U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FREDERICK L. MORRIS and DEPARTMENT OF THE ARMY, TANK-AUTOMOTIVE & ARMAMENTS COMMAND, Warren, MI

Docket No. 97-2846; Submitted on the Record;
Issued August 11, 1999

DECISION and ORDER

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

The issue is whether appellant met his burden of proof in establishing that he sustained bilateral knee strains that were causally related to factors of his federal employment and is, therefore, entitled to continuation of pay pursuant to section 8118 of the Federal Employees' Compensation Act for intermittent periods of temporary total disability from June 13 to July 17, 1995.

On June 9, 1995 appellant, then a 37-year-old system analyst, filed a notice of traumatic injury and claim, alleging that he sustained an injury to his left knee while in the performance of duty. Appellant stopped work or June 9, 1995 and returned to work on June 13, 1995. The Office of Workers' Compensation Programs accepted appellant's claim for contusion of the left knee. On September 20, 1995 appellant filed a claim for continuing compensation for intermittent periods of alleged temporary total disability from June 9 to July 17, 1995. In a decision dated January 26, 1996, the Office denied appellant's claim on the grounds that his claim had been accepted for contusion of the left knee and his claim for continuation of pay was based on bilateral knee strains but there was no probative medical evidence indicating this condition was work related. By decision dated June 28, 1996, an Office hearing representative affirmed the January 26, 1996 decision of the Office. In a merit decision dated April 17, 1997, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was not sufficient to establish modification of the prior decisions. By decision dated July 7, 1997, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was repetitious and not sufficient to warrant merit review. In a merit decision dated September 2, 1997, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was not sufficient to establish that modification of the prior decision was warranted.

The Board has duly reviewed the entire case record appeal and finds that appellant has not established that he sustained bilateral knee strain that was causally related to factors of his federal employment.[1]

An employee seeking benefits under the 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 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. These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[2] An award of compensation may not be based on surmise, conjecture, speculation, or appellant's belief of causal relationship.[3] The Board has held that the mere fact that a disease or condition manifests itself during a period of employment does not raise an inference of causal relationship between the condition and the employment.[4] Neither the fact that the condition became apparent during a period of employment nor appellant's belief that employment caused or aggravated his condition is sufficient to establish causal relationship.[5] While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty,[6] neither can such opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition, for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.[7]

In the present case, appellant indicated that he hit his left knee when he tripped on a stair while setting up a room for a meeting. The Office accepted appellant's claim for contusion of the left knee. Subsequently, appellant submitted a form medical report dated August 21, 1995, by Dr. Robert G. Paris, an osteopath. In his report Dr. Paris indicated that appellant injured his knees on June 9, 1995 and diagnosed bilateral knee sprain. He reported that walking and standing for long periods of time caused shooting pains and aching in appellant's knees. Dr. Paris reported that appellant was injured June 9 to 16, June 28 to July 6 and July 13 to 17, 1995. Appellant filed a claim for continuing compensation for the aforementioned periods of

[1] The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal. As appellant filed his appeal with the Board on September 15, 1997, the only decisions before the Board are the Office's April 17, July 7 and September 2, 1997 decisions; *see* 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

[2] *Ruthie M. Evans*, 41 ECAB 416 (1990); *Joe D. Cameron*, 41 ECAB 153 (1989).

[3] *Williams Nimitz, Jr.*, 30 ECAB 567, 570 (1979); *Miriam L. Jackson Gholikely*, 5 ECAB 537-39 (1953).

[4] *Edward E. Olson*, 35 ECAB 1099, 1103 (1984).

[5] *Joseph T. Gulla*, 36 ECAB 516, 519 (1985).

[6] *See Kenneth J. Deerman*, 34 ECAB 641 (1983).

