

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL R. SHAFFER and UNITED STATES GOVERNMENT

*Docket No. 00-1857; Submitted on the Record;
Issued May 8, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has established that he sustained an injury causally related to his interment by the Imperial Japanese Government during its occupation of the Philippine Islands from 1941 through 1945.

On September 7, 1999 appellant filed a Form WC-3, claim for injury or disability benefits by a civilian American citizen, pursuant to section 5(f) of the War Claims Act of 1948. Appellant indicated on the form that he was incarcerated in the Philippines by the Imperial Japanese Government from May 1942 to February 4, 1945. He indicated on his WC-3 form that he experienced difficulty in walking and neurological problems in his lower extremities due to a severe vitamin B-12 and thiamine deficiency "from prison camp diet."

In support of his claim, appellant submitted an excerpt from a medical article on the topic of neurological consequences related to severe thiamine deficiency.

In a letter dated October 5, 1999, the Office of Workers' Compensation Programs advised appellant of the medical evidence required to establish his claim.

In a report dated December 1, 1999, Dr. William T. Morgan, a Board-certified internist, noted that appellant suffered from progressive and chronic immobility and neurological problems with his lower extremities and used a scooter for mobility. He indicated that appellant was generally disabled due to the loss of his ambulatory status. Dr. Morgan related that appellant believed his condition was caused by B-12 and thiamine deficiency while he was a prisoner of war. He indicated that appellant was seen by a physician who ordered a Shilling's test and found that appellant had an intrinsic factor missing, for which time appellant began receiving B-12 shots. Dr. Morgan further related that appellant suffered a "major medical illness in January" 1991 that left him much weaker than usual. He concluded:

"He has seen three separate neurologists in hopes of getting a firm diagnosis but no one has given him any other explanation. While he was a prisoner of war, he went from 165 pounds to only 103 pounds. He wonders if this may indeed have

begun his current problem. I believe that these facts stated are somewhat consistent with problems which might be attributed to him having been a prisoner of war.”

In a decision dated December 7, 1999, the Office denied appellant’s claim on the grounds that he did not establish fact of injury. In an accompanying memorandum, the Office indicated that there was no reasoned medical evidence establishing that his medical condition resulted from the accepted trauma or exposure.¹

The Board finds that appellant has not established that he sustained a compensable condition causally related to his interment during World War II.²

The entitlement to compensation benefits under the Federal Employees’ Compensation Act³ for civilian American citizens held by or in hiding from the Imperial Japanese Government is derived from the War Hazards Compensation Act (42 U.S.C. §§ 1701-1717) and the War Claims Act of 1948 (50 U.S.C. §§ 2001-2017). Under 42 U.S.C. § 1701, certain employees that had injuries resulting from a war-risk hazard were entitled to compensation under the Federal Employees’ Compensation Act “to the same extent as if the person so employed were a civil employee of the United States and were injured in the performance of duty.” The War Claims Act of 1948 provided that the provisions of 42 U.S.C. §§ 1701-1717 “are extended and shall apply with respect to the injury, disability, or death resulting from injury of a civilian American citizen occurring while he was held by or in hiding from the Imperial Japanese Government, to the same extent as if such civilian American citizen were an employee within the purview” of 42 U.S.C. §§ 1701-1717.⁴

In the present case, appellant has filed a claim for compensation benefits under the Federal Employees’ Compensation Act pursuant to the War Claims Act of 1948, asserting that his neurological disorder was causally related to his interment in the Philippines by the Imperial Japanese Government from 1942 to 1945. As with other claims for compensation under the Federal Employees’ Compensation Act, it is appellant’s burden to establish his claim. 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 the factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the 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

¹ The Office noted that appellant’s name was located on the census list for Baguio-Bilibid Interment Camp Number 3 and as such established that his claim was timely filed and that he actually experienced the claimed event.

² The Board does not have jurisdiction to consider evidence submitted by appellant subsequent to the Office’s final decision. *See* 20 C.F.R. § 501.2(c). This decision does not preclude appellant from submitting additional evidence to the Office along with a request for reconsideration

³ 5 U.S.C. §§ 8101-8193.

⁴ 50 U.S.C. § 2004(f).

factors identified by the claimant.⁵ The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, showing a causal relationship between the claimed conditions and the identified factors.⁶ The belief of appellant that the condition was caused or aggravated by the identified factors is not sufficient to establish causal relation.⁷

In this case, appellant has submitted a December 1, 1999 report from Dr. Morgan, which notes that three different referral specialists were unable to render a diagnosis of appellant's neurological condition or causally relate it to a B-12 or thiamine deficiency arising from his interment during World War II. He could only speculate that appellant's alleged B-12 and thiamine deficiency are "somewhat consistent with problems which might be attributed to him having been a prisoner of war."⁸ Consequently, there is insufficient medical evidence to support a finding of a causal relationship between appellant's neurological condition and his interment by during World War II.

It is appellant's burden to submit sufficient medical evidence to establish the issue of causal relationship. Since appellant has not submitted probative evidence on the issue of causal relationship, he has not met his burden and the Office properly denied his claim.

The December 7, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
May 8, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

⁵ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁶ *See Walter D. Morehead*, 31 ECAB 188 (1979).

⁷ *Manuel Garcia*, 37 ECAB 767 (1986).

⁸ The Board has often held that an opinion which is speculative in nature has limited probative value in determining the issue of causal relationship. *Arthur P. Vliet*, 31 ECAB 366 (1979).