U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOE E. MUNIZ and DEPARTMENT OF THE NAVY, NAVAL AIR SYSTEMS COMMAND, China Lake, CA

*Docket No. 02-1284; Submitted on the Record;*
*Issued October 7, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS, A. PETER KANJORSKI

The issue is whether appellant has established that he sustained a left shoulder and arm condition in the performance of duty on April 18, 2001, causally related to factors of his federal employment.

On July 27, 2001 appellant, then a 58-year-old pipefitter, filed a claim alleging that he sustained an injury on April 18, 2001 while opening and closing water valves. He did not stop work, and he did not seek medical treatment until April 23, 2001.

In support of his claim, appellant submitted an August 28, 2001 report from Dr. Thomas L. Smith, a Board-certified orthopedic surgeon, who noted as history that on April 18, 2001 appellant was loosening a T-valve when he felt a sharp pain in his left shoulder and down into his arm. Dr. Smith noted that appellant was initially seen and treated at the employing establishment dispensary for acute shoulder strain with possible rotator cuff tear, that he was given anti-inflammatories and put on light duty, but that he continued to have left shoulder pain into the deltoid muscle area with some complaints of tingling, numbness and aching into his left hand. Upon examination, he found limited active left shoulder range of motion, but near full passive range of motion without a lot of discomfort. Dr. Smith found pain into the upper deltoid with radiation down to the left hand, guarded neck range of motion and a positive Spurlings' sign for radicular pain into the left upper extremity. He noted that cervical spine x-rays revealed multiple levels of disc disease at C3-4, C5-6 and C6-7, and he opined that appellant presented more for cervical radiculopathy than for acute rotator cuff tear. On September 4, 2001 Dr. Smith diagnosed cervical radiculopathy and acromioclavicular joint arthritis with impingement in the left shoulder, noted that appellant had had good relief of left arm numbness, but noted that he still complained of superior left shoulder pain. He noted that shoulder x-rays revealed degenerative joint disease of the left acromioclavicular joint with crepitus.

By report dated October 2, 2001, Dr. Smith noted that appellant's symptoms had resolved except for his left shoulder and subscapular complaints of pain upon movement. He indicated

that appellant experienced pain in the superior aspect of his shoulder under the subacromial arch and that he had trouble lifting with his left arm due to pain at about 90 degrees of flexion or abduction. Dr. Smith treated appellant by injecting steroids and noted that he was working without restrictions.

In an October 23, 2001 follow-up report, Dr. Smith noted appellant's continued left shoulder pain, noted that the steroids were helpful for only a few days, but that discomfort returned with left arm use and noted that appellant had pain and guarding above 90 degrees of abduction and flexion, with the pain occurring in the anterior arch and radiating into the deltoid area. He reviewed the positive radiologic findings and opined that appellant had some impingement and possibly abrasion of the rotator cuff.

By letter dated November 2, 2001, the Office of Workers' Compensation Programs requested further factual and medical information including a medical narrative giving a diagnosis and discussing causal relation.

In response, appellant explained that he was responding to an emergency water shut down for a water main break when he felt a sharp pain in his shoulder as he tried to shut off the water with a T-handle valve key. He also resubmitted copies of Dr. Smith's August 28, September 4 and October 2 and 23, 2001 reports.

Appellant additionally submitted a November 19, 2001 report from Dr. Smith which noted as history that appellant injured his left shoulder on April 18, 2001 while loosening a big valve, that he felt an initial pop in his shoulder followed by pain and some numbness down the left arm, that he was treated at the dispensary and returned to regular duty, but that the left shoulder pain did not resolve. Dr. Smith noted that when he first saw appellant on August 28, 2001 he complained of left shoulder pain in the posterior interscapular area with radiation into the deltoid muscle and arm pain with numbness all the way to his left hand. He noted that appellant guarded range of motion of both his neck and shoulder and that he had a positive Spurlings' sign. Dr. Smith indicated that conservative treatment had not been effective, that injection of steroids had limited effect, that range of motion was painful overhead and above 90 degrees of abduction and flexion, and that x-rays were positive for some acromioclavicular joint narrowing and cervical disc disease at multiple levels.

