

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT D. VON SCHRILTZ and DEPARTMENT OF HEALTH & HUMAN SERVICES, SOCIAL SECURITY ADMINISTRATION, San Diego, CA

*Docket No. 00-599; Submitted on the Record;
Issued December 12, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issue is whether appellant's degenerative back condition was aggravated by work factors.

On January 5, 1998 appellant, then a 52-year-old contact representative, filed an occupational disease claim alleging that he suffered from stress and a back condition caused by work factors. He noted that the culmination of his back pain and stress happened on December 7, 1995 when he could not get out of bed to report to work. Appellant attributed his back pain to having to stand and walk to the printer, as well as sitting down and twisting in his chair at his computer terminal. He added that his stress was caused by "requirements put on me by management to do more complicated actions and maintain the volume and quality of work done."

In a letter dated February 6, 1996, the Office of Workers' Compensation Programs advised appellant of the factual and medical evidence required to establish his claim. The Office also reminded appellant on March 12, 1996 that no medical evidence had been submitted in support of his claim.

Appellant subsequently submitted a report dated January 2, 1996 by Dr. Clark Allen, a psychiatrist, who noted that appellant was seen for complaints of anger, stress and depression. Dr. Allen related:

"[Appellant] states that stress at work has been increasing over the last few months and on December 7, 1995 he wok[e] up feeling unable to go to work. He saw his family doctor, who put him on disability for 30 days. [Appellant] feels at work that there is a 'conspiracy' against him. He feels that ever since they have changed the evaluation procedures that they are out to get him, to fire him. [Appellant] is a telephone service representative to the employing establishment. He denies that he has been told he will be fired, in fact, he was promoted in

November of last year. [Appellant] feels generally overwhelmed and primarily has complaints centered around anger at the system.”

Dr. Allen noted that appellant had a history of depression and was suffering from a recurrent episode. He opined that appellant was unable to work at his current job given the chronic nature of his problems with depression and insomnia and his inability to deal with “people in institutions.”

In progress notes dated September 1995 to March 1996, Dr. Barbara Denysiak, a family practitioner, noted that appellant received treatment for depression, low back pain and right thumb injury.

In a decision dated September 26, 1996, the Office denied appellant’s claim on the grounds that the evidence was insufficient to establish fact of injury.

Appellant requested a hearing, which was held on March 16, 1998.

Prior to the hearing, appellant submitted a copy of a magnetic resonance imaging (MRI) scan of the lumbar spine taken on January 22, 1998 that revealed mild chronic T12 vertebral body compression fracture with no disc bulge or spinal stenosis.

In reports dated February 27 and March 3, 1998, Dr. L. Mercer McKinley, a Board-certified orthopedist, noted that appellant had a private industry accident in 1988 and that he had been hired with a permanent accommodation for his physical disability. Dr. McKinley diagnosed severe lumbar spondylosis and spinal stenosis. She indicated that appellant’s preexisting back condition was aggravated by prolonged sitting at his cubicle. Dr. McKinley added that appellant’s permanent impairment was also due to being overweight and the natural progression of his degenerative spinal disease.¹

The record also contained a memorandum dated April 2, 1998 indicating that the employing establishment modified appellant’s work schedule to alleviate his back condition based on Dr. McKinley’s recommendation. Appellant was specifically given every Wednesday off as he had requested.

Subsequent to the March 16, 1998 hearing, the employing establishment submitted a declaration from Gil Morales, appellant’s supervisor, describing appellant’s work duties as follows:

“Teleservice representatives handle an average of 70 to 100 calls per day via telephone headset. While answering telephone calls, they may sit down, stand down, stand up or move around to the limits of the approximately six-foot telephone headset cord. To respond to inquiries, keyboarding is required intermittently throughout the workday. Keyboarding adds up to an average

¹ Dr. McKinley referenced a January 22, 1998 MRI scan as revealing spinal stenosis and degenerative disc disease. The radiologist who initially reviewed the MRI scan, however, did not note the presence of stenosis. The record also includes a cervical spine x-ray which showed mild diffuse cervical spondylosis.

maximum of not more than 10 minutes per hour or about an hour and 15 minutes per 7½-hour day. At the most, 15 minutes per hour of intermittent keyboarding may occasionally be required.”²

In a decision dated June 4, 1998, an Office hearing representative determined that appellant had established a compensable factor of employment since he was regularly assigned in his job to talk to members of the public and hear their problems. However, the Office hearing representative found the medical evidence insufficient to establish a causal relationship between either appellant’s stress or his back condition and the established work factors.

On August 27, 1998 appellant requested reconsideration and submitted additional medical evidence.³

The reconsideration evidence consisted of an August 14, 1998 report from Dr. McKinley that diagnosed multilevel degenerative lumbar disc disease. Dr. McKinley opined that there was a direct relationship between appellant’s increase in symptoms and his work, “based on the job [duties] that he described to me.” Dr. McKinley noted that appellant’s inactivity, along with his inability to move around in his job and vary his position, had aggravated his degenerative back condition.

In a decision dated March 11, 1999, the Office denied appellant’s request for reconsideration.

