

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PENNY RINEHART and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Knoxville, IA

*Docket No. 00-245; Submitted on the Record;
Issued March 26, 2001*

DECISION and ORDER

Before MICHAEL E. GROOM, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether appellant met her burden of proof to establish that she sustained a left shoulder and knee injury in the performance of duty.

On August 8, 1998 appellant, then a 43-year-old police officer, filed traumatic injury and occupational disease claims alleging that she hurt her left shoulder on August 12, 1998, while being thrown to a mat during police training and that she developed shin splints and water on her kneecap during physical training.

By decision dated January 7, 1999, the Office of Workers' Compensation Programs denied the claim. The Office found that the factual evidence submitted did not establish that the injury occurred as alleged and the medical evidence did not explain the mechanism of injury. Therefore, the Office found that appellant failed to establish fact of injury.

On January 15, 1999 appellant requested reconsideration and submitted additional evidence. After conducting a merit review, by decision dated June 22, 1999, the Office denied modification of the prior decision. The Office found that appellant had not established that the injury occurred as alleged or submitted sufficient medical evidence to support that she suffered any injury caused by her employment.

On July 29, 1999 appellant again requested reconsideration and submitted additional evidence. By decision dated August 5, 1999, the Office modified its January 7, 1999 decision and accepted appellant's claim for bilateral shin splints. However, the Office determined that the other conditions alleged by appellant remained denied.

The Board finds that appellant did not meet her burden of proof to establish that she sustained a left shoulder or knee injury in the performance of duty.

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 filed within the applicable time limitation 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 occupational disease.³

The medical evidence required is generally rationalized medical opinion evidence which includes a physician's opinion of reasonable medical certainty based on a complete factual and medical background of the claimant and supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by claimant.⁴

In this case, appellant alleged that she hurt her left shoulder while being thrown down to a mat in training and developed water on her left knee and shin splints during other training with the employing establishment.

In a letter dated October 22, 1998, the employing establishment reported that appellant's records were reviewed and instructors were interviewed at its training center. The letter stated that appellant had not reported any injury, either orally or in writing, during law enforcement training. The employing establishment further submitted corroborating witness statements that appellant was sent home from the training academy early because she failed the academic portion of the course and that no trainees were thrown down on mats during demonstrations.

In a statement dated December 15, 1998, Thomas W. Kellogg, appellant's training instructor, stated that, during his defensive tactic class, the students are shown how to take a person down to the prone position for handcuffing. However, this procedure is done very slowly and with control. Based on this evidence, the Board finds that appellant has failed to establish fact of injury regarding her shoulder.

The Office has, however, accepted that appellant sustained bilateral shin splints in the performance of duty and the Board concurs with this finding. Appellant was required to run everyday during the training course and complained of shin splints to her instructor. He indicated that appellant did in fact report shin splints after running during training. Dr. Brent Dixon, an osteopath and appellant's treating physician, diagnosed bilateral shin splints in various reports and related the diagnosed condition to appellant's aggressive physical training at work. Therefore, the Office properly accepted this condition.

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton* 40 ECAB 1143, 1145 (1989).

³ *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

⁴ *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

To establish that her knee condition was work related, appellant must submit probative medical evidence on a causal relationship between the diagnosed condition and an employment incident. The Board has held that medical evidence must be in the form of a reasoned opinion by a qualified physician based on a complete and accurate factual and medical history.⁵

In attending physician reports (Form CA-20) dated from August 31, 1998 to July 27, 1999, Dr. Dixon indicated that appellant was seen for shin splints, shoulder, neck and knee pain allegedly sustained during an “aggressive” defensive tactics training course. He diagnosed tendinitis of the left shoulder, chondromalacia of the left knee (a softening of cartilage) and bilateral shin splints.

