U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DEWEY E. CALFEE and U.S. AIR FORCE,
ELGIN AIR FORCE BASE, Elgin, Fla.

Docket No. 96-737; Submitted on the Record;
Issued March 20, 1998

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has established an employment-related disability after May 21, 1992.

The Board has duly reviewed the case record in the present appeal and finds that appellant has failed to establish an employment-related disability after May 21, 1992.

On February 12, 1992 appellant, an engineer, filed a traumatic injury claim alleging that on February 11, 1992, he sustained a mild head contusion, back, neck and shoulder bruises, and a minor laceration of the right elbow when he was struck by a vehicle while walking on a street. Appellant stopped work on February 11, 1992 and returned to work on February 12, 1992. Appellant worked intermittently until he stopped work on May 30, 1992.[1]

By letter dated June 2, 1992, the Office of Workers' Compensation accepted appellant's claim for a head contusion and a contusion of both shoulders. The Office advised appellant that if he lost time from work due to the employment injury, then the absence would be covered by the employing establishment through continuation of pay, but that if his absence from work due to the effects of the injury exceeded 45 days, then he may claim wage-loss compensation on a claim for compensation on account of traumatic injury or occupational disease. The Office advised appellant that he needed to support any claimed periods of continuing disability with probative medical evidence.

On May 15, 1992 appellant filed a Form CA-7 for the period March 30 through June 16, 1992. On the reverse of the form, Joseph S. McCollum, appellant's supervisor, indicated that appellant received continuation of pay from February 12 through March 29, 1992.

[1] Appellant retired from the employing establishment on disability on November 20, 1992.

By decision dated September 1, 1992, the Office found the evidence of record insufficient to establish that the claimed period of disability on or after March 2, 1992 was causally related to the February 11, 1992 employment injury.

In a September 21, 1992 letter, appellant requested an oral hearing before an Office representative.

By decision dated May 29, 1993, the hearing representative affirmed, but modified the Office's September 1, 1992 decision to reflect that appellant was partially disabled until May 21, 1992.

In a May 27, 1994 letter, appellant requested reconsideration of the hearing representative's decision accompanied by medical evidence.

By decision dated August 11, 1994, the Office denied appellant's request for modification based on a merit review of the claim.

In an August 9, 1995 letter, appellant, through his counsel, requested reconsideration of the Office's decision accompanied by medical evidence.

By decision dated October 2, 1995, the Office denied appellant's request for modification based on a merit review of the claim.

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of his or her claim by the weight of reliable, probative, and substantial evidence, including the fact that the individual is an "employee of the United States" within the meaning of the Act and 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.[3]

In this case, the Office accepted that appellant sustained a head contusion and a contusion of both shoulders on February 11, 1992. Appellant returned to work on February 12, 1992, but only worked intermittently and then stopped work on June 1, 1992. Appellant received continuation of pay for the period February 12, 1992 through March 29, 1992. Appellant did not return to work and eventually filed a claim for continuing compensation for the period March 30, 1992 through June 16, 1992. The Office advised appellant that he needed to support any claimed periods of continuing disability with probative medical evidence. The evidence of record, however, does not establish a continuing disability causally related to the February 11, 1992 employment injury.

The record reveals the May 19, 1992 medical report of Dr. R.S. Ellis, a Board-certified family practitioner, which indicated a history of the February 11, 1992 employment injury and

[2] 5 U.S.C. § 8101 *et seq.*

[3] *Elaine Pendleton*, 40 ECAB 1143 (1989).

medical treatment, and his findings on physical and objective examination. Dr. Ellis noted that he had referred appellant to Dr. Mark Calkins, a Board-certified orthopedic surgeon, for an evaluation of his back complaints. Dr. Ellis also noted that appellant had requested consultations from other specialists, but stated that there was no apparent reason for such requests. Dr. Ellis opined that "I was unable to explain [appellant's] resistant problems on the basis of his history, examination and laboratory and x-ray studies." Dr. Ellis stated that "I approved returning to work for [appellant] on February 28, 1992. He continued to complain that he was not able to work full time, and I approved half-days work from that date until May 21, 1992." Dr. Ellis further stated that he denied appellant's request for a 30-day leave of absence due to his abdominal and back distress, and headache because he did not find sufficient evidence to justify approval of the request. Additionally, Dr. Ellis stated that appellant requested an appointment with Dr. Thomas Holt, an internist, to further investigate his abdominal distress, and that he advised appellant to pay for this treatment because he did not approve the treatment as a covered expense under workers' compensation coverage. In a May 28, 1992 medical report, Dr. Ellis agreed with appellant's request for 30 days leave without pay. Dr. Ellis' June 9, 1992 medical report revealed that appellant had sought medical treatment from several other physicians which was neither requested nor cleared by Dr. Ellis. Dr. Ellis noted appellant's multiple complaints and a review of medical evidence. Dr. Ellis stated that "[f]rankly I am unable to sort out the multiple symptoms and to relate them to the accident of February this year." In his July 29, 1992 medical report, Dr. Ellis noted a history of appellant's employment injury, his findings on physical and objective examination and a review of medical evidence. Dr. Ellis opined that "I am unable to explain [appellant's] symptoms on the basis of clinical, x-ray, laboratory and computerized tomography evaluations. I do not know of any real reason that [appellant] could not have returned to work for a minimum of four hours per day beginning March 2 until May 21, 1992 and then returning to his full-time workday. I do not know of any reason based on objective findings that [appellant] would have been disabled to return to his usual occupation." Although Dr. Ellis agreed that appellant should take a 30-day leave period due to his condition, he ultimately provided a well-rationalized medical opinion concluding that there was no objective reason why appellant could not return to work on May 21, 1992.

