

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

ROBERT W. PRICE, Appellant)

and)

DEPARTMENT OF THE ARMY,)
CORPORATION OF ENGINEERS,)
Fort Wood, MO, Employer)

**Docket No. 06-108
 Issued: June 16, 2005**

Appearances:
 Robert W. Price, pro se
 Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
 MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 18, 2005 appellant filed a timely appeal from decisions of the Office of Workers' Compensation Programs dated September 1, 2004 and August 26, 2005 which found that he had not established that he sustained Lyme disease from vaccinations he received at work. Pursuant to 20 C.F.R. §§ 501.2(cc) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant has met his burden of proof to establish that he sustained Lyme disease as a result of his federal employment.

FACTUAL HISTORY

On April 22, 2002 appellant, then a 62-year-old construction representative, filed an occupational disease claim alleging that he contracted Lyme disease as a result of Lymerix vaccinations he received for his federal employment on August 8 and September 13, 1999.

In a report dated April 22, 2002, Dr. Charles L. Crist, a Board-certified family practitioner, indicated that appellant had Lyme disease. He noted that appellant experienced joint pain, depression, fatigue, chills and a rash on his arms, legs and back. Appellant also had arthritis in his right knee, both ankles, both wrists, left elbow, left shoulder and left big toe. Finally, he noted diminished mental capability with memory loss, difficulty concentrating and general confusion.

By decision dated July 3, 2002, the Office denied appellant's claim for the reason that appellant had not established that his condition was caused by the alleged event. Appellant requested an oral hearing.

In a note dated October 15, 2002, Dr. Crist indicated that appellant was a patient of his who had received the Lymerix vaccine. After the second evaluation, appellant developed flu-like symptoms, a pruritic rash and joint pain. He also noted that the first vaccine was followed by a rash and pain in the knee and ankle. Dr. Crist stated that many patients were much worse after receiving the vaccine. He noted that about 90 percent of his practice was with Lyme disease patients. Dr. Crist concluded: "It is probable that the Lymerix vaccine caused the multiple symptoms because of injury." The fact that appellant's employer required him to get the vaccine should be considered strongly in his case.

By decision dated January 7, 2003, the hearing representative noted that Dr. Crist's October 15, 2002 report required further development and remanded the case, instructing the Office to refer appellant for a second opinion.

By letter dated February 3, 2003, the Office referred appellant to Dr. Gordon D. Christensen, a Board-certified internist with a specialty in infectious disease, for a second opinion. In an April 1, 2003 report, Dr. Christensen listed his diagnoses as:

"Arthritis and arthralgias, etiology unknown, but probably due to degenerative joint disease. No conclusive evidence for [L]yme disease and no conclusive evidence for vaccine induced injury.

"Strong objective evidence for moderate to severe depression."

Dr. Christensen noted that appellant reported having an itch post vaccine rash and that it was possible that this could be an allergic reaction to the vaccine protein or some component of the vaccine carrier. Although he could not conclusively state that appellant did not have Lyme disease, Dr. Crist's approach to the diagnosis and management of appellant was unconventional and unproven, but not demonstrably and conclusively erroneous.

In a May 2, 2003 follow-up report, Dr. Christensen reviewed some new laboratory studies and indicated that his diagnosis had not changed.

The Office found a conflict in medical opinion between Dr. Crist and Dr. Christensen, regarding whether appellant's condition was related to the vaccinations for Lyme disease.

By letter dated February 4, 2004, the Office referred appellant to Dr. Edward F. Hendershot, a Board-certified internist specializing in infectious disease, for an impartial medical examination. However, he did not submit a report in a timely manner.¹

By letter dated July 21, 2004, the Office referred appellant to Dr. Paul M. Jost, a Board-certified internist specializing in infectious disease, for an impartial medical examination. In a medical report dated August 20, 2004, Dr. Jost stated:

“[A]fter reviewing all this information, talking with and examining [appellant], I do not think that he suffers from any physical problems that are related to the L[y]me rix vaccinations. [Appellant’s] complaints appear to stem from two underlying problems. The first is osteoarthritis in his knees and ankles. This diagnosis is confirmed by the x-ray report of his knees. The second problem causing [appellant’s] complaints is his depression, which he readily admits to having had over the past four years. All of his complaints are readily explained by these two conditions and there is nothing that requires invoking any other disease process to provide an explanation. [Appellant’s] complaints of arthritis really do not fit well with the arthritis that is typically described with Lyme disease. Furthermore, there is only a minimal amount of anecdotal data in the medical literature to support the idea that Lymerix vaccination can cause or exacerbate Lyme-like symptoms. I do not think that appellant’s complaints at this time would be any different than if he had never received L[y]me rix vaccinations.”

