U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DARYEL PRUITT and U.S. POSTAL SERVICE,
POST OFFICE, Plainwell, MI

Docket No. 00-1801; Submitted on the Record;
Issued May 7, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether appellant has met his burden of proof to establish he was disabled from February 1 to July 4, 1998 due to his accepted employment injury; (2) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's medical benefits.

On May 8, 1998 appellant, then a 40-year-old window distribution clerk, filed a notice of occupational disease alleging that continuous standing, walking, kneeling, bending, twisting, pushing, pulling, grasping and reaching of his federal employment caused joint problems and back pain.

Appellant's claim was accepted on September 18, 1998 for "aggravation of ankylosing spondylitis." He stopped work on January 31, 1998 and from February 1 to July 4, 1998 intermittently used family leave, leave without pay, sick leave and annual leave.[1]

On July 24, 1998 appellant filed a claim for compensation (Form CA-7) for the period February 1 to July 4, 1998.

Appellant submitted a report from Dr. Timothy J. Swartz, a Board-certified internist, dated August 12, 1998. In his report, Dr. Swartz diagnosed appellant with "ankylosing spondylitis" and stated that he has had evidence of tendon nodules, carpal tunnel syndrome, and "currently has stiffness, gel phenomenon and joint pain." He indicated that appellant was unable to do any repetitive activities with his hands or much lifting or carrying due to the tendon nodules and his back disease. Dr. Swartz further stated:

> "Although his spondylitis was not caused by his employment, the recurrence of the tendon nodules is certainly exacerbated by his activities. Recurrent use with

[1] Appellant started work at a different post office on July 5, 1998.

the onset of some inflammation in the tendons is a nidus for the formation of nodules. Again, repetitive activity with lifting, bending, carrying and twisting will exacerbate his back pain and worsen his disease state."

By letter dated August 26, 1998, the Office requested that appellant submit additional medical information from Dr. Swartz regarding his compensation claim. On September 15, 1998 the Office received a response from Dr. Swartz, who stated: "Please have someone with some medical knowledge review his records as I am tired of sending the same information over and over." When asked about appellant's claimed period of disability, he wrote: "See office notes. Patient has pain that precludes him from doing regular work."

By letter dated October 19, 1998, the Office requested that appellant submit a detailed medical explanation from Dr. Swartz regarding the extent and period of his disability, explaining that the information received was not sufficient. Dr. Swartz responded on February 5, 1999 stating that he is no longer appellant's physician and referred the Office to his August 12, 1998 report.

On January 1, 1999 the Office received a treatment note from appellant's family doctor, Dr. Roger J. Smith, a Board-certified family practitioner, dated January 21, 1998, in which he diagnosed appellant with "reactive tendinitis of both forearms, wrists and hands," and noted: "advise medical leave of absence of four to six weeks pending improvement. Effective immediately."

By letter dated February 3, 1999, the Office referred appellant to Dr. Paul E. Wenig for a second opinion examination. On February 23, 1999 the Office received a letter and medical report from Dr. Wenig dated February 18, 1999. Based on a statement of accepted facts, medical evidence of record and a physician examination of appellant, Dr. Wenig opined:

"Assuming that this patient does have sacroiliitis with ankylosing spondylitis, I agree that the amount of the weight that he had been lifting in the past would aggravate his condition. I agree with the restrictions that were placed on him by his previous rheumatologist. I do not feel that he is medically capable of performing the physical requirements of his regular position as I feel that will aggravate his condition even more. There is nothing on physical examination objectively to say that his disease has been aggravated or is still active."

In discussing ankylosing spondylitis and appellant's work limitations, he stated: "it is extremely difficult at a single meeting to evaluate a patient in regard to this."

On March 9, 1999 the Office requested that Dr. Wenig submit an addendum report answering specific questions regarding appellant's disability. By report dated March 15, 1999, Dr. Wenig responded:

"On physical examination he had no evidence of ankylosing spondylitis. Also within a reasonable degree of medical certainty, based on my physical examination, there is new evidence that the work-related aggravation in [appellant's] condition is evident. There is no way that I can estimate when this

has occurred. I am unable to say with certainty as to whether he was unable to perform his position due to the work-related aggravation."

By letter dated May 20, 1999, the Office referred appellant to a referral physician, Dr. Neil Levitt, a Board-certified internist, stating that a conflict of medical opinion had been created between Drs. Swartz and Wenig. The Office provided Dr. Levitt with a statement of accepted facts, questions and all medical evidence of record.

In a report from Dr. Levitt dated June 21, 1999, he stated:

"On the basis of my physical examination, I would not be able to confirm the diagnosis of ankylosing spondylitis."

* * *

"With regard to [appellant's] previous episode of claimed disability, from February 1998 through July 1998, I am unable to make any definitive comments without having evaluated him at that time. I cannot find any evidence, however, based on my present examination of a serious or significant underlying medical disorder which should have precluded him from performing his usual duties.

"I would emphasize that at the present time he has an entirely normal joint examination except for limited subtalar motion on the left secondary to his previous surgery. I do not feel that this should, in any way, render him disabled for his previous occupation."

On September 27, 1999 the Office issued a notice of proposed termination of medical benefits and denial of wage loss. By decision dated November 3, 1999, the Office denied appellant's claim for compensation benefits since the weight of the medical evidence did not establish that appellant was disabled for the period of February 1 to July 4, 1998 due to the accepted work-related injury.

