

**United States Department of Labor
Employees' Compensation Appeals Board**

CLEMSON MOORE, Appellant

and

**DEPARTMENT OF THE ARMY, WALTER
REED ARMY MEDICAL CENTER,
Washington, DC, Employer**

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**Docket No. 04-67
Issued: February 12, 2004**

Appearances:
Clemson Moore, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On October 7, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision of June 10, 2003 denying his injury claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue on appeal is whether appellant has met his burden of proof in establishing that he sustained a bilateral shoulder injury in the performance of duty.

FACTUAL HISTORY

On May 20, 2002 appellant, then a 56-year-old motor vehicle operator, filed a claim alleging that he sustained a bilateral rotator cuff injury after an automobile accident which occurred while transporting medical personnel to the hospital on September 14, 2001 in the wake of the September 11, 2001 attack. Appellant stopped work on April 11, 2002 and returned on May 15, 2002.

Appellant submitted a note from Dr. Robert J. Neviasher, a Board-certified orthopedist, who noted that appellant was to remain off work effective April 11, 2002. Also submitted was an accident report which indicated that appellant had been driving a bus that was struck in the rear by another automobile.

By letter dated June 21, 2002, the Office asked appellant to submit additional information including a comprehensive medical report from his treating physician which included a reasoned opinion as to how the specific work factors or incidents identified by appellant had contributed to his bilateral shoulder injury.

In treatment notes dated June 11, 18 and 25, 2002, Dr. Neviasher noted that appellant was treated for bilateral shoulder pain and was diagnosed with high grade incomplete rotator cuff tears of both shoulders. His June 18 and 25, 2002 return-to-work slips advised that appellant could return to work with a restriction on constant or long distance driving.

In a decision dated June 22, 2002, the Office found that the motor vehicle incident occurred but denied appellant's claim on the grounds that the medical evidence was not sufficient to establish that his condition was caused by the incident.

In a letter dated August 8, 2002, appellant through his attorney requested an oral hearing before an Office hearing representative. The hearing was held on March 14, 2003. Appellant submitted a report from Dr. Parul Jindal, a Board-certified internist, dated October 10, 2001 which noted that appellant was seen that day for a cholesterol check. An x-ray of the left shoulder dated March 15, 2002 revealed left acromioclavicular osteoarthritic changes. In a report dated March 15, 2002, Dr. Gary Malakoff, a Board-certified internist, noted that appellant was treated for left shoulder pain commencing four weeks prior. Dr. Malakoff diagnosed cuff tendinitis and bilateral shoulder pain. A magnetic resonance imaging (MRI) scan of the right shoulder dated April 16, 2002 revealed a full thickness tear of the rotator cuff; and the left shoulder MRI scan revealed a suggestion of a very small full thickness tear of the anterior most aspect of the rotator cuff.

Also submitted were reports from Dr. Neviasher dated April 11, 2002 to May 31, 2003. He indicated that appellant presented with bilateral shoulder pain commencing in January 2002 and advised that there was no history of injury. On April 23, 2002 the physician indicated that appellant "now states that he began to note his stiffness about a month after his automobile accident." Dr. Neviasher noted a history of injury occurring on September 14, 2001 when appellant was in a "near accident" and thereafter experienced bilateral shoulder pain. His June 11, 2002 report corrected the previous note and indicated that appellant was in an automobile accident in September 2001 which was struck in the rear by another automobile. Dr. Neviasher opined that appellant's bilateral shoulder condition was work related. In an attending physician's report dated June 25, 2002, he diagnosed a possible rotator cuff tear and indicated with a checkmark "yes" that appellant's condition was caused or aggravated by an employment activity. Dr. Neviasher advised that appellant was totally disabled from April 11 to May 14, 2002 and partially disabled from May 15, 2002 to the present and could return to light-duty work on May 14, 2003. On March 31, 2003 the physician advised that appellant's chart was inaccurate with regard to appellant's shoulder injuries and how they were sustained and

noted that on September 14, 2001 appellant was in a bus accident at work and sustained bilateral rotator cuff tears.