The record reveals brain electrical activity monitoring reports of James L. Burchfield, a psychologist, which were interpreted as normal in July 1990, but mildly abnormal in June 1992. These reports are insufficient to establish appellant's burden because they do not address whether the claimed period of disability was causally related to the February 11, 1992 employment injury.

The record also reveals the April 9, 1992 report of Dr. Henry L. O'Steen, Jr., a chiropractor, providing that appellant had been under his active care and recommending that appellant refrain from any long periods of standing and sitting, and that appellant should avoid any heavy lifting, pulling, twisting and stooping. Dr. O'Steen also recommended that appellant refrain from any type of yard work. In a March 2, 1993 report, Dr. O'Steen noted a history of appellant's employment injury, his findings on physical and objective examination, and a review of medical records. Dr. O'Steen opined that appellant's current subjective complaints and attendant residual objective findings were consistent in nature and were a direct result of the February 11, 1992 employment injury, that appellant had a 10 percent impairment based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, that

appellant needed future chiropractic treatment, and that appellant could seek gainful employment, but should avoid prolonged sitting, standing and heavy lifting. Under section 8101(2) of the Act,[4] "[t]he term 'physician' includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation of the spine as demonstrated by x-ray to exist and subject to regulation by the Secretary."[5] If a chiropractor's reports are not based on a diagnosis of subluxation as demonstrated by x-ray to exist, they do not constitute competent medical evidence to support a claim for compensation.[6] Inasmuch as Dr. O'Steen did not diagnose subluxation as demonstrated by x-ray, he does not qualify as a physician under section 8101(2).[7] Therefore, his reports do not constitute competent medical evidence to support a claim for compensation.[8]

Additionally, the record reveals the results of computerized tomography scans performed on May 20, 1992 which indicated that appellant had straightening of the normal lordotic curvature of the lower cervical spine and severe degenerative disc disease at C6-7 with bilateral encroachment of the intervertebral foramina from uncinate hypertrophy. These test results are insufficient to establish appellant's burden because they failed to address a causal relationship between the claimed disability period and the February 11, 1992 employment injury.

The June 8, 1992 medical report of Dr. Wallace Rubin, a Board-certified otolaryngologist, revealed appellant's medical history, which included a diagnosis of left labyrinthine abnormality, and noted appellant's February 11, 1992 employment injury. He stated that appellant was progressing very well prior to the employment injury and that this injury not only slowed his progress, but caused him to have regression in this improvement. Dr. Rubin noted that his finding was based on physical and objective examination. His May 17, 1994 medical report indicated that the February 11, 1992 employment injury caused appellant's problems with his balance system. Dr. Rubin stated that appellant had experienced previous cardiovascular difficulties which caused balance problems dating back to appellant's initial examination and testing on July 2, 1990. He opined that there was no question that an individual with previous damage to the balance system which had been compensated for by the central adaptive mechanisms was much more easily damaged, and thus caused further symptoms of dizziness. Dr. Rubin further opined that appellant continued to be disabled as of his last office visit on March 3, 1994 based on the objective test results. He failed to explain how the February 11, 1992 employment injury caused appellant's problems with his balance system.

In a August 3, 1992 medical report, Dr. Herbert Salisbury, a dentist, noted appellant's employment injury, and revealed his findings on examination and the medical treatment that he rendered to appellant. In a May 19, 1994 medical report, Dr. Salisbury indicated that appellant

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[4] 5 U.S.C. §§ 8101-8193.

[5] 5 U.S.C. § 8101(2); *see also* 20 C.F.R. § 10.400(a); *Robert J. McLennan*, 41 ECAB 599 (1990); *Robert F. Hamilton*, 41 ECAB 431 (1990).

[6] *Loras C. Dignann*, 34 ECAB 1049 (1983).

[7] *Milton E. Bentley*, 32 ECAB 1805 (1981).