By decision dated September 1, 2004, the Office denied appellant’s claim for compensation, finding that the weight of the evidence was represented by the opinion of Dr. Jost, who determined that there was no objective evidence to support that appellant’s claimed conditions resulted from the Lymerix vaccine.

On September 11, 2004 appellant requested an oral hearing.

In a medical report dated July 15, 2005, Dr. Crist noted that he had diagnosed and treated borreliosis patients from all over America. He stated:

“At work, [appellant] was given the Lymerix vaccine. After that his health worsened. It is possible the vaccine was one of the causes of his symptoms. If that is the case this injury occurred at work and he should be compensated. To the best of my medical judgment, the Lymerix vaccine caused the injury.”

At the hearing held on May 18, 2005. Appellant testified that he noted a rash on both his arms after receiving the first Lymerix vaccine on August 8, 1999. He described numerous symptoms that he attributed to having Lyme disease causally related to the vaccinations.

¹ Dr. Hendershot submitted a report dated November 28, 2004, received December 8, 2004. He negated the diagnosis of Lyme disease from the Lymerix vaccinations.

By decision dated August 26, 2005, the Office hearing representative affirmed the denial of appellant's claim. The Office found that appellant had not established that he sustained an injury in the performance of duty.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employee's Compensation Act² 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.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 the 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 diagnosed condition is causally related to the employment factors identified by the claimant.⁵

ANALYSIS

The Board finds that the weight of the medical evidence does not establish that appellant contracted Lyme disease as a result of the Lymerix vaccinations he received as part of his federal employment. Appellant's treating Board-certified family practitioner, Dr. Crist, opined that to the best of his medical judgment, the Lymerix vaccine caused appellant's illnesses. The Office referred appellant to Dr. Christensen, a Board-certified internist specializing in infectious disease, who found no conclusive evidence for the diagnosis of Lyme disease or that the vaccine induced any injury. In order to resolve the conflict between Drs. Crist and Christensen, the Office referred appellant to Dr. Hendershot. However, Dr. Hendershot did not submit a timely medical report. Thereafter, the Office referred appellant to Dr. Jost, a Board-certified internist specializing in infectious disease.

Dr. Jost examined appellant and concluded that appellant did not have any physical problems related to the Lymerix vaccinations. He noted that appellant's complaints were explained by the osteoarthritis to his knees and ankles and his depression. Appellant's arthritis of the knees and ankles was confirmed by x-ray and he noted that appellant's complaints of arthritis did not fit well with the arthritis typically described with Lyme disease. He further

² 5 U.S.C. § 8101 *et seq.*

³ *Joe D. Cameron*, 41 ECAB 150 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

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

⁵ *Solomen Polen*, 51 ECAB 441 (2000); *see also Michael E. Smith*, 50 ECAB 313 (1999).

pointed out that appellant's complaints would not be any different even if he had not received the vaccination. In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial 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.⁶ Dr. Jost provided a clear and well-rationalized opinion as to why appellant did not sustain Lyme disease causally related to the vaccinations and accordingly, the special weight of the medical evidence rests with his opinion.

Dr. Crist's report of July 15, 2005, contained a similar opinion which gave rise to the original conflict on whether the vaccinations caused Lyme disease. However, as Dr. Crist was on one side of the conflict, his report is insufficient to overcome the weight of Dr. Jost's report or to create another conflict as his opinion is largely duplicative of his stated conclusion.⁷

The Office properly determined that appellant had not established that he sustained Lyme disease causally related to the vaccinations received as part of his federal employment.⁸

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he sustained Lyme disease as a result of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 26, 2005 and September 1, 2004 are affirmed.

Issued: June 16, 2006
Washington, DC

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

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

⁶ *Michael W. Loveless*, 53 ECAB 784, 788 (2002).

⁷ *See Howard Y. Miyashiro*, 43 ECAB 1101 (1992); *Dorothy Sidwell*, 41 ECAB 857 (1990).

⁸ Appellant submitted numerous articles from the internet with regard to Lyme disease and the Lymerix vaccinations. The Board has held that internet articles, newspaper clippings and excerpts from medical texts are of no evidentiary value in establish the necessary causal relationship as such materials are of general application and are not determinative of whether the specific condition claimed is related to the particular employment factors alleged by the employee. *William C. Bush*, 40 ECAB 1064 (1989).