By decision dated June 10, 2003, the hearing representative affirmed the decision of the Office dated June 22, 2002.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act 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 filed within the applicable time limitation 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. 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.¹

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 considered in 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.² In some traumatic injury cases, this component can be established by an employee's uncontroverted statement on the Form CA-1.³ An alleged work incident does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statement must be consistent with the surrounding facts and circumstances and his subsequent course of action.⁴ A consistent history of the injury as reported on medical reports, to the claimant's supervisor and on the notice of injury can also be evidence of the occurrence of the incident.⁵ The second component is whether the employment incident caused a personal injury and generally can be established only 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 a causal relationship.⁶

¹ *Gary J. Watling*, 52 ECAB 357 (2001).

² *Michael E. Smith*, 50 ECAB 313 (1999).

³ *John J. Carlone*, 41 ECAB 354 (1989).

⁴ *See Michael W. Hicks*, 50 ECAB 325 (1999).

⁵ *Id.*

⁶ *Michael E. Smith*, *supra* note 2.

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 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.⁷ The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁸

ANALYSIS

Appellant alleged that he sustained bilateral shoulder injuries as a result of an automobile accident which occurred in the performance of duty. The Board notes that the Office accepted that the accident occurred on September 14, 2001 as alleged. The Board finds, however, that the medical evidence is insufficient to establish that appellant sustained bilateral rotator cuff tears causally related to his employment duties.

Appellant submitted treatment notes from Dr. Neviasser dated June 11, 18 and 25, 2002, who noted that appellant was treated for bilateral shoulder pain and diagnosed with high grade incomplete rotator cuff tears of both shoulders. He advised that appellant could return to work with restrictions on constant or long distance driving. Dr. Neviasser, however, did not provide an opinion regarding the cause of appellant's bilateral shoulder condition. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value.⁹ On June 25, 2002 Dr. Neviasser diagnosed a possible rotator cuff tear and noted with a checkmark "yes" that the condition was caused or aggravated by an employment activity. The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether a claimant's condition is related to the history given is of little probative value.¹⁰ Other reports from Dr. Neviasser dated April 11, 2002 to March 31, 2003 fail to provide a consistent history of appellant's bilateral shoulder injury.¹¹ An April 11, 2002 report indicated that appellant presented with bilateral shoulder pain which began in January and noted that there was no history of injury. On April 23, 2002 Dr. Neviasser advised that appellant "now states that he began to note his stiffness about a month after his automobile accident." A report of May 21, 2002 noted a history of injury occurring on September 14, 2001 when appellant was in a "near accident" and thereafter experienced bilateral shoulder pain. His June 11, 2002 report indicated that appellant was in an automobile accident in

⁷ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁸ *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

⁹ *Michael E. Smith*, *supra* note 2.

¹⁰ *Lee R. Haywood*, 48 ECAB 145 (1996).

¹¹ *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).

September 2001 which was struck in the rear by another automobile. On March 31, 2003 the physician noted that appellant's chart was inaccurate with regard to his shoulder injuries and how they were sustained and advised that on September 14, 2001 appellant was in a bus accident at work and diagnosed bilateral rotator cuff tears.

The Board finds that the reports of Dr. Neviasser are not sufficient to establish appellant's bilateral shoulder conditions as causally related to the accepted employment incident. Dr. Neviasser did not provide an explanation of how the September 2001 motor vehicle accident would cause or contribute to appellant's rotator cuff tears. The Board therefore finds his reports of diminished probative value and insufficient to establish causal relationship.¹² These reports are insufficient to meet appellant's burden of proof.

In a report dated March 15, 2002, Dr. Malakoff noted that appellant was treated for left shoulder pain which had commenced four weeks prior. He diagnosed rotator cuff tendinitis and bilateral shoulder pain. However, Dr. Malakoff did not provide an opinion regarding the cause of appellant's bilateral shoulder condition.¹³ Therefore, this report is also insufficient to establish appellant's claim.

CONCLUSION

The Board finds that, as none of the medical reports provide a rationalized opinion that appellant's bilateral shoulder condition is causally related to the accepted employment incident, appellant failed to meet his burden of proof.¹⁴

¹² See *Jimmie H. Duckett*, *supra* note 8.

¹³ *Michael E. Smith*, *supra* note 2.

¹⁴ See *Calvin E. King*, 51 ECAB 394 (2000).

ORDER

IT IS HEREBY ORDERED THAT the June 10, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 12, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member