[7] *See Margaret A. Donnelly*, 15 ECAB 40 (1963); *Morris Scanlon*, 11 ECAB 384 (1960).

alleged temporary total disability. He indicated that on June 9, 1995 he had a traumatic sprain of both knees, beginning June 28, 1995 he had a sprain of the "RL" knee and beginning July 13, 1995 he had bilateral knee sprain. A review of the contemporaneous medical evidence reveals that neither the report by the employing establishment medical unit nor the emergency room medical report dated June 9, 1995, suggest that appellant had any injury other than a contusion of the left knee. Dr. Michael Kobernick, the attending emergency room physician, examined both legs, noted no limitation in movement in either leg, but also noted that appellant had tenderness in the left knee and hip. In an undated composite medical report, Dr. Paris provided conclusory findings for each of the alleged periods of temporary total disability cited in the claim for continuing compensation. He noted that appellant sustained a traumatic sprain of the right and left knee, indicated that x-rays were taken on June 9, 1995, described symptoms and recommended medical treatment and concluded that appellant was totally disabled. As this report does not provide a complete history of injury and does not provide any rationale for the doctor's conclusions it is of limited probative value. In a report dated February 2, 1996, Dr. Paris provides a medical history of appellant catching his toe on the edge of the platform, twisting and losing his balance, falling onto the conference table and hitting his knees on the left side edge, twisting and falling into a chair and then the floor. Dr. Paris believed that appellant twisted several times during the fall and had impact with the table, chair and floor. He reported that appellant initially believed that he had only injured his left knee. As Dr. Paris noted appellant's claim form indicates that he hit his left knee on the edge of a table top after tripping on a stair. This history of injury is consistent with the history appellant provided to the emergency room when admitted for treatment. Therefore, appellant's initial recollection of his injury is substantially different from the history relied on by Dr. Paris, which included multiple points of impact and twisting motions during a fall to the floor. Inasmuch as appellant did not provide any witness statements nor supplemental statements to substantiate the change in the recitation of his accident, Dr. Paris' report is deemed to be based on an inaccurate history of injury and, therefore, is of no probative value. A report dated June 13, 1995,[8] by Dr. Ben Khili, an osteopath, also provides a history that is similar to that provided by Dr. Paris. However, as this history of injury differed from that provided by appellant on his claim form and to the emergency room and is not corroborated by any of the witness statements, his report is of little probative value. As appellant did not submit any medical evidence with an accurate history of injury, which supported his claimed condition of bilateral knee strains and in view of the contrary contemporaneous medical report evidence, he has not discharged his burden of proof.

Section 8118 of the Act provides for payment of continuation of pay, not to exceed 45 days, to an employee "who has filed a claim for a period of wage loss due to traumatic injury with his immediate supervisor on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of this title."[9] Section 8122 provides that written notice of the injury shall be given within 30 days as specified in section 8118 which requires, in pertinent

[8] This report was received January 28, 1997.

[9] 5 U.S.C. § 8188(a); *see* 20 C.F.R. § 10.201(a)(3).

part, that written notice of the injury shall be given to employee's immediate superior within 30 days after the injury.[10]

The Office's implementing regulations state that employees who file a claim for a period of wage loss caused by traumatic injury "shall be entitled under certain circumstances, to have their regular pay continued for a period not to exceed 45 days."[11] The regulations further specify that to receive continuation of pay, an employee must have sustained a traumatic job-related injury and must file a claim for a period of wage loss on an approved form within 30 days of the injury.[12] Since appellant has not established that he sustained a traumatic injury that was causally related to his June 9, 1995 accepted employment injury, he is not entitled to continuation of pay for the claimed periods of temporary total disability during the 45 days subsequent to his accepted employment injury.

The decisions of the Office of Workers' Compensation Programs dated September 2, June 7 and April 17, 1997 are hereby affirmed.

Dated, Washington, D.C.
August 11, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

[10] 5 U.S.C. § 8122(a)(2); 5 U.S.C. § 8119(a)-(c); *Dodge Osborne*, 44 ECAB 849 (1993).

[11] 20 C.F.R. § 10.200(a).

[12] 20 C.F.R. § 10.200(a)(2)-(3).