U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIE H. JOHNSON and U.S. POSTAL SERVICE,
POST OFFICE, Tampa, FL

Docket No. 99-2347; Submitted on the Record;
Issued October 20, 2000

DECISION and ORDER

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

The issue is whether appellant has established that he was totally disabled beginning January 5, 1999 due to an employment-related condition.

On December 2, 1996 appellant filed a claim for injuries to his upper and lower back and his right leg sustained on that date in a motor vehicle accident in the performance of his duties as an express mail carrier. The Office of Workers' Compensation Programs accepted that appellant sustained a sprain of the cervical spine, a sprain of the lumbar spine and a contusion of the right groin. He received continuation of pay from December 3, 1996 to January 16, 1997, after which the Office began paying him compensation for temporary total disability. Appellant returned to light-duty work on March 19, 1997 for six hours per day in a position involving sitting six hours with no lifting over ten pounds and the Office reduced his compensation to that for the two hours per day he was missing from work.

By decision dated December 30, 1997, the Office found that the disability from appellant's December 2, 1996 injury had resolved and that his continuing limitations for work were related to his September 21, 1994 employment injury.[1] Following a hearing held on November 17, 1998, an Office hearing representative found, by decision dated January 26, 1999, that the evidence was not sufficient to meet the Office's burden of proof to terminate appellant's compensation. The Office hearing representative remanded the case to the Office to obtain another second opinion evaluation.

On March 5, 1999 the employing establishment called the Office to advise that appellant's employment had been terminated December 23, 1998 for sleeping on the job. On an Office form the employing establishment indicated appellant's employment had been terminated effective January 4, 1999 for unsatisfactory performance.

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[1] Appellant sustained injuries to his neck, low back and shoulders on September 21, 1994 in an employment-related motor vehicle accident.

By decision dated June 21, 1999, the Office found that appellant was not entitled to compensation for an additional six hours per day beginning January 5, 1999 for the reason that he was terminated for cause and not because of his work-related physical restrictions. The Office continued to pay appellant compensation for two hours per day based on his actual earnings beginning March 19, 1997 and also found that he continued to be entitled to medical benefits for the effects of his December 2, 1996 employment injury.

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.[2]

The Board finds that appellant has not established that he was totally disabled beginning January 5, 1999 due to an employment-related condition.

There is no medical evidence that appellant's injury-related condition changed such that he was totally disabled for work beginning January 5, 1999. Dr. Howard W. Sharf, the Board-certified orthopedic surgeon to whom the Office referred appellant pursuant to an Office hearing representative's January 26, 1999 decision, stated in an April 23, 1999 report that appellant could work eight hours per day with four hours of walking and four hours of standing. Appellant's attending physician, Dr. Dennis M. Lox, stated in a March 5, 1999 report that appellant could return to light-duty work with no lifting over 20 pounds. The limitations in these reports would not have precluded appellant from continuing to perform the duties of the light-duty position he held from March 19, 1997 until his employment was terminated for sleeping on the job effective January 4, 1999.

Appellant alleges that his sleeping on the job was a result of medications he was taking for his employment-related conditions. It is an accepted principle of workers' compensation law, and the Board has so recognized, that when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause which is attributable to the employee's own intentional conduct.[3] The effects of medication taken for an employment-related condition can be compensable if they cause another medical condition[4] or if they result in termination of employment.[5]

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[2] *Terry R. Hedman*, 38 ECAB 222 (1986).

[3] *Frank Barone*, 30 ECAB 1119 (1979)

[4] *Lon C. Dunn*, 32 ECAB 323 (1980).

[5] *See Marlyn Earl Canfield*¸ 34 ECAB 53 (1982) (the Board found that medical evidence indicating that "medication was prescribed for appellant … which may very well disable appellant from performing the duties of air traffic control specialist" was sufficient to require the Office to reopen the case for a review of the merits of the claim).

Appellant has the burden of proof to establish that the consequential disability is causally related to the employment injury[6] and the burden of establishing that disability changed from partial to total as a result of the consequential injury.[7] Appellant has not met that burden of proof. The only medical evidence appellant submitted in support of his claim that the sleeping for which he was terminated was related to medication he was taking for his employment-related condition was an April 30, 1998 note from Dr. Thomas Mixa, an orthopedic surgeon, stating that appellant was under his care for low back strain and was "taking Robaxin and Darvocet N100 which can cause drowsiness, dizziness and can impair mental capabilities." This medical note does not establish that appellant was taking these medications at the time of the incidents of sleeping on the job that led to his termination of employment, nor does it establish that such medications were the cause of appellant sleeping on the job on the particular dates involved.

The decision of the Office of Workers' Compensation Programs dated June 21, 1999 is affirmed.

Dated, Washington, DC
October 20, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

[6] *Fred Magnotta*, 23 ECAAB 125 (1972).

[7] *Beatrice F. Berman*, 32 ECAB 138 (1980).