U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL A. MAGRO and U.S. POSTAL SERVICE,
POST OFFICE, Levittown, PA

Docket No. 01-1354; Submitted on the Record;
Issued August 27, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether appellant established that he sustained a recurrence of disability on July 21, 1999, causally related to his January 8, 1999 employment injury; (2) whether appellant's October 13, 1999 right shoulder acromioplasty is causally related to his accepted employment injury; and (3) whether the Office of Workers' Compensation Programs properly determined that appellant no longer suffered from residuals of his employment injury on or after January 14, 2000.

Appellant, a 30-year-old letter carrier, sustained a traumatic injury in the performance of duty on January 8, 1999. The Office accepted his claim for acute cervical sprain, right shoulder sprain and mild lumbosacral sprain. Appellant returned to part time, limited duty shortly after his injury, however; he, again ceased working on July 21, 1999 and filed a claim for recurrence of disability.[1] On October 13, 1999 he underwent surgery on his right shoulder.[2]

In a decision dated January 14, 2000, the Office terminated appellant's compensation and medical benefits on the basis that the medical evidence established that appellant recovered from his accepted employment injury of January 8, 1999. The Office further found that appellant's claimed recurrence of disability on July 21, 1999 and his subsequent surgery on October 13, 1999 were unrelated to his January 8, 1999 employment injury. The Office based its determination on the December 6, 1999 opinion of Dr. John T. Williams, a Board-certified orthopedic surgeon and impartial medical examiner.[3]

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[1] Appellant received appropriate wage-loss compensation through July 21, 1999.

[2] Dr. John M. Fenlin Jr. performed acromioplasty and resection of the distal clavicle. He noted a preoperative diagnosis of rotator cuff tendinitis and acromioclavicular arthritis.

[3] In his December 6, 1999 report, Dr. Williams found that the accepted conditions of acute cervical sprain, right shoulder sprain and mild lumbosacral sprain had resolved.

Appellant requested an oral hearing, which was held on June 27, 2000. By decision dated August 17, 2000, the Office hearing representative affirmed the January 14, 2000 decision. On November 6, 2000 appellant filed a request for reconsideration accompanied by additional medical evidence. In a decision dated January 9, 2001, the Office denied modification of its prior decision dated August 17, 2000.

The Board finds that appellant failed to establish that he sustained a recurrence of disability on July 21, 1999, causally related to his January 8, 1999 employment injury.

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.[4]

Where appellant claims a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury.[5] This burden includes the necessity of furnishing evidence from a qualified physician who concludes, on the basis of a complete and accurate factual and medical history, that the condition is causally related to the employment injury.[6] The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.[7] While a physician's opinion supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.[8] Moreover, the physician must support his conclusion with sound medical reasoning.[9]

[4] 20 C.F.R. § 10.5(x).

[5] 20 C.F.R. § 10.104(b) (1999); *Helen K. Holt*, 50 ECAB 279, 382 (1999); *Carmen Gould*, 50 ECAB 504 (1999); *Robert H. St. Onge*, 43 ECAB 1169 (1992).

[6] *See Helen K. Holt, supra* note 5.

[7] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

[8] *Norman E. Underwood*, 43 ECAB 719 (1992).

[9] *See Robert H. St. Onge, supra* note 5.

In the instant case, the Office determined that a conflict of medical opinion existed based on the opinions of Drs. Kimmel, Smith and Valentino.[10] Accordingly, the Office properly referred appellant to an impartial medical examiner.[11] As previously noted, Dr. Williams found that the accepted conditions of acute cervical sprain, right shoulder sprain and mild lumbosacral sprain had resolved. Additionally, Dr. Williams noted preexisting degenerative disease in appellant's right acromioclavicular joint and cervical and lumbar spine. The Board finds that the Office properly relied on the impartial medical examiner's December 6, 1999 opinion. Dr. Williams' opinion is sufficiently well rationalized and based upon a proper factual background. He not only examined appellant, but also reviewed appellant's medical records. Additionally, Dr. Williams reported accurate medical and employment histories. Therefore, the Office properly accorded determinative weight to the impartial medical examiner's December 6, 1999 findings.[12]