In numerous reports, Dr. E. Scott Coyle, a chiropractor, indicated that appellant was seen for injuries sustained during a defensive tactics training course with the employing establishment. He diagnosed x-ray cervical and thoracic subluxations, right shoulder depression and cervical compression and distraction. In other form reports dated September 22 and October 1, 1998, Dr. Thomas Carlstrom, a Board-certified neurologist, indicated that appellant had myofascial and shoulder pain.

Each physician indicated that appellant’s conditions were caused or aggravated by an employment activity by placing a check mark in the box marked “yes.” The Board has held that an opinion on causal relationship which consists only of a physician checking “yes” to a medical form report question on whether the claimant’s disability was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, each report is insufficient to establish causal relationship.⁶

In a medical report dated October 15, 1998, Dr. Dixon stated that appellant was treated in the past two months for a severe myofascial injury involving her lumbar and lower cervical thoracic spine, leading to cephalgia, bilateral knee splints, knee injury and other problems. He added that in the past year appellant had undergone two complete physicals at 100 percent prior to her injury at the training academy. Dr. Dixon, however, did not discuss whether appellant had water on her left knee related to training or provide a reasoned opinion on causal relationship. Inasmuch as he did not provide any medical rationale explaining the causal relationship between appellant’s conditions and the claimed employment injury, his report is of diminished probative value.

⁵ *Robert J. Krstyen*, 44 ECAB 227, 229 (1992).

⁶ *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

In a medical report dated March 17, 1999, Dr. Theodore Rooney, an osteopath, reported appellant's history of the injury and discussed the previous findings on magnetic resonance imaging (MRI) scan and his physical examination. He concluded:

“Based on her findings and the temporal relationship to her training camp, I believe she presents with the type of fibromyalgia that is seen in about 15 percent of cases where it comes on following some type of traumatic event. Therefore, I believe it is related to her activities that she was doing as a part of the [employing establishment] training program.”

Dr. Rooney, however, did not provide a diagnosis of the injuries claimed by appellant nor did he provide a reasoned opinion on causal relationship.

In a report dated November 19, 1998, Dr. Coyle related that appellant was injured by repetitive activities such as demonstrating “body throws” on mats during an intense training course with the employing establishment. He opined that the radiographic and MRI scan reports of appellant's cervical spine and brain showed mild spondylosis and loss of lordosis in the cervical spine. X-rays revealed posterior disc wedging at C5-6, which could have possibly caused appellant's shoulder pain. Dr. Coyle diagnosed cervical sprain, cervicocranial syndrome, left shoulder sprain with tendinitis and chondromalacia patella of left knee.

The Board finds that Dr. Coyle's opinion is also insufficient to meet appellant's burden of proof. Dr. Coyle is a chiropractor, and under the Act is a “physician” only to the extent that his reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation.⁷ Therefore, Dr. Coyle's opinion regarding the cause of appellant's left shoulder injury does not constitute competent medical evidence.⁸ The physical therapy notes are not medical evidence as a physical therapist is not a physician under the Act.⁹

Inasmuch as appellant has failed to submit rationalized medical evidence establishing that she sustained a left shoulder and knee injury due to employment training in August 1998, she has failed to satisfy her burden of proof.¹⁰

⁷ See 5 U.S.C. § 8101(2).

⁸ *Linda Mendenhall*, 41 ECAB 532 (1990); *Marjorie Geer*, 39 ECAB 1099 (1988). The Board notes that Dr. Coyle reported having treated appellant for cervical and thoracic subluxations based on an x-ray.

⁹ *Thomas R. Horsfall*, 48 ECAB 180 (1996).

¹⁰ Appellant submitted evidence on appeal that was not before the Office prior to the issuance of its August 5, 1999 decision. Inasmuch as the Board's review is limited to the evidence of record that was before the Office at the time of its final decision, the Board cannot consider appellant's newly submitted evidence. 20 C.F.R. § 501.2(c).

The decisions of the Office of Workers' Compensation Programs dated August 5, June 29 and January 7, 1999 are hereby affirmed as modified.

Dated, Washington, DC
March 26, 2001

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member