

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROSE HOYER and DEPARTMENT OF VETERANS AFFAIRS,
ALLEN PARK VETERANS HOSPITAL, Allen Park, Mich.

*Docket No. 95-2144; Submitted on the Record;
Issued March 17, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof to establish that she sustained a medical condition in the performance of duty as alleged.

The Board has duly reviewed the case record in the present appeal and finds that the Office of Workers' Compensation Programs properly determined in its May 4 and January 30, 1995 decisions that appellant failed to meet her burden of proof in establishing her claim due to insufficient medical evidence.

An employee seeking benefits under the Federal Employees' Compensation Act 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.¹ These are the essential elements of each and every claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.²

In the present case, on August 1, 1994 appellant, then a 64-year-old nurse, filed a claim for occupational disease alleging that she contracted shingles as a combined result of stress in her workplace and exposure to a patient with active shingles in the course of her employment. Appellant stopped work on May 28, 1994 and returned to work on July 12, 1994. In a decision dated January 30, 1995, the Office denied appellant's claim on the grounds that the medical

¹ *Elaine Pendelton*, 40 ECAB 1143 (1989).

² The Office's regulations clarify that a traumatic injury refers to injury caused by a specific event or incident or series of incidents occurring within a single workday or work shift whereas occupational disease refers to injury produced by employment factors which occur or are present over a period longer than a single workday or shift; *see* 20 C.F.R. §§ 10.5(a)(15), (16).

evidence was insufficient to establish that her outbreak of shingles was causally related to factors of her federal employment. By letter dated February 9, 1995, appellant requested reconsideration of the Office's decision, and submitted additional factual evidence in support of her request. In a decision dated May 4, 1995, the Office indicated that it had reviewed appellant's claim on its merits but found the additional evidence submitted insufficient to warrant modification of the prior decision.

There is no dispute that appellant is a federal employee, that she timely filed her claim for compensation benefits, that she experienced an outbreak of shingles in or around May of 1994, and that, as a result of this outbreak, she was totally disabled for employment until July 12, 1994. However, the medical evidence is insufficient to establish that appellant's outbreak of shingles occurred as a result of factors of stress and/or exposure to a patient with active shingles, during her federal employment because it does not contain a rationalized medical opinion supporting such a causal relationship.³

In support of her claim, appellant submitted narrative statements in which she stated that she felt that her exposure, from April 25 through April 29, 1994, to a patient with active herpes zoster, or shingles, combined with the usual stress of working in a critical care unit and the added stress of undergoing mandatory advanced cardiac life support testing, led to her disabling outbreak of shingles. In addition, appellant submitted a medical report dated July 26, 1994 from her attending physician, Dr. Michael T. Goldfarb, a Board-certified dermatologist. In his report, Dr. Goldfarb noted appellant's history of working in a stressful occupation, and her statement that she had no recollection of whether she had ever had chicken pox as a child, and confirmed that he treated appellant for approximately two months for an outbreak of herpes zoster, or shingles. With respect to whether appellant's condition was caused or aggravated by factors of her employment, the physician stated: "Herpes zoster is a flare of a dormant varicella infection [chicken pox], that can flare at times of stress and being immuno-compromised. It is therefore conceivable that a stressful job could flare a case of herpes zoster."

Although it is noted that there is some dispute between appellant and the employing establishment as to whether the patient to whom appellant was exposed had active or inactive, herpes zoster, Dr. Goldfarb, who provided the only medical report of record, did not indicate that exposure, either to persons with active or inactive herpes zoster, was a method of transmittal of the condition. Rather, Dr. Goldfarb stated that shingles is caused by a flare up of underlying dormant varicella [chicken pox]. Furthermore, although admittedly appellant is in a high stress occupation, and the additional life support testing she was required to take probably added to her usual level of stress, Dr. Goldfarb did not specifically state that stress in appellant's job triggered her shingles outbreak, but rather stated that it was "conceivable" that a stressful job "could" trigger an outbreak. Thus, Dr. Goldfarb's report is speculative in nature and lacks the requisite

³ Part of a claimant's burden of proof includes the submission of rationalized medical evidence based upon a complete factual and medical background showing causal relationship between the claimed injury and employment factors; see *Mary J. Briggs*, 37 ECAB 578 (1986); *Joseph T. Gulla*, 36 ECAB 516 (1985).

degree of certainty to establish appellant's claim.⁴ The mere fact that a condition manifests itself or worsens during a period of employment does not raise an inference of causal relationship between the condition and the employment.⁵ Neither the fact that the condition became apparent during a period of employment, nor the belief of appellant that the condition was caused or aggravated by employment conditions, is sufficient to establish causal relation.⁶

The Office advised appellant of the type of medical evidence needed to establish her claim but she did not provide such evidence. Consequently, appellant has not submitted sufficient medical evidence to establish that her shingles outbreak was causally related to factors of her federal employment. In view of this, appellant has not met her burden of proof in establishing that she sustained an occupational disease in the performance of duty.

The decisions of the Office of Workers' Compensation Programs dated May 4 and January 30, 1995 are hereby affirmed.

Dated, Washington, D.C.
March 17, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁴ See *William Nimitz, Jr.*, 30 ECAB 567 (1979) (where the Board held that medical opinions which are speculative or equivocal in character have little probative value.

⁵ *Juanita C. Rogers*, 34 ECAB 544 (1983).

⁶ *Bruce E. Martin*, 35 ECAB 1090 (1984); *Froilan Negron Marrero*, 33 ECAB 796 (1982).