Much of the evidence that accompanied appellant's November 6, 2000 request for reconsideration was previously of record. Evidence not previously considered included the July 17, 2000 report of Dr. John M. Fenlin, Jr., appellant's orthopedic surgeon, who described appellant's course of treatment during the period of September 20, 1999 through January 18, 2000, including surgery on October 13, 1999. Although Dr. Fenlin stated that appellant's January 8, 1999 fall at work was "directly and causally related to his rotator cuff injury and his acromioclavicular joint pain," which required surgical intervention, he failed to explain the basis for his opinion.[13] Appellant also submitted treatment records and reports covering the period of July through October 2000 from Dr. Brian Kelly, a neurologist, who treated appellant for cervical spine and right shoulder pain and possible thoracic outlet syndrome. Dr. Kelly's various records do not specifically address the cause of appellant's condition. Accordingly, the evidence submitted does not rise to the level of rationalized medical opinion evidence and thus, does not overcome the weight of the medical evidence as represented by the opinion of the impartial medical examiner, Dr. Williams.

[10] In a report dated June 8, 1999, Dr. Steven J. Valentino, an Office referral physician, diagnosed "resolved" acute cervical, right shoulder and mild lumbosacral sprains. Dr. Valentino concluded that appellant had recovered without incident. He further noted that appellant had a nonindustrial and preexistent history of cervical spondylosis, osteoarthritis and degenerative discs, which were not sufficient to impose any ongoing restriction referable to appellant's ability to work. Appellant's treating physician, Dr. Douglas G. Kimmel, indicated that he was totally disabled as of July 21, 1998. In a report dated August 31, 1999, Dr. Kimmel explained that appellant's cervical disc bulge and ongoing right shoulder problems were associated with his January 8, 1999 employment injury. Additionally, Dr. Kimmel stated that appellant's recent use of a employing establishment's Jeep and a particular type of mail sack exacerbated his condition. Appellant also received treatment from Dr. Randall N. Smith, who, in a report dated August 30, 1999, diagnosed cervical radiculopathy and right shoulder impingement. Dr. Smith attributed appellant's condition to his January 8, 1999 employment injury.

[11] The Federal Employees' Compensation Act provides that if there is disagreement between the physician making the examination for the Office and the employee's physician, the Office shall appoint a third physician who shall make an examination. 5 U.S.C. § 8123(a); *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

[12] In cases where the Office has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight. *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

[13] *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (a medical opinion not fortified by medical rationale is of little probative value).

Additionally, appellant failed to establish that his October 13, 1999 right shoulder acromioplasty was causally related to his accepted employment injury.

The impartial medical examiner indicated that appellant's October 13, 1999 surgery was for treatment of his preexisting acromioclavicular disease. He further noted that the fall appellant sustained on January 8, 1999 caused only a sprain of the right shoulder and a bruise on the humeral head. Dr. Williams stated that bruising the bone did not cause appellant to have early arthritic changes in the acromioclavicular joint. As previously noted, while Dr. Fenlin stated that appellant's January 8, 1999 fall at work was "directly and causally related to his rotator cuff injury and his acromioclavicular joint pain," which required surgical intervention, he failed to explain the basis for his opinion. Accordingly, the evidence fails to establish that appellant's October 13, 1999 surgery was causally related to his accepted employment injury.

The Board also finds that the Office met its burden of proof in terminating appellant's compensation and medical benefits effective January 14, 2000.

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.[14] Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.[15] The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.[16] To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.[17]

Again, the impartial medical examiner's December 6, 1999 report establishes that appellant no longer suffers from residuals of his January 8, 1999 employment injury. Dr. Williams stated that "with regard to the work[-]related incident, [appellant] is completely recovered." While he recommended certain work restrictions, he clearly stated that "all of these restrictions do [not] have anything to do with [appellant's January 8, 1999] incident." Therefore, the weight of the evidence establishes that appellant no longer suffers from residuals of his January 8, 1999 employment-related orthopedic condition.

[14] *Curtis Hall*, 45 ECAB 316 (1994).

[15] *Jason C. Armstrong*, 40 ECAB 907 (1989).

[16] *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

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

The January 9, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
August 27, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member