By decision dated February 26, 2002, the Office rejected appellant's injury claim finding that, although the record supported that the incident occurred as alleged and that he experienced sharp left shoulder pain, no medical evidence had been submitted that established that he sustained a condition in connection with these events.

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

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing 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

[1] 5 U.S.C. §§ 8101-8193.

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.[2] These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[3]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.[4] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[5] Appellant has the burden of establishing by the weight of reliable, probative, and substantial medical evidence that the injury claimed was caused or aggravated by his federal employment. As part of this burden, appellant must submit a rationalized medical opinion, based upon a complete and accurate factual and medical background, showing a causal relationship between the injury claimed and factors of his federal employment.[6] Causal relationship is a medical issue that can be established only by medical evidence.[7]

In this case, the Office accepted that appellant experienced the employment incident at the time, place and in the manner alleged. However, the Office found that no medical condition had been diagnosed or established.

The Board notes that the most contemporaneous employing establishment dispensary notes regarding appellant's initial treatment are not included in the case record, however, it also notes that Dr. Smith referred to such treatment indicating that appellant was being treated for acute left shoulder strain with a possible rotator cuff tear. The Board notes that is a definitive diagnoses.

Dr. Smith, who began treating appellant in August 2001, noted his history of injury on April 18, 2001 and initially diagnosed cervical disc disease at multiple levels, cervical radiculopathy and acromioclavicular joint arthritis with impingement in the left shoulder. These

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[2] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[3] *Victor J. Woodhams*, 41 ECAB 345 (1989); *Delores C. Ellyet*, 41 ECAB 992 (1990).

[4] *John J. Carlone*, 41 ECAB 354 (1989). To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action. In determining whether a *prima facie* case has been established, such circumstances as late notification of injury, lack of confirmation of injury and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on a claimant's statements. The employee has not met this burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim. *Carmen Dickerson*, 36 ECAB 409 (1985); *Joseph A. Fournier*, 35 ECAB 1175 (1984); *see also George W. Glavis*, 5 ECAB 363 (1953).

[5] *Id.* For a definition of the term "injury," see 20 C.F.R. § 10.5(a)(14).

[6] *Steven R. Piper*, 39 ECAB 312 (1987); *see* 20 C.F.R. § 10.110(a).

[7] *Mary J. Briggs*, 37 ECAB 578 (1986); *Ausberto Guzman*, 25 ECAB 362 (1974).

are all definitive diagnoses. Thereafter he diagnosed degenerative joint disease of the acromioclavicular joint with crepitus, as evidenced by x-ray and examination. After further work-up, Dr. Smith opined that appellant had some impingement and possible abrasion of the left rotator cuff.

On November 19, 2001 Dr. Smith reported appellant's history of an April 18, 2001 injury to his left shoulder while turning a valve, noting that initially appellant experienced a pop in his shoulder followed by shoulder pain and numbness down the left arm. He further noted that after conservative treatment appellant's left shoulder pain remained; he reported positive findings upon physical examination and testing, and indicated that x-rays were positive for acromioclavicular joint narrowing and cervical disc disease at multiple levels. These are also definite diagnoses.

Proceedings under the Act are not adversary in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.[8] In the instant case, although none of appellant's treating physician's reports contain rationale sufficient to completely discharge appellant's burden of proving by the weight of reliable, substantial and probative evidence that he sustained a definitive injury or injuries, causally related to the April 18, 2001 incident, they constitute substantial, uncontradicted evidence in support of appellant's claim and raise an uncontroverted inference of causal relationship between the April 18, 2001 incident and his immediate and ongoing left shoulder complaints, that is sufficient to require further development of the case record by the Office.[9] Additionally, there is no opposing medical evidence in the record.

Therefore, the case must be remanded to the Office for further development of the medical evidence, including composition of a statement of accepted facts and referral to an appropriate medical specialist for a rationalized second opinion as to whether appellant sustained an April 18, 2001 incident-related injury or injuries.

[8] *William J. Cantrell*, 34 ECAB 1223 (1983).

[9] *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

Consequently, the decision of the Office of Workers' Compensation Programs dated February 26, 2002 is hereby set aside and the case is remanded for further development in accordance with this decision and order of the Board.

Dated, Washington, DC
October 7, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member