

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALAN M. LIPSKY and DEPARTMENT OF THE NAVY,
PORTSMOUTH NAVAL SHIPYARD, Portsmouth, NH

*Docket No. 03-1568; Submitted on the Record;
Issued October 16, 2003*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant established that he sustained an injury in the performance of duty on November 27, 2001 as alleged.

On April 12, 2002 appellant, then 45 years old, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that, on November 27, 2001, while removing shielding, he sustained an injury to his left upper arm, specifically, "stabbing pain." In support of the claim, appellant submitted medical reports dated April 24 and 26, 2002 by Dr. C. Craig Heindel, appellant's treating Board-certified neurosurgeon, where he indicated that appellant sustained a nerve root encroachment in the cervical spine. Appellant also submitted an April 25, 2002 magnetic resonance imaging report by Dr. V. Paul Pullen, a Board-certified radiologist, indicating that appellant had a disc extrusion at C5-6 on the left side. The employing establishment did not controvert the claim.

By letter dated August 19, 2002, the Office of Workers' Compensation Programs requested that appellant submit further information in support of his claim. In response, appellant submitted a statement wherein he indicated that, after removing shielding weighing about 35 pounds, he climbed down the ladder and noted that his upper left arm was hurting. He indicated that he "went through the pain" but that, after a couple of months, he saw a doctor. Appellant also submitted a statement by a coworker. Finally, appellant submitted a September 18, 2002 report by Dr. Heindel wherein he indicated:

"[Appellant] is a patient of mine and has been since April 24, 2002. At that time, the history he gave was one which to me related his problems regarding his neck to an incident in which he lifted a 35-pound piece of shielding at work, and this caused pain in his neck and arm. He has preexisting degenerative diseases but was pretty much asymptomatic before that event which rendered him symptomatic."

By letter dated August 19, 2002, the Office informed appellant that the evidence was insufficient to support his claim and provided appellant 30 days to submit further information. On September 26, 2002 appellant responded to questions propounded by the Office by indicating that he had no other injury between the date of the alleged injury and the date that this injury was reported to his supervisor, nor did he have any similar disability or symptoms before the injury.

By decision dated December 10, 2002, the Office denied appellant's claim as it found that the medical evidence was not sufficient to establish that his condition was caused by the employment event.

On February 11, 2003 appellant requested reconsideration. In support thereof, appellant submitted a January 29, 2003 report by Dr. Heindel, wherein he opined that appellant has a ruptured disc and a cervical nerve root compression syndrome. He further indicated:

"It is my opinion that his work injury on November 27, 2001 was the event which caused him to have the nerve root compression secondary to this pathology. I find it somewhat disconcerting that this patient, who attempted to treat this conservatively and attempted to continue working despite a cervical radiculopathy, has seemingly jeopardized his being provided care which would seem appropriate in response to this work injury. I would hope that a careful review of my note from April 24, 2002 coupled with this letter would establish the undeniable relationship between his work injury of November 27, 2001 and his present medical condition and need for treatment."

By decision dated March 18, 2003, the Office reviewed appellant's claim on the merits but denied the claim because the medical evidence was not sufficiently rationalized to establish that appellant's injury was causally related to the employment incident.

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

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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 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 the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be addressed in

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.⁴ Appellant has met these criteria. The second component is whether the employment incident caused a person's injury and generally can only be established by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such causal relationship.⁵ Rationalized medical opinion evidence is medical evidence which includes a physician's 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 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.⁶

In the instant case, the Office has accepted the November 27, 2001 incident. Dr. Heindel indicated that appellant had been a patient of his since April 24, 2002 and attributed appellant's ruptured disc and cervical nerve root compression syndrome to the November 27, 2001 incident at work. Dr. Heindel indicated on September 18, 2002 that, although appellant had preexisting degenerative diseases, he was "pretty much asymptomatic before the event which rendered him symptomatic." In his January 29, 2003 report, Dr. Heindel again opined that the November 27, 2001 employment incident "was the event which caused him to have the nerve root compression secondary to this pathology." He concluded that there was an "undeniable relationship between the employment incident and resultant medical treatment." Dr. Heindel did not provide a sufficient explanation as to why this injury was causally related to his employment; the mere fact that appellant became symptomatic after the alleged work incident is not sufficient to establish causal relationship.⁷ Although Dr. Heindel's opinion is insufficiently rationalized to carry appellant's burden of proof in establishing his claim, this deficiency does mean that the reports may be completely disregarded by the Office. It merely means that the probative value has been diminished.⁸ As it stands uncontroverted in the record, it is therefore sufficient to require further development of the case by the Office.⁹

Proceedings under the Act are not adversarial in nature and the Office is not a disinterested arbiter.¹⁰ While the claimant has the burden to establish entitlement to

⁴ *Caroline Thomas*, 51 ECAB 451, 455 (2000).

⁵ *Duane B. Harris*, 49 ECAB 170, 173 (1997).

⁶ *Id.*

⁷ *See Thomas R. Horsfall*, 48 ECAB 180, 183 (1996) (finding that a physician's opinion on causal relationship, which is based on the fact that appellant was asymptomatic prior to the work incident and symptomatic afterwards, is of little probative value without supporting rationale).

⁸ *See Shirley A. Temple*, 48 ECAB 404 (1997).

⁹ *Id.*

¹⁰ *Claudia A. Dixon*, 47 ECAB 168 (1995).

compensation, the Office shares responsibility in the development of the evidence to see that justice is done.¹¹ On remand the Office should have appellant examined by a Board-certified physician and undertake any further medical development it deems necessary to ascertain whether appellant is entitled to compensation.

The decisions of the Office of Workers' Compensation Programs dated March 18, 2003 and December 10, 2002 are hereby set aside and the case is remanded for further action consistent with this opinion.

Dated, Washington, DC
October 16, 2003

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹¹ *Id.*