

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

JAMES ROGY, JR., Appellant

and

**U.S. ARMY CORPS OF ENGINEERS,
Philadelphia, PA, Employer**

)
)
)
)
)
)
)
)
)
)
)

**Docket No. 05-1247
Issued: December 8, 2005**

Appearances:
Jeffrey P. Zeelander, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On May 18, 2005 the appellant filed a timely appeal from a December 10, 2004 merit decision of the Office of Workers' Compensation Programs, which denied his claim for compensation benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.

ISSUE

The issue is whether appellant has met his burden of proof to establish that he sustained an injury causally related to factors of his federal employment.

FACTUAL HISTORY

On August 2, 2004 appellant, then a 50-year-old construction representative, filed an occupational disease claim alleging that he developed anterior ischemic neuropathy in his right eye while stationed in Afghanistan on a temporary volunteer assignment. He first became aware of his condition on June 20, 2004 and stopped work on June 28, 2004. Appellant returned from Afghanistan on July 3, 2004. Appellant returned to work on September 9, 2004. With his claim,

appellant submitted a June 28, 2004 medical report from Dr. S. Scholtz, at a German Field Hospital, which noted a cataract and an infarction of the optic disc or anterior ischemic optic neuropathy (AION).¹ Appellant also submitted two medical prescription notes from Lawrence R. Peck, DO and a statement from Jerald A. Jones, Chief, O&M Section, which noted that appellant had no previous record of vision loss until his deployment to Afghanistan.

By letter dated October 4, 2004, the Office advised appellant that the materials submitted were insufficient to determine his eligibility for compensation benefits and informed him of the factual and medical evidence needed to support his claim.

In response, appellant submitted an October 26, 2004 statement providing a detailed explanation of his duties, exposures and stresses while stationed in Afghanistan. From approximately May 12 to July 1, 2004, appellant stated that he was exposed to high altitude conditions of approximately 7000 to 8000 feet and, at times, 10,000 feet, for 24 hours per day, seven days per week. He submitted a copy of one page of a pamphlet prepared by the U.S. Army Center for Health Promotion and Preventive Medicine with a section discussing high elevations circled together with a note from the National Library of Medicine referencing an article entitled "Anterior ischaemic optic neuropathy at high altitude."

Medical evidence submitted consisted of medical reports dated June 28 and July 3, 2004, from Dr. Scholtz at the German Field Hospital, which indicated a cataract and an infarction of the optic disc or anterior ischemic optic neuropathy. A June 29, 2004 Emergency Care and Treatment note diagnosed ischemic optic neuropathy of the right eye of unclear etiology. A June 29, 2004 Aeromedical Evacuation Patient Record diagnosed ischemic optic neuropathy and made referral for an internal medicine evacuation. Dr. Christopher Allen, MAJ, USAF MC of the Ophthalmology Service at the Landstuhl Regional Center indicated likely anterior ischemic optic neuropathy. In an August 30, 2004 certificate of medical examination form Dr. Eric Singman, a Board-certified ophthalmologist, advised that "prognosis for recovery of right eye is grave."

In a September 7, 2004 report, Dr. Singman indicated that appellant had an anterior ischemic optic neuropathy and now had a flat, pallid optic nerve with severe visual field loss on the right. He stated "The patient had a number of labs looking for causes of anterior ischemic optic neuropathy. In all fairness, the cause isn't truly known but there have been a number of important associations and reports." Dr. Singman noted that the various testing that was done on behalf of appellant was generally negative. He stated that the negative testing and the fact that anterior ischemic optic neuropathy had been reported as being associated with high altitude, strongly suggested that appellant's condition arose from the high altitude in which he served overseas in Kabul, Afghanistan. Dr. Singman also indicated that sleep apnea had been associated with nonarteric anterior ischemic optic neuropathy. He added that "we are fairly certain that anterior ischemic optic neuropathy is from low perfusion pressure in the posterior ciliary circulation."

¹ Dr. Scholtz noted a history of loss of vision of the right eye gradually developing and that appellant sustained head trauma on June 7, 2004 when he hit a bunker wall.

By decision dated December 10, 2004, the Office denied appellant' claim on the grounds that the medical evidence of record failed to establish that his diagnosed right eye condition was caused or aggravated by factors of his employment.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing that 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.³ 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.⁴

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. 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.⁵ The mere fact that a disease manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.⁶

² 5 U.S.C. §§ 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *Id.*

⁶ *See Ernest St. Pierre*, 51 ECAB 623 (2000).

The general rule regarding coverage of employees on travel status or on temporary duty assignments is set forth by Larson in his treatise, *The Law of Workers' Compensation*:

“Employees whose work entails travel away from the employer’s premises are held in the majority of jurisdictions to be within the course of their employment continuously during the trip, except when a distinct departure on a personal errand is shown.”⁷

Similarly, the Board has recognized the rule that the Act covers an employee 24 hours a day when he or she is on travel status or on a temporary-duty assignment or special mission and engaged in activities essential or reasonably incidental to such duties.⁸

ANALYSIS

As a construction representative for the employing establishment on a temporary volunteer assignment in Afghanistan, appellant’s activities which are essential or reasonably incidental to such duties are covered by the Act. Appellant alleges that he was exposed to high altitude conditions 24 hours a day, 7 days a week from approximately May 12 to July 1, 2004 while performing his temporary duty assignment. There is no dispute that appellant established work-related exposure to environmental factors as alleged while stationed in Afghanistan doing his assigned duties. Therefore, the environmental factor of high altitude, along with his assigned duties, would be covered under the Act. However, the fact that an employee is on a special mission or in travel status during the time a disabling condition manifests itself does not raise an inference that the condition is causally related to the incidents of the employment.⁹ Appellant has not established his claim for an occupational disease claim. Specifically, appellant has submitted insufficient medical evidence to establish that the condition for which compensation is claimed (anterior ischemic optic neuropathy of the right eye) was causally related to the employment factors that he identified.

Although appellant submitted medical articles to support his contention that his condition arose from the high altitude of his temporary posting in Afghanistan, the articles do not specifically address appellant’s high altitude exposure or explain how appellant’s condition was related to such factors of his employment. The Board has held that textual materials are of diminished probative value in resolving questions on causal relation unless a physician shows the applicability of the general medical principles discussed in the text to the specific factual situation at issue in the case.¹⁰

The medical evidence provided a diagnosis of appellant’s right eye and addressed the ischemic neuropathy condition but failed to provide a discussion of how appellant’s federal

⁷ Larson, *The Law of Workers' Compensation* § 25.01 (2000).

⁸ *Lawrence J. Kolodzi*, 44 ECAB 818, 823 (1993).

⁹ *Carl Paul Johnson*, 39 ECAB 470 (1988).

¹⁰ *Ruby I. Fish*, 46 ECAB 276 (1994).

duties in Afghanistan, including his exposure to environmental factors, caused or contributed to the development of his medical condition. In a September 7, 2004 report, Dr. Singman stated that appellant's negative diagnostic testing, together with the fact that the AION condition had been associated with high altitude strongly suggested that appellant's right eye condition resulted from the high altitude in Afghanistan. At best, this medical opinion is speculative as to the etiology of appellant's right eye condition, stating only that it could be related to employment factors to which appellant was exposed while in Afghanistan.¹¹ Dr. Singman did not provide a reasoned medical opinion that appellant's right eye condition was caused or contributed to by his employment.¹² As such, Dr. Singman's opinion is insufficient to meet appellant's burden of proof.

The Office informed appellant of the deficiencies in the medical evidence and what was needed to establish his claim in a letter dated October 3, 2004. While appellant submitted medical treatment notes and reports regarding his right eye condition, the requisite evidence needed to establish the claim includes a probative medical report from his physician that explains how his federal employment contributed to the diagnosed condition. While appellant may believe that the high altitude conditions of Afghanistan contributed to the development of his right eye condition and resulted in an anterior ischemic optic neuropathy, the record contains insufficient medical opinion evidence explaining how such work factors caused and/or aggravated his condition. As noted above, part of appellant's burden of proof is the submission of reasoned medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by appellant.

As there is insufficient, rationalized medical evidence addressing the issue of how appellant's medical condition was caused or aggravated by factors of his employment, appellant has not met his burden of proof.

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that his diagnosed medical condition was caused or aggravated in the performance of duty.

¹¹ See *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).

¹² *Solomon Polen*, 51 ECAB 441 (2000); see also *Michael E. Smith*, 50 ECAB 313 (1999).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 10, 2004 is affirmed.

Issued: December 8, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board