[8] *Theresa K. McKenna*, 30 ECAB 702 (1979).

complained of pain resulting from the February 11, 1992 employment injury, that on examination appellant had a sore masseter and medial pterygoids bilaterally, that the right temporal manidibular joint had been traumatized, and that tooth number four had broken porcelain. Dr. Salisbury opined that these findings were consistent which led him to believe that they were caused by a traumatic blow to the jaw, *i.e.*, the February 11, 1992 employment injury. Dr. Salisbury's opinion is insufficient to establish appellant's burden inasmuch as he failed to provide any medical rationale for his conclusion. Appellant submitted Dr. Salisbury's medical treatment notes covering the period 1983 through 1993 which are insufficient to establish appellant's burden because they do not address whether the claimed period of disability was causally related to the February 11, 1992 employment injury.

The medical treatment notes regarding appellant's pain dated December 3, 1992 and February 8, 11 and 18, 1993, and the February 4, 1993 operative report of Dr. Andrea Trescot, a Board-certified anesthesiologist, revealing a diagnosis of myofascial pain are insufficient to establish appellant's burden because they do not address whether the claimed period of disability was caused by the February 11, 1992 employment injury. In an August 4, 1993 medical report, Dr. Trescot stated that "[appellant] did not have the abdominal and triceps pain prior to accident, and I believe that the fact of the accident is not under contention. Myofascial pain, although it can occur spontaneously, is most often related to trauma. Based on the patient's history I have no question that the pain is related to his accident." The Board has previously held that the opinion of a physician that a condition is causally related to an employment injury because the employee was asymptomatic before the employment injury was insufficient, without supporting medical rationale, to establish causal relationship.[9] Dr. Trescot failed to provide any medical rationale explaining how the February 11, 1992 employment injury caused appellant's myofascial pain.

In support of his contention that he sustained an emotional condition that was caused by the February 11, 1992 employment injury during the claimed period of disability,[10] appellant submitted a February 3, 1993 medical report from Dr. Frank Gill revealing a history of the February 11, 1992 employment injury and appellant's medical treatment, a review of medical records, and his findings on mental and objective examination. Dr. Gill diagnosed dysthmia, undifferentiated somatoform disorder, anxiety disorder, mixed personality disorder and organic mental disorder. Dr. Gill opined that appellant's chance to return to work was nil, and that job stress and the February 11, 1992 employment injury caused appellant's disability. Dr. Gill's report is insufficient to establish appellant's burden because he failed to identify any specific employment factors that caused appellant's emotional condition and he failed to provide any medical rationale in support of his conclusion that appellant's emotional condition was caused by the February 11, 1992 employment injury.

Appellant further submitted the medical treatment notes regarding his emotional condition covering the period December 14, 1993 through April 29, 1994, and June 8, 1994

[9] *Thomas D. Petrylak*, 39 ECAB 276 (1987).

[10] The Board notes that the Office has not accepted that appellant sustained an emotional condition on February 11, 1992.

through June 19, 1995 of Dr. Steven Doheny, a Board-certified psychiatrist and neurologist. These medical notes are insufficient to establish appellant's burden because they do not address a causal relationship between appellant's emotional condition and the February 11, 1992 employment injury. The May 16, 1994 medical report, of Dr. Doheny, indicated a review of medical records and diagnosed an organic mental disorder caused by the February 11, 1992 employment injury. Dr. Doheny opined that one could assume a patient with appellant's background, educational achievement and job performance could not have worked in the civil service from 1974 until 1992 with that degree of impairment. Dr. Doheny diagnosed somatoform disorder and opined that the hallmark of this condition was continued pain and physical symptoms that seem out of proportion to the original trauma or objective medical findings. In addition, Dr. Doheny diagnosed depression and opined that this condition was often seen in patients who develop postconcussive changes, who have an inability to concentrate, to remember and function, and who have concomitant continued pain syndromes. Dr. Doheny concluded that these conditions were caused by the February 11, 1992 employment injury and that appellant continued to be disabled by these conditions. Dr. Doheny further concluded that appellant's vertigo condition was caused by the February 11, 1992 employment injury. Dr. Doheny's reports are insufficient to establish appellant's burden inasmuch as they failed to explain how the diagnosed conditions were caused by the February 11, 1992 employment injury.

Appellant also submitted the March 25, 1994 medical report of Dr. Bonnie G. Benshoof, a clinical psychologist,[11] indicating a history of the employment injury and appellant's medical treatment, and her findings on mental and objective examination. Dr. Benshoof diagnosed recurrent and severe major depression, and severe organic mental disorder. Dr. Benshoof opined that appellant was disabled from work. Dr. Benshoof's opinion does not establish appellant's burden because she failed to address whether appellant's emotional condition was caused by the February 11, 1992 employment injury.

Additionally, appellant submitted Dr. Ellis' May 6, 1994 letter revealing that appellant had an emotional and/or psychiatric condition, but that he was uncertain as to how these conditions were related to the February 11, 1992 employment injury. Dr. Ellis' opinion is insufficient to establish appellant's burden because he does not explain the causal relationship between appellant's alleged emotional condition and the February 11, 1992 employment injury.

[11] The Board notes that Dr. Benshoof is considered a physician under the section 8101(2) of the Act. 5 U.S.C. § 8101(2).

The October 2, 1995 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
March 20, 1998

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member