

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

M.E., Appellant

and

**DEPARTMENT OF THE ARMY, 25th
DIVISION OFFICERS' MESS, TRANG BANK,
REPUBLIC OF VIET NAM, Employer**

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**Docket No. 08-1169
Issued: December 11, 2008**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 3, 2008 appellant filed a timely appeal from a November 7, 2007 decision of the Office of Workers' Compensation Programs that denied his claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that his headaches and dizziness were caused by his December 18, 1969 injury.

FACTUAL HISTORY

This case has previously been before the Board. By decision dated January 30, 2007, the Board remanded the case to the Office. The Board found that appellant's September 13, 2005 reconsideration request was not untimely pursuant to section 10.607 of the Office's regulations. The Board noted that no time limit applied to requests for reconsideration of decisions issued before June 1, 1987 as there was no regulatory time limit for requesting reconsideration prior to

that date. As appellant was never notified of the one-year filing requirement in a later decision, his request for reconsideration was not as untimely. The case was remanded for the Office to further consider appellant's September 13, 2005 reconsideration request.¹

By decision dated September 21, 2007, the Board found that a March 6, 2007 Office decision was inadequate because it did not make findings about the extent of visual impairment of the left eye and was not responsive to the claimed consequential injury of dizziness and headaches. The decision did not provide any discussion of the specific factual or medical evidence or specify the precise defect of the claim so that appellant would know the evidence needed to overcome the denial. The Board remanded the case for a *de novo* decision on the merits of the claim.² The law and the facts of the previous Board decisions and orders are incorporated herein by reference.

In a merit decision dated November 7, 2007, the Office denied appellant's claim on the grounds that there was insufficient medical evidence to establish that his dizziness and headaches were related to the 1969 injury.³

LEGAL PRECEDENT

The general rule respecting consequential injuries is that, when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause, which is attributable to the employee's own intentional conduct. The subsequent injury is compensable if it is the direct and natural result of a compensable primary injury. With respect to consequential injuries, the Board has stated that, where an injury is sustained as a consequence of an impairment residual to an employment injury, the new or second injury, even though nonemployment related, is deemed, because of the chain of causation to arise out of and in the course of employment and is compensable.⁴

¹ Docket No. 06-1886 (issued January 30, 2007).

² Docket No. 07-1272 (issued September 21, 2007). The Board also notes that by order dated June 28, 1984, Docket No. 84-448, the Board granted the Director's motion to dismiss on the grounds that appellant was seeking reconsideration with the Office.

³ The Board notes that on December 3, 2007 appellant requested reconsideration with the Office and submitted additional medical evidence. On January 3, 2008 he filed an appeal with the Board. By decision dated March 17, 2008, the Office denied appellant's reconsideration request. The Office and the Board may not have simultaneous jurisdiction over the same issue in the same case. Following the docketing of an appeal with the Board, the Office does not retain jurisdiction to render a further decision regarding a case on appeal until after the Board relinquishes its jurisdiction. Any decision rendered by the Office on the same issues for which an appeal is filed is null and void. *Jacqueline S. Harris*, 54 ECAB 139 (2002). As the Board's review is limited to the evidence in the case record at the time the Office made its decision over which the Board has jurisdiction, the Board cannot review the evidence submitted to the Office with appellant's December 3, 2007 reconsideration request. *D.E.*, 58 ECAB ____ (Docket No. 07-27, issued April 6, 2007).

⁴ *S.S.*, 59 ECAB ____ (Docket No. 07-579, issued January 14, 2008).

A claimant bears the burden of proof to establish a claim for a consequential injury. As part of this burden, he or she must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship. Rationalized medical evidence is evidence which relates a work incident or factors of employment to a claimant's condition, with stated reasons of a physician. The opinion must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship of the diagnosed condition and the specific employment factors or employment injury.⁵

ANALYSIS

The Board finds that appellant did not establish that his headaches and dizziness were caused by the December 18, 1969 rocket propelled grenade attack. There is insufficient medical evidence relating these conditions to that injury.⁶ The medical evidence relevant to his current condition includes a July 29, 2005 radiographic/ultrasound report that demonstrated a density in the left frontal region.⁷ An August 18, 2005 computerized tomography (CT) scan of the head demonstrated age-related cerebral volume loss, a bony defect of the left frontal bone which was a possible postsurgical change, and bilateral maxillary, ethmoid and sphenoid sinus disease. In a September 12, 2005 report, Dr. Miguel Delmer F. Calayag, a neurologist, noted the history of injury and appellant's complaints of vertigo and headaches. He provided examination findings of depressed skull and diminished vision in the left eye with no motor or neurological defect. Dr. Calayag diagnosed post-traumatic stress syndrome, status post craniotomy with dural repair, and removal of a foreign object from his left eye and recommended further testing. However, the physician did not address whether appellant's headaches or dizziness were due to the 1969 injury.

None of these reports contain any discussion regarding the cause of the diagnosed conditions or a discussion of disability. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.⁸ Appellant, therefore, submitted insufficient evidence to discharge his burden of proof to establish that his headaches and dizziness were a consequence of the December 30, 1969 employment injury.⁹

⁵ *Charles W. Downey*, 54 ECAB 421 (2003).

⁶ The specific accepted injuries in this case are unspecified. Appellant, however, sustained multiple fragment wounds to the face, neck, right arm and left eye, and was granted a schedule award for a 35 percent loss of use of the left eye.

⁷ Appellant also submitted medical reports regarding his treatment in 1969 and early 1970 following the injury, and a September 14, 1982 report in which Dr. James V. Anderson, a Board-certified neurologist, diagnosed post-traumatic syndrome and discussed appellant's head trauma.

⁸ *Willie M. Miller*, 53 ECAB 697 (2002).

⁹ *S.S.*, *supra* note 4.

CONCLUSION

The Board finds that appellant did not establish that his headaches and dizziness were caused by his December 18, 1969 injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 7, 2007 be affirmed.

Issued: December 11, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board