By letter dated March 31, 2000, appellant requested reconsideration and submitted a medical report from Dr. Earl S. Rhind, a Board-certified orthopedic surgeon, who opined:

"It is obvious that the treating [physician] was appropriate in his diagnosis."

* * *

"It is perfectly understandable why he would have gotten into trouble leading to his being pulled off of work for six months. Once those inflammations had calmed down, it is perfectly understandable that he would be able to return to work which is less demanding, and be able to do so successfully.

"The acute inflammatory, activity related, problems would not be diagnosable two years after they [ha]d calm down.

> "I do feel a sense of sadness when specialty examinations fail to meet a certain standard; for instance failure to measure chest expansion in a person with back pain and a working diagnosis of ankylosing spondylitis."

By decision dated April 10, 2000, the Office denied appellant's request for reconsideration since the medical evidence submitted was insufficient to warrant modification of the November 3, 1999 decision.

The Board finds that the issue of whether appellant has met his burden of proof to establish he was disabled from February 1 to July 4, 1998 is not in posture for decision.

An employee seeking benefits under the Federal Employees' Compensation Act[2] 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.[3] These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[4]

In this case, the Office found that appellant established that his condition was caused by his federal employment, but failed to support that his disability for the period February 1 to July 7, 1998 was causally related to his December 29, 1997 injury.

Dr. Schwartz opined that appellant had pain caused by his accepted condition which did not allow him to perform repetitive activities with his hands, or much lifting and carrying, and that appellant was disabled from his regular work. He did not specifically state the period of appellant's disability. Appellant's other treating physician, Dr. Smith, reported on January 21, 1998 that appellant required a four- to six-week leave of absence due to his wrist and hand condition. The Office did not request that Dr. Smith clarify appellant's period of disability, although Dr. Smith was appellant's treating physician during the relevant time period. The Office's second opinion physician, Dr. Wenig, stated that he agreed with the restrictions of appellant's treating physicians, but that he could not comment regarding the period of disability as he had not examined appellant at that time. Regarding the period of disability, there was no conflict of medical opinion at the time appellant was referred to Dr. Levitt.

In his June 21, 1999 report, Dr. Levitt stated: "he was off work from February 1 to July 5, 1998, returning to a new position at a different post office on July 6, 1998." He further stated:

> "With regard to [appellant's] previous episode of claimed disability, from February through July 1998, I am unable to make any definitive comments without having evaluated him at that time."

---

[2] 5 U.S.C. §§ 8101-8193.

[3] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[4] *Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

Dr. Levitt stated that he is unable to form an opinion regarding the claimed period since he did not examine appellant at that time. The only other report which mentions the claimed period is the February 1, 2000 report from Dr. Rhind. In his report, Dr. Rhind noted:

> "[Appellant] stated that in late 1997 he was having increasing pain in his back and he was finally taken off work by Dr. Swartz in February 1998. He stayed off work for about six months. His symptoms gradually calmed down and he was able to return to work on July 6, 1998."

He also indicated: "It is perfectly understandable why he would have gotten into trouble leading to his being pulled off of work for six months."

On remand the Office should obtain a supplemental report from Dr. Smith to clarify appellant's period of disability.

The Board also finds that the Office met its burden of proof to terminate appellant's medical benefits.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.[5] After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation benefits without establishing that the disability has ceased or that it is no longer related to the employment.[6] Further, the right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for wage loss.[7] To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition that require further medical treatment.[8]

In this case, the Office accepted appellant's claim for aggravation of ankylosing spondylitis. Appellant's treating physician, Dr. Smith, diagnosed appellant on January 21, 1998 with reactive tendinitis of both forearms, wrists and hands, and advised medical leave of absence of four to six weeks, essentially declaring appellant disabled during that time. Dr. Wenig, on the other hand, in his supplemental report dated March 15, 1999, stated that upon physical examination appellant had no evidence of ankylosing spondylitis.

Because of the conflict in medical opinion evidence between Drs. Smith and Wenig, the Office referred appellant to an impartial medical examiner, Dr. Levitt, a Board-certified internist. In his June 21, 1999 report, Dr. Levitt stated that he would not be able to confirm the diagnosis of ankylosing spondylitis. He also stated that based upon his examination, he could not find any evidence which should preclude appellant from performing his regular duties.

---

[5] *Harold S. McGough*, 36 ECAB 332 (1984).

[6] *Vivien L. Minor*, 37 ECAB 541 (1986).

[7] *Marlene G. Owens*, 39 ECAB 1320 (1988).

[8] *See Calvin S. Mays*, 39 ECAB 993 (1988).

In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical examiner for the purpose of resolving the conflict, the opinion of such examiner, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[9]

As Dr. Levitt's report was well rationalized and was based upon a complete factual and medical background, it represents the weight of the medical evidence and establishes that appellant's work-related residuals had ceased.

The November 3, 1999 decision of the Office of Workers' Compensation Programs terminating appellant's compensation benefits is hereby affirmed and the decision denying appellant's period of disability from February 1 to July 4, 1998 is hereby set aside.

Dated, Washington, DC
May 7, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

[9] *Jack R. Smith*, 41 ECAB 691, 701 (1990).