

By letters dated July 31 and August 1, 2008, the Office advised appellant that additional factual and medical evidence was needed. It requested a physician's opinion addressing causal relationship and provided him 30 days to submit the requested information.

In a letter dated August 21, 2008, the employing establishment noted that appellant had advanced bilateral degenerative joint disease and a significant deformity of both humeral heads. Appellant had surgery in April 2008 and there was no mention in the medical records of any work-related condition.

A February 12, 2008 x-ray of the shoulders read by Dr. Patrick W. White, a Board-certified surgeon and radiologist, revealed increasing advanced bilateral changes. Dr. White also noted that appellant had a significant deformity of both humeral heads. The Office also received nurse's notes dated March 5, April 18 and 21, 2008.

In a March 9, 2008 duty status report, Dr. Francisco S. Garcia-Lopez, a Board-certified physiatrist, noted that appellant had degenerative joint disease and diagnosed bilateral shoulder osteoarthritis. Appellant worked in confined areas and inside equipment. Dr. Garcia-Lopez found that appellant could not resume regular duty but could perform limited duties. He specified lifting no more than 15 to 20 pounds intermittently for two hours per day; standing for no more than seven hours per day; and no more than four hours of walking, kneeling, bending, stooping, twisting, grasping and fine manipulation.

In a June 20, 2008 report, Dr. Ryan Simovitch, a Board-certified orthopedic surgeon, advised that appellant was status post left total shoulder arthroplasty and that his current condition started over a year earlier. He placed appellant off work for approximately 8 to 12 weeks. On August 26, 2008 Dr. Simovitch provided documentation regarding appellant's application for a disability retirement. Appellant was first seen on March 10, 2008 with a complaint of bilateral shoulder pain which was determined to be severe degenerative joint disease. On examination, Dr. Simovitch noted that appellant had significantly restricted range of motion and pain with activities of daily living as well as chores at work. Appellant underwent a left total shoulder replacement on April 21, 2008. Dr. Simovitch stated that appellant was unable to do his normal activities as he was at significant risk of exacerbating his condition. He reviewed appellant's work description and diagnosed left shoulder osteoarthritis. Dr. Simovitch recommended restrictions which included no walking on ladders, catwalks, walkways, scaffolds, vertical lifts and platforms. He also indicated that appellant was unable to use his hand tools or power tools.

By decision dated September 15, 2008, the Office denied appellant's claim. It found that the medical evidence did not establish that his degenerative disease was related to the accepted work activities.

On September 22, 2008 appellant's representative requested a telephonic hearing, which was held on January 15, 2009. At the hearing, appellant stated that he was required to constantly work with his arms extended and lift heavy objects and motors.

On October 17, 2008 Dr. Simovitch noted that he was requested to address the causal relationship of appellant's work and his shoulder arthritis which necessitated surgery on

April 12, 2008. He stated that appellant's repetitive work-related activities contributed to the erosion of cartilage and development of reactive osteoarthritis in the left shoulder joint. Dr. Simovitch found no history of any previous fracture or trauma in the setting of profound cartilage erosion and development of pain and stiffness over the years during which appellant worked at the employing establishment.

By decision dated March 25, 2009, the Office hearing representative affirmed the September 15, 2008 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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.² 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.³

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.⁴

¹ 5 U.S.C. §§ 8101-8193.

² *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ *Id.*

ANALYSIS

The Office accepted that appellant was required to work with his arms extended and lift heavy objects and motors. It denied his claim for compensation on the grounds that the medical evidence was not sufficient to establish that his degenerative shoulder condition was causally related to his employment.

However, the Board notes that the medical evidence submitted by appellant generally supports that his osteoarthritis in the shoulders was aggravated by his repetitive weighted work-related activities. On August 26, 2008 Dr. Simovitch reviewed appellant's work description and diagnosed left shoulder osteoarthritis. He noted that appellant underwent a total left shoulder replacement in April 2008. Dr. Simovitch advised that appellant could work with restrictions but he could not walk on ladders, catwalks, walkways, scaffolds, vertical lifts and platforms. He also indicated that appellant had the inability to use his hand tools or power tools. On October 17, 2008 Dr. Simovitch opined that appellant's repetitive work activities contributed to the erosion of cartilage and development of reactive osteoarthritis in the left shoulder joint. He advised that appellant had no previous history of fracture or trauma in the setting of profound cartilage erosion or development of pain and stiffness over the years that appellant worked at the employing establishment. The Board finds that Dr. Simovitch noted that he had read the employment description, was aware of the employment activities and generally provided an explanation on causal relationship between factors of appellant's employment. Although the reports are not sufficiently rationalized to meet appellant's burden of proof in establishing his claim, they stand uncontroverted in the record and are sufficient to require further development of the case.⁵

Proceedings under the Act are not adversarial in nature nor is the Office a disinterested arbiter. While appellant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence. It has the obligation to see that justice is done.⁶

The Board will remand the case to the Office for referral to an appropriate medical specialist to determine the extent of any injury or aggravation of any preexisting conditions as a result of his employment-related activities. Following this and any other further development as deemed necessary, the Office shall issue an appropriate merit decision on appellant's claim.

CONCLUSION

The Board finds that this case is not in posture for decision.

⁵ *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

⁶ *John W. Butler*, 39 ECAB 852 (1988).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated March 25, 2009 and September 15, 2008 are set aside and the case is remanded for further development in accordance with this decision of the Board.

Issued: January 28, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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