleging that a vaccine triggered his rheumatoid arthritis. The vaccine for Lyme disease, LYMERix, had been administered by the employing establishment. He did not stop work. In a supporting statement, he advised that during January 2000 he began to suffer from joint and muscle pain and was treated by both a physician and a physician's assistant. Appellant further stated that on March 2, 2000 his physician informed him that he had tested positive for rheumatoid arthritis. He also submitted blood test results and treatment notes from Dr. John S. Moss, who is Board-certified in orthopedic surgery and Dr. Shaun Ruddy, who is Board-certified in internal medicine, allergy and immunology.¹

The employing establishment provided a report dated March 22, 2000, which advised that appellant had been offered the opportunity to have a vaccine against Lyme disease and had received two of three injections, the first on September 22, 1999 and the second on October 22, 1999. In a June 6, 2000 letter, the employing establishment indicated that it had sponsored the administration of the vaccine.

By letter dated June 27, 2000, the Office of Workers' Compensation Programs informed appellant of the type of evidence needed to support his claim. In response, he submitted treatment notes from Dr. Ruddy dated June 1 and July 18, 2000 and stated that he had sued the

¹ Appellant also submitted medical reports that preceded the instant claim.

manufacturer of the vaccine. Appellant provided information indicating that a class action suit had been filed against the manufacturer.²

In a decision dated September 7, 2000, the Office denied appellant's claim. The Office noted that administration of the vaccine had been sponsored by the employing establishment, but that appellant failed to submit rationalized medical evidence indicating that his rheumatoid arthritis was caused by the vaccine. By letter dated March 8, 2001, appellant requested reconsideration and submitted additional medical evidence, including a medical report dated January 10, 2001 from Dr. Charlene C. DeMarco, an osteopathic physician. By decision dated June 25, 2001, the Office denied modification of the prior decision on the grounds that Dr. DeMarco's report was speculative. The Office further noted that she was not a rheumatologist and, therefore, her opinion was of diminished probative value. The instant appeal follows.

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

An employee seeking benefits under the Federal Employees' Compensation Act³ has the burden of establishing the essential elements of his or her claim,⁴ including the fact that the individual is an "employee of the United States" within the meaning of the Act,⁵ that the claim was timely filed within the applicable time limitation period of the Act,⁶ 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.⁷ These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁸ However, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong and persuasive evidence.⁹

Causal relationship is a medical issue¹⁰ 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

² The class action suit alleged that the manufacturer of LYMERix, SmithKline Beecham, failed to warn doctors and the general public that nearly 30 percent of the population, who were positive for the HLA DR4 trait, were at risk of contracting arthritis when exposed to the vaccine.

³ 5 U.S.C. §§ 8101-8193.

⁴ See *Daniel R. Hickman*, 34 ECAB 1220 (1983); see also 20 C.F.R. § 10.115 (1999).

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

⁶ 5 U.S.C. § 8122.

⁷ See *Melinda C. Epperly*, 45 ECAB 196 (1993).

⁸ See *Delores C. Ellyett*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁹ See *Robert A. Gregory*, 40 ECAB 478 (1989).

¹⁰ *Mary J. 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.¹¹ Moreover, 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 are sufficient to establish causal relationship.¹²

The medical evidence in the instant case includes reports dated January 31 and February 28, 2000 in which Tammy Welch, PAC, noted appellant's complaints of joint pain and diagnosed tendinitis and questionable arthritis. In an unsigned treatment note dated February 7, 2000, Dr. John S. Moss, a Board-certified orthopedic surgeon, diagnosed bilateral chronic Achilles tendinitis and median nerve compression, right greater than left. A March 1, 2000 rheumatoid arthritis screen blood test was reported as positive. Lyme IGG-AB and IGM-AB testing was done on March 17, 2000 and reported as negative. HLA-DR4 was positive.

In a treatment note dated March 14, 2000, Dr. Ruddy noted appellant's history of Lyme disease vaccine and painful joints. He diagnosed rheumatoid arthritis, stating "uncertain relation to LYMERix vaccine, will research." Dr. Ruddy continued to submit reports and, in a July 18, 2000 treatment note, advised that appellant's rheumatoid arthritis was minimally controlled.

Repeat testing for Lyme disease was performed on October 2, 2001 and was reported as positive. In a report dated January 10, 2001, Dr. DeMarco, who examined appellant on October 2, 2000, noted appellant's history of LYMERix vaccine administration and development of arthritis. She discussed the positive test findings and stated:

"HLA markers can be used to define subjects at risk of autoimmune disease from vaccination. The lipoprotein OspA contained in LYMERix has an amino acid sequence that is homologous to a sequence from the human leukocyte function-associated antigen-1 (LFA-1). Patients that are HLA-DR4 and HLA-DR2 positive can produce a response to OspA and LFA-1. This production of antibodies directed at LFA-1 initiates autoimmune Lyme arthritis.... In the past year and a half, I have seen patients that developed clinical rheumatoid arthritis after receiving LYMERix. They were HLA-DR4 [positive]. The patients had no previous history or family history of [rheumatoid arthritis]. It would be reasonable that the vaccine triggered an altered immune response leading to arthritis. I believe that [appellant's] condition was precipitated by the administration of LYMERix."

The Board notes that a report of Ms. Welch, a physician's assistant, is entitled to no weight in a claim under the Act because physician's assistants are not "physicians" as defined by

¹¹ *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, *supra* note 8.

¹² *Minnie L. Bryson*, 44 ECAB 713 (1993); *Froilan Negron Marrero*, 33 ECAB 796 (182).

section 8101(2) of the Act.¹³ Appellant also submitted copies of publications with his request for reconsideration. The Board has held that newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing the causal relationship between a claimed condition and a claimant's federal employment as such materials are of general application and are not determinative of whether the specific condition claimed is related to particular employment factors or incidents.¹⁴

The Board finds that the January 10, 2001 report of Dr. DeMarco constitutes sufficient evidence in support of appellant's claim to require further development by the Office. Dr. DeMarco provided a consistent history of injury and indicated that appellant's condition was related to the employing establishment sponsored administration of LYMERix vaccine. Dr. DeMarco explained that in individuals, like appellant, who exhibit a positive HLA-DR4 test are at greater risk for developing arthritis. While the physician's report lacks detailed medical rationale sufficient to discharge appellant's burden of proof to establish by the weight of reliable, substantial and probative evidence that his rheumatoid arthritis was caused or aggravated by LYMERix, this does not mean that this report may be completely disregarded by the Office. It merely means that its probative value is diminished.¹⁵ It is well established that proceedings under the Act are not adversarial in nature¹⁶ and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.¹⁷ On remand the Office should compile a statement of accepted facts and refer appellant, together with the complete case record and questions to be answered, to a Board-certified specialist for a detailed opinion on the relationship of appellant's rheumatoid arthritis and the administration of the vaccine LYMERix. After such development as the Office deems necessary, a *de novo* decision shall be issued.

¹³ *Lyle E. Dayberry*, 49 ECAB 369 (1998).

¹⁴ *Dominic E. Coppo*, 44 ECAB 484 (1993).

¹⁵ See *Delores C. Ellyett*, *supra* note 8.

¹⁶ See, e.g., *Walter A. Fundinger, Jr.*, 37 ECAB 200 (1985).

¹⁷ See *Dorothy L. Sidwell*, 36 ECAB 699 (1985).

The decision of the Office of Workers' Compensation Programs dated June 25, 2001 is hereby set aside and the case is remanded to the Office for further proceedings.

Dated, Washington, DC
May 17, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

Michael E. Groom
Alternate Member