U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ERIC A. MENDENHALL and FEDERAL JUDICIARY PROBATION OFFICE, Naples, FL

Docket No. 02-1988; Submitted on the Record;
Issued May 9, 2003

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof to establish that he sustained an injury in the performance of duty on September 9, 1999.

This case has previously been on appeal.[1] On September 22, 1999 appellant, then a 34-year-old probation officer, filed a claim alleging that on September 9, 1999 he sustained an employment-related injury to his low back while making an arrest. Appellant alleged that he "bear hugged" and twisted his back, causing him lower back pain. In a decision dated December 10, 1999, the Office of Workers' Compensation Programs denied appellant's claim, finding that the evidence was insufficient to establish that an injury resulted from the incident. In a June 1, 2001 decision, the Board affirmed the decision of the Office, finding that appellant failed to furnish rationalized opinion medical evidence supporting a causal relationship between the employment incident and his diagnosed condition of lumbar radiculopathy.

Appellant submitted a December 16, 1999 report from Germaine Eurich, a nurse. She indicated that appellant was under her care for a neurological problem that was the result of a work-related injury in September 1999.

In a December 7, 1999 report, Dr. Michael T. Havig, a Board-certified orthopedic surgeon, noted that he had recently treated appellant for a back injury sustained on the job. Dr. Havig explained that he thought there was some confusion regarding appellant's treatment notes. He indicated that appellant had a history of a prior back injury years ago; however, he stated that this was completely asymptomatic prior to the new injury. Dr. Havig stated that the mechanism of injury was consistent with an acute injury, which he felt occurred with appellant's work-related accident. He opined that appellant's current back pain was completely related to this new injury as his previous back problem had resolved.

[1] Docket No. 00-2280 (issued June 1, 2001). The history of the case is contained in the prior decision and is incorporated by reference.

In a September 23, 1999 report, Dr. Havig noted that appellant had a work-related injury approximately two weeks prior. He noted that appellant worked as a probation officer and was making an arrest when a large person jumped on his back, pushing him into a door and that he felt a knob hit him in the low back. Dr. Havig stated that appellant had a history of surgery for a herniated disc about nine years prior, which had done well and was asymptomatic since that time. He reported that appellant was taking Aleve and Motrin with no significant relief and also complained of some increased urinary frequency and had a work up for renal stones as this had been a problem in the past and the urinary tract studies were negative. Dr. Havig indicated that appellant's pain was better with rest, particularly lying supine and worse with activity, noting occasional radiating pain to the left anterior thigh. He stated that appellant denied any frank numbness or weakness in the lower extