U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LARRY ROSS and U.S. POSTAL SERVICE,
POST OFFICE, San Diego, Calif.

Docket No. 96-2193; Submitted on the Record;
Issued June 10, 1998

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant sustained an injury in the performance of duty.

On January 13, 1995 appellant filed a claim asserting that his subluxation in the lower lumbar area was a result of his federal employment. He explained that it was the nature of his job to walk while carrying loads of mail, which caused cumulative stress on his lower back, leading to debilitating pinched nerves and spasms.[1]

The record contains a January 14, 1994 report from Dr. Wayne S. Moyer, appellant's attending chiropractor. Dr. Moyer indicated that an x-ray examination revealed a subluxation complex at the L5-S1 level, indicative of a ligamentous injury, and degenerative disc disease at the L3-4 level. He stated that appellant was originally seen on September 25, 1990 with complaints of low back pain and had been treated with manual manipulation and physical therapy with favorable results. He stated that appellant's continuing complaints included frequent slight lower back pain becoming constant slight pain with increased activity. Treatments, he stated, relieved these complaints for a period of approximately two weeks, at which time appellant experienced an increase in symptomatology and required further treatment.

[1] In a prior claim, the Office of Workers' Compensation Programs accepted that appellant had sustained a subluxation of the lumbar spine from sitting in the seat of a new postal vehicle and turning and stretching during curbside mounted delivery. In 1993 appellant claimed a recurrence of disability causally related to this accepted injury. The medical opinion evidence from appellant's chiropractor, however, attributed the condition to walking and carrying bundles of mail. The Office denied the claim of recurrence on the basis that the evidence indicated that the alleged recurrence was not causally related to the original injury without intervening causes. Appellant requested a review of the written record and indicated that the previous statements made by him and his chiropractor to the effect that his continuing work duties were an intervening cause of his low back condition were merely speculative statements. Appellant was quoted as saying: "The only thing that actually aggravates my condition (the result of the original injury) is abstinence from the regular and continuous treatment prescribed for the original injury." Nonetheless, appellant filed his current claim asserting that the subluxation in his lower lumbar area was a result of walking and carrying loads of mail.

Dr. Moyer reported: "I believe this condition is caused by the nature of his work duties, (walking and carrying bundles of mail) along with his anatomical deficiencies, (subluxation complex L5-S1, disc degeneration L3-4). It is my professional opinion that [appellant's] condition is prone to reoccurrence as evidenced by his history of exacerbation and remission with treatment. It is my further opinion that [appellant] will need future treatment including physical therapy and manipulations for exacerbation of his symptoms."

On October 20, 1995 the Office of Workers' Compensation Programs requested additional information, including a description of all activities outside appellant's federal employment, a description of all previous orthopedic injuries, and, if there were no recent x-rays of a subluxation, a report from appellant's chiropractor containing, among other things, an opinion with medical reasons on the cause of appellant's condition. Specifically, the Office advised, if the chiropractor felt that exposure or incidents in federal employment contributed to appellant's condition, an explanation of how such exposure contributed should be provided.

In an undated letter received on November 21, 1995, appellant described his outside activities and previous orthopedic injuries. He stated that x-rays would be taken the week of November 6, 1995 and would be sent to the Office together with a full and recent report from his chiropractor.

In a decision dated January 26, 1996, the Office denied appellant's claim and noted that no additional medical information had been received.

In an undated letter received on February 22, 1996, appellant advised that x-rays and a medical report from Dr. Moyer had been submitted and that the Office should check again and reconsider. On March 15, 1996 the Office advised appellant that neither could be found in the file and that appellant should arrange to have them submitted by March 29, 1996.

In a decision dated April 2, 1996, the Office denied appellant's request for reconsideration and noted that no new medical report or x-rays were in the file.[2]

The Board finds that the medical evidence of record is insufficient to establish that appellant's subluxation at L5-S1 is causally related to his duties as a mail carrier.

[2] Without new evidence or new legal argument, appellant's request for reconsideration was *prima facie* insufficient to warrant a merit review of his case. Section 10.138(b)(1) of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by (1) showing that the Office erroneously applied or interpreted a point of law, or (2) advancing a point of law or a fact not previously considered by the Office, or (3) submitting relevant and pertinent evidence not previously considered by the Office. 20 C.F.R. § 10.138(b)(1). Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim. *Id*. § 10.138(b)(2).

An employee seeking benefits under the Federal Employees' Compensation Act[3] has the burden of proof to establish the essential elements of his claim. When an employee claims that he sustained an injury in the performance of duty, he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He must also establish that such event, incident or exposure caused an injury.[4]

There is no dispute in this case concerning the nature of duties appellant performs as a mail carrier. The question is whether these duties caused or contributed to appellant's subluxation condition. Causal relationship is a medical issue,[5] and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's reasoned opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,[6] must be one of reasonable medical certainty,[7] and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.[8]

Dr. Moyer's report of January 14, 1994 is supportive of appellant's claim because the physician unequivocally stated his belief that appellant's condition was caused by the nature of his work duties, including walking and carrying bundles of mail, together with his anatomical deficiencies, including the subluxation complex and disc degeneration. This opinion, however, provides no medical explanation to demonstrate that the conclusion is sound and logical. It is not enough for the physician merely to state his conclusion: He must support that conclusion with sound medical reasoning. Because Dr. Moyer failed to explain the medical basis for his January 14, 1994 opinion, the report is of diminished probative value and is insufficient to discharge appellant's burden of proof.[9]

The Board notes that on May 13, 1996, after the Office denied appellant's request for reconsideration, the Office received a December 20, 1995 form report from Dr. Moyer, a bill for chiropractic services provided in November and December 1995, and a December 20, 1995 report from Dr. Deborah Pate, a chiropractic radiologic consultant.

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[3] 5 U.S.C. §§ 8101-8193.

[4] *See generally John J. Carlone*, 41 ECAB 354 (1989); *Abe E. Scott*, 45 ECAB 164 (1993); *see also* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. §§ 10.5(a)(15)-.5(a)(16) ("traumatic injury" and "occupational disease or illness" defined).

[5] *Mary J. Briggs*, 37 ECAB 578 (1986).

[6] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[7] *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

[8] *See William E. Enright*, 31 ECAB 426, 430 (1980).

[9] *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).

The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision.[10] The Board therefore has no jurisdiction to review the new evidence received by the Office on May 13, 1996. Appellant may submit any new evidence, including any reasoned medical opinion evidence, to the Office and request, in writing, a review of the merits of his case.[11]

The April 2 and January 26, 1996 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
June 10, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

[10] 20 C.F.R. § 501.2(c).

[11] *See generally id.* § 10.138.