

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VIVIAN Y. LUKE and U.S. POSTAL SERVICE,
POST OFFICE, Long Beach, CA

*Docket No. 02-690; Submitted on the Record;
Issued November 8, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
WILLIE T.C. THOMAS

The issue is whether the dog attack of June 29, 1999 caused an injury to appellant's right shoulder.

On June 29, 1999 appellant, then a 47-year-old city carrier, was delivering mail when a dog attacked her, biting her right hand and right leg. The Office of Workers' Compensation Programs accepted her claim for dog bites to the right hand and right knee and strains to the cervical spine, right knee and right ankle. Appellant received benefits.

A conflict arose between appellant's physician, Dr. Ali A. Dini, and the Office referral physician, Dr. William C. Boeck, Jr., on whether appellant sustained a right shoulder condition causally related to the June 29, 1999 dog attack. Dr. Dini indicated that appellant's tendinitis and partial rotator cuff tear of the right shoulder was causally related to the attack. He advised that appellant undergo a right shoulder arthroscopy due to persistent pain and limited motion. Dr. Boeck disagreed. He could find no clear-cut association between appellant's right shoulder tendinitis and the June 29, 1999 attack. Dr. Boeck disagreed with the recommendation for arthroscopic surgery for the right shoulder: "I do not see how this is directly related to the incident of June 29, 1999."

To resolve the conflict the Office referred appellant, together with the medical record and a statement of accepted facts, to Dr. Kenneth B. Elconin, a Board-certified orthopedic surgeon. In a report dated February 23, 2001, Dr. Elconin advised that he had reviewed appellant's extensive medical records. He related appellant's history, present complaints and findings on physical and x-ray examination. Dr. Elconin diagnosed the following: "[Appellant] has a functional problem relative to the right shoulder. Appellant's complaints appear to be on a nonorganic basis." Dr. Elconin noted that there was no evidence on appellant's early examinations of involvement of the right shoulder. He noted that appellant currently presented with considerable inconsistencies on examination of the right shoulder and considerable

functional overlay in her entire examination, with nonorganic distribution of loss of sensation and lack of atrophy:

“There appears to be some motivation for the patient’s functional basis. This may be that the patient is terrified of dogs and states that she will never return to mail delivery. She has a personal injury litigation pending in regard to the dog bite against the owner of the dog.”

Dr. Elconin saw no need for arthroscopic surgery of the right shoulder as recommended by Dr. Dini and reported that no apportionment was indicated.

In a supplemental report dated March 16, 2001, Dr. Elconin clarified as follows:

“[Appellant] does not have an organic problem relative to the right shoulder. She does not need surgery. She did not injure her shoulder. She does not need surgery. Her complaints are entirely on a functional basis.”

In a decision dated April 3, 2001, the Office denied coverage for any right shoulder condition and for the surgery recommended by Dr. Dini. The Office found that the weight of the medical evidence, as represented by the opinion of Dr. Elconin, failed to demonstrate that appellant sustained any right shoulder condition causally related to the incident of June 29, 1999.

On October 30, 2001 an Office hearing representative affirmed the April 3, 2001 decision.

The Board finds that the weight of the medical evidence establishes that the dog attack of June 19, 1999 caused no injury to appellant’s right shoulder.

An employee seeking benefits under the Federal Employees’ Compensation Act¹ has the burden of proof to establish the essential elements of her claim. When an employee claims that she sustained an injury in the performance of duty, she must submit sufficient evidence to establish that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. She must also establish that such event, incident or exposure caused an injury.²

In this case, the Office accepts that a dog attacked appellant on June 29, 1999. The Office also accepts that this incident caused injuries to appellant’s right hand, knee and ankle and to her cervical spine. The question for determination is whether the incident of June 29, 1999 caused an injury to appellant’s right shoulder, and if so, whether this injury requires surgery.

¹ 5 U.S.C. §§ 8101-8193.

² See *Walter D. Morehead*, 31 ECAB 188, 194 (1979) (occupational disease or illness); *Max Haber*, 19 ECAB 243, 247 (1967) (traumatic injury). See generally *John J. Carlone*, 41 ECAB 354 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

Causal relationship is a medical issue,³ and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,⁴ must be one of reasonable medical certainty,⁵ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.⁶

Appellant's attending physician, Dr. Dini, indicated that appellant's right shoulder tendinitis and partial rotator cuff tear were causally related to the June 29, 1999 incident. He recommended surgery. The Office referral physician, Dr. Boeck, found no clear-cut association between appellant's right shoulder tendinitis and the June 29, 1999 attack and disagreed with the recommendation for surgery.

Section 8123(a) of the Act provides in part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."⁷

To resolve the conflict, the Office referred appellant, together with the medical record and a statement of accepted facts, to Dr. Elconin, a Board-certified orthopedic surgeon, who reviewed appellant's medical records, related her history, complaints and findings and concluded that she had a functional problem relative to the right shoulder, that she did not injure her shoulder and did not need surgery.

When there exist opposing medical reports of virtually equal weight and rationale, and the case is referred to a referee medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁸

The Board finds that Dr. Elconin's opinion is based on a proper factual and medical background and is sufficiently well rationalized that it must be accorded special weight in resolving the conflict in this case. Dr. Elconin's opinion is clear and unequivocal, and he supported his conclusion with references to both current findings on examination and reported findings more contemporaneous to the June 29, 1999 injury. As the weight of the medical evidence establishes that the dog attack of June 29, 1999 did not cause an injury to appellant's

³ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁴ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁵ *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁶ *See William E. Enright*, 31 ECAB 426, 430 (1980).

⁷ 5 U.S.C. § 8123(a).

⁸ *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

right shoulder, the Board will affirm the Office's decision to deny coverage for any right shoulder condition and for the surgery recommended by Dr. Dini.

The October 30 and April 3, 2001 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
November 8, 2002

Alec J. Koromilas
Member

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member