On May 3, 1999 appellant filed a second request for reconsideration and submitted a March 31, 1999 report from Dr. McKinley. The physician explained that patients who have disc degeneration do not do well if they are required to sit for long periods of time, as “[b]iomechanical studies show that sitting raises the pressure in the disc to a height of 3.8 times greater than when a person stands or lies. Therefore, prolonged sitting causes an increase in interdiscal pressure, which will aggravate the patient’s low back condition.” Dr. McKinley reiterated that appellant’s degenerative back condition was aggravated by the requirement that he sit for long periods of time at work.

An MRI scan dated July 7, 1999 of the lumbar spine showed mild multilevel degenerative disc disease and mild chronic T12 vertebral body compression fracture, but no evidence of either facet disease, disc bulge or spinal stenosis.

The Office referred appellant for a second opinion evaluation with Dr. Gerald W. Cady on July 15, 1999. In a report dated July 19, 1999, Dr. Cady discussed appellant’s job duties, his complaints of back pain and the medical record. He noted that a July 7, 1999 MRI scan showed degenerative disc disease at T12-L1, L2-3 and L3-4 but no spinal stenosis. Dr. Cady recorded physical findings including full range of motion of the spine. He indicated that appellant was morbidly obese and walked with a wide-based, shuffling gait, with slight flexion of his spine.

² Mr. Morales also stated that appellant had been given an ergonomic chair to accommodate his weight and that he was also informed of his right to request that a printer be placed in his cubicle that would require less standing and walking. Appellant, however, had not filled out any of the forms necessary to complete the printer request.

³ No appeal or request for reconsideration was made with respect to the emotional claim.

Dr. Cady acknowledged that appellant's obesity would increase the intradiscal pressure on his spine while sitting as opposed to standing or lying down.⁴ He opined, however, that there had been no significant aggravation of appellant's degenerative back condition caused by his federal employment.

In a decision dated September 3, 1999, the Office modified the June 3, 1998 decision to reflect that appellant established the existence of a diagnosed back condition. The Office, however, denied compensation on the grounds that the medical evidence was insufficient to establish a causal relationship.⁵

The Board finds that appellant failed to establish that he suffers from a degenerative back condition aggravated by work factors.

An employee seeking benefits under the Federal Employees' Compensation 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 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. These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁶

To establish that an injury was sustained in the performance of duty in on 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 employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment 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 employment factors identified by the claimant.⁷ The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.

Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.⁸ The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature

⁴ Dr. Cady reported that appellant weighed 372 pounds at the time of his examination.

⁵ There was no decision made on the stress claim.

⁶ *Doyle W. Richetts*, 48 ECAB 167 (1996).

⁷ *Dennis M. Mascarenas*, 49 ECAB 215 (1997); *Ruth Seuell*, 48 ECAB 188 (1996).

⁸ *See Id.*

of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁹

To support his claim, appellant relies on the opinion of Dr. McKinley that he has severe degenerative disc disease and lumbar spinal stenosis¹⁰ aggravated by work factors. The Board, however, notes that, in his medical reports dated March 31, August 14, March 3 and February 27, 1998, Dr. McKinley does not report any clinical or physical findings to support his conclusion on causal relationship. Although the physician notes an increase in appellant's symptoms, that does not equate with a reasoned opinion on causality.

Furthermore, Dr. McKinley's opinion was not based on an accurate understanding of appellant's work duties. Dr. McKinley noted that appellant was confined to his desk for three hours a day. However, the job description provided by the employing establishment stated that appellant could move about at will depending on his comfort level. He was specifically provided with a headset and a long telephone cord for freedom of movement. There is no evidence of record that appellant was forced to sit for long periods of time as suggested by Dr. McKinley. Because Dr. McKinley was under the impression that appellant was forced to sit for prolonged periods of time, the Board finds that Dr. McKinley's opinion is not sufficiently reasoned.

Lastly, the Board notes that Dr. McKinley did not distinguish between the effects of appellant's morbid obesity and his work-related injury. Because of appellant's weight, it was important for the physician to ascertain whether or not his continuing back problems are due to that nonwork-related factor. In view of the inadequate rationale provided by Dr. McKinley on the issue of causal relationship, the Board finds that Dr. McKinley's opinion fails to establish appellant's entitlement to compensation.

In contrast, Dr. Cady's report is comprehensive and discusses both appellant's work duties and his obesity in relation to his back condition. Dr. Cady answered all the Office's questions regarding a causal relationship between appellant's back condition and employment factors and found no stenosis on a July 1999 MRI scan. Because Dr. Cady provided a reasoned opinion that appellant's back condition was not causally related to factors of his federal employment, his report is entitled to more probative value than that of Dr. McKinley's controlling weight.

⁹ *Dennis M. Mascarenas, supra* note 7.

¹⁰ The two MRI reports dated January 22, 1998 and January 7, 1999 do not show any evidence of spinal stenosis. Since Dr. McKinley did not explain the basis for his diagnosis of severe spinal stenosis, his opinion is not reasoned to establish a causal relationship between appellant's back condition and his employment. *See generally Ronald C. Hand*, 49 ECAB 113 (1997) (a medical opinion not fortified by medical rationale is of little probative value).

The September 3, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
December 12, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member