

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

D.M., Appellant

and

**DEPARTMENT OF THE ARMY, Fort Lee, VA,
Employer**

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**Docket No. 07-2131
Issued: July 24, 2008**

Appearances:
Appellant, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 15, 2007 appellant filed a timely appeal of a May 23, 2007 decision of the Office of Workers' Compensation Programs which found that he did not sustain an esophageal condition in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this emotional condition case.

ISSUE

The issue is whether appellant sustained an esophageal condition in the performance of duty causally related to factors of his federal employment.

FACTUAL HISTORY

On September 26, 2005 appellant, then a 54-year-old police officer, filed an occupational disease claim, alleging that he experienced severe and explosive esophagitis in the course of his federal employment. He realized his condition was caused or aggravated by his employment on

September 3, 2005. Appellant did not stop work. The employing establishment controverted the claim.¹

In a separate statement, appellant noted that he sustained a previous employment injury to his right shoulder and hand on April 28, 2004. He alleged that this injury caused stress and a stomach ulcer.

In an April 19, 2005 report, Dr. Keith J. Rost, Board-certified in family medicine, noted that appellant experienced pain when he bent over. Appellant exhibited normal findings for the abdomen. In a September 19, 2005 report, Dr. Donald A. Swetter, Board-certified in preventive medicine, noted that appellant had a “[t]hree plus erosive esophagitis and a large hiatal hernia which are considered a probable cause of a constant right upper quadrant pain which has begun on April 2005, approximately one year after [appellant] was injured in a training accident” at the employing establishment. He advised that appellant had surgery for a tendon rupture, that recovery took over a year and that appellant’s shoulder condition still prevented him from working as a police officer. Dr. Swetter opined that this caused appellant considerable stress and he subsequently developed a stress-related ulcer condition with erosive esophagitis. He opined that appellant’s current peptic ulcer stress condition was related to his loss of former function as a police officer. Dr. Swetter diagnosed a stress-induced peptic ulcer, a tendon rupture of the right biceps and “misadventure during care.” In a September 30, 2005 operative report, Dr. Edward J. Ramsey, a Board-certified gastroenterologist, performed an esophagogastro-duodenoscopy video scope.

In an October 12, 2005 statement, Louis P. Ostmann, Jr., an operations officer from the employing establishment, indicated that appellant was removed from working as police officer due to his light-duty status. He indicated that the employing establishment had since sought to find appropriate light duty for appellant. The Office also received a separate statement from the employing establishment dated October 6, 2005; and a notification of personnel action. In a January 3, 2006 memorandum, Walter F. Dane, the director of civilian personnel, related that appellant was provided with a visitor receptionist job offer, which he accepted on January 9, 2006.

In a January 13, 2006 report, Dr. N. Douglas Boardman, a Board-certified orthopedic surgeon, opined that appellant was able to return to his duties as a police officer with no restrictions. He added that appellant should not be confined to “any type of sedentary or clerical duties.”

By letter dated March 6, 2006, the Office requested additional factual and medical evidence from appellant. It requested that he describe in detail the employment-related conditions or incidents which he believed contributed to his illness. The Office also requested that appellant describe those aspects of his employment which he believed were detrimental to his health and that he identify any relevant dates, locations, coworkers, supervisors and any required duties. Additionally, it requested that, for any events or duties which he identified,

¹ The record reflects that appellant has a separate claim for a right shoulder injury sustained on April 28, 2004 under Claim No. 252041526. This claim, not presently before the Board, was accepted for right shoulder supraspinatus tear.

appellant should describe how often they occurred and for how long. Appellant was asked to provide the names, addresses and telephone numbers of any person who could confirm his allegations. The Office allotted him 30 days within which to submit the requested information. Appellant did not respond.

By decision dated April 24, 2006, the Office denied the claim on the basis that the evidence was insufficient to establish that the events occurred as alleged. It indicated that appellant did not describe the specific employment factor, event or practice which appellant believed caused his injury.

On August 1, 2006 the Office received appellant's reconsideration request. In a July 27, 2006 statement, appellant alleged that his esophageal ulcer arose as a result of the extensive medication he received for his work injury and the stress of being placed in numerous temporary positions, losing his physical fitness "(SWAT/SRT team member)" and losing the chance for career advancement. In a February 27, 2007 statement, he recounted his April 28, 2004 work injury to his right arm and shoulder. Appellant alleged that his recovery required him to take medication and sleep and remain in a supine position that resulted in his gastroenterological condition. He asserted that his esophageal ulcer was due to medication and was aggravated by stress. Appellant alleged that his physicians "all concur that the ulcer and the injury are related." He also attributed stress to his loss of career and being placed in "demeaning positions" after returning to work. On March 2, 2007 appellant reiterated that his condition was a direct result of his accepted employment condition.

In a February 8, 2007 report, Dr. Ramsey noted the history of appellant's arm injury and indicated that appellant was being treated for severe reflux esophagitis and chest pain. He noted that appellant never had acid reflux stomach problems before his 2004 work injury. Dr. Ramsey explained that following arm surgery appellant was required to spend a great deal of time supine and took daily pain medications. He opined that "the stress of the injury plus the pain medicines, which both delayed gastric emptying, and lowered his lower esophageal sphincter pressure, would be enough that he could develop severe esophagitis." Dr. Ramsey added that he believed that appellant's esophagitis was "definitely tied to his injury while on his training mission. He opined that he did not believe that you could "separate appellant's severe esophagitis from his injury."

By decision dated May 23, 2007, the Office affirmed the April 24, 2006 decision, modified to reflect that the evidence was insufficient to establish a causal relationship between his esophageal condition and factors of his employment.²

LEGAL PRECEDENT

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

² The Office advised appellant that his physician attributed his condition to medication relative to an orthopedic condition which was not part of the present claim. Appellant was advised that he should seek relief under the orthopedic claim.

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.³

ANALYSIS

Appellant alleged that his prior claim caused his consequential esophageal condition and other stress-related conditions and submitted medical evidence in support of his claim. A consequential injury flows from a primary employment injury and is properly pursued through the prior claim, not by filing a claim for a new injury.⁴ The evidence shows that appellant is claiming that his esophageal and stress-related conditions are due to his accepted injury in Claim No. 252041526. The Office advised appellant that, since his physician was attributing his condition to his orthopedic condition, which was not part of the present claim, he should seek relief under the prior claim. If appellant is claiming that his esophageal condition and stress-related conditions arose out of his April 28, 2004 claim, the issue should be adjudicated under that claim.

The Board notes that the Office denied appellant's claim on the basis that appellant had presented insufficient evidence to establish a causal relationship between his esophageal and factors of his employment. However, appellant had not established new employment factors unrelated to his other claim as contributing to his alleged condition. In the absence of a factual statement identifying such new employment factors as contributing to a diagnosed condition, he has not met his burden of proof with respect to the present claim.⁵

³ *Id.*

⁴ *See, e.g., Margarete B. Rogler*, 43 ECAB 1034 (1992).

⁵ The Board notes that, subsequent to the Office's May 23, 2007 decision, appellant submitted additional evidence. The Board has no jurisdiction to review this evidence for the first time on appeal. 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).

CONCLUSION

The Board finds that appellant has failed to meet his burden of proof to establish a new occupational disease.

ORDER

IT IS HEREBY ORDERED THAT the May 23, 2007 decision of the Office of Workers' Compensation Programs is modified.

Issued: July 24, 2008
Washington, DC

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

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

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