U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLES M. PATUREAU and U.S POSTAL SERVICE, POST OFFICE, Houma, LA

Docket No. 99-1029; Submitted on the Record;
Issued January 8, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON, MICHAEL E. GROOM

The issue is whether appellant sustained an injury to his knees on May 25, 1994.

On March 3, 1995 appellant filed a claim for an injury to his back and neck sustained on May 25, 1994 when his automobile was struck by a school bus. The Office of Workers' Compensation Programs accepted that appellant sustained a cervical sprain as a result of this employment injury. On August 21, 1995 appellant filed a claim for an occupational disease, in which he attributed his knee condition to his May 25, 1994 employment injury. On August 28, 1995[1] he filed a claim for a recurrence of disability due to his May 25, 1994 employment injury. On August 31, 1995 appellant underwent bilateral arthroscopic meniscectomies. By decision dated November 27, 1995, the Office rejected appellant's claim for a recurrence of disability on the basis that the medical evidence he submitted in support of this claim addressed an injury to appellant's knees.

Appellant requested a hearing, which was held on September 25, 1996, and submitted additional medical evidence. By decision dated November 20, 1996, an Office hearing representative found that appellant had failed to establish that he sustained an injury to his knees on May 25, 1994 as alleged. Appellant requested reconsideration and submitted additional medical evidence. By decision dated April 23, 1997, the Office refused to modify its prior decision. Appellant again requested reconsideration and submitted additional medical evidence. By decision dated January 16, 1998, the Office refused to modify its prior decisions. Appellant requested reconsideration and submitted a copy of the judgment against the third parties responsible for his May 25, 1994 employment injury rendered on February 23, 1998. His attorney contended that this judgment showed that a civil jury had decided that appellant's knee

[1] This claim form was dated August 28, 1994, by appellant but was signed by the employing establishment on August 28, 1995 and received by the Office on September 5, 1995. It appears that appellant inadvertently dated it 1994 rather than 1995.

injuries were caused by his May 25, 1994 accident. By decision dated October 9, 1998, the Office refused to modify its prior decisions.

The Board finds that the case is not in posture for a decision on the issue of whether appellant sustained an injury to his knees on May 25, 1994.

An employee has the burden of establishing the occurrence of an injury at the time, place, and in the manner alleged, by the preponderance of the reliable, probative and substantial evidence. An injury does not have to be confirmed by eyewitnesses in order to establish the fact that the employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action. An employee has not met his burden of proof when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.[2] Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and the failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established.[3]

In the present case, appellant did not file a claim indicating that he had injured his knees in the May 25, 1994 motor vehicle accident until August 1995, 15 months after the injury. He explained at the hearing, however, that at the time he filed his initial claim for a traumatic injury on March 3, 1995 he did not relate his knee condition to his May 25, 1994 injury. This is consistent with the medical evidence, in that Dr. H. Carson McKowen, a Board-certified neurosurgeon, stated in a November 10, 1994 report that appellant was having some knee pain which was unrelated to his car wreck and Dr. Christopher E. Cenac, a Board-certified orthopedic surgeon, stated in a January 19, 1995 report that appellant was complaining of bilateral knee pain unrelated to his accident. The first medical report that indicated appellant's knee pain was aggravated by his May 25, 1994 injury was one from Dr. Cenac dated April 12, 1995, over a month after appellant filed his initial claim form for an injury to his neck and back.

Appellant did continue to work following his May 25, 1994 employment injury, but he did so only with difficulty. He submitted five affidavits from coworkers attesting that he walked with a limp after his May 25, 1994 injury and his postmaster testified to the same effect at the September 25, 1996 hearing. At this hearing, appellant testified that he delayed in obtaining medical care for his knees because the emphasis of the doctors was his neck and back injury and because he believed his knee pain was due to arthritis. In a deposition taken on October 1, 1997, Dr. Cenac testified that appellant's major problem when he was first seen was his neck and back and that this had a masking effect on his knee pain. There is no evidence contradictory to appellant's testimony at the September 25, 1996 hearing that he experienced knee pain within one week of the May 25, 1994 injury. Appellant's wife testified that she became aware of appellant's knee pain one to two weeks after this injury and his postmaster testified that he

[2] *Joseph A. Fournier*, 35 ECAB 1175 (1984).

[3] *Dorothy Kelsey*, 32 ECAB 998 (1981).

became aware that appellant's knees were bothering him "several weeks" after the May 25, 1994 injury.

Appellant's burden of proof includes the submission of rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relation. The mere fact that a disease manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the disease became apparent during a period of employment, nor the belief of appellant that the disease was caused or aggravated by employment conditions, is sufficient to establish causal relation.[4]

Appellant has not met this burden. Although Dr. Cenac stated in his initial report, which was dated January 19, 1995, that appellant's bilateral knee pain was unrelated to his accident, in a September 27, 1996 report he attributed this statement to a typographical error and stated that the sentence should have said appellant's knee pain was related to his accident. He, however, has not provided sufficient rationale for this opinion to allow the Board to find that appellant sustained an injury to his knees on May 25, 1994.

In a report dated April 12, 1995, Dr. Cenac first discusses that appellant had degenerative changes of both knees preexisting his May 25, 1994 accident, but that he had an aggravation of his knee problems as a result of this accident. In an October 1, 1997 deposition, Dr. Cenac stated that meniscal tears such as appellant had could be caused by aging, but that appellant's weight bearing surfaces of his knees were normal without loss of articular cartilage, which led him to conclude that the meniscal tears were "of recent origin and not long-standing" and that the tears were "more probably than not the result of a traumatic event more so than a degenerative event because these surfaces are still normal." Dr. Cenac also stated that appellant's symptoms after his May 25, 1994 injury were different from those before the injury, in that appellant did not experience "freezing up" of the knees before the injury. While these reports support appellant's claim for a knee injury on May 25, 1994, they are not sufficient to meet appellant's burden of proof, given the long lapse between appellant's May 25, 1994 injury and the first treatment of his knees. Proceedings under the Federal Employees' Compensation Act are not adversarial in nature nor is the Office a disinterested arbiter. Although none of these reports contain sufficient rationale to discharge appellant's burden of proving by the weight of the reliable, substantial, and probative evidence that his condition is causally related to factors of his federal employment, they raise an uncontroverted inference of causal relation sufficient to require further development of the case record by the Office.[5]

[4] *Froilan Negron Marrero*, 33 ECAB 796 (1982).

[5] *See Daniel J. Gury*, 32 ECAB 261 (1980); *Horace Langhorne*, 29 ECAB 820 (1978).

The decisions of the Office of Workers' Compensation Programs dated October 9 and January 16, 1998 are set aside and the case remanded to the Office for action consistent with this decision of the Board.

Dated, Washington, DC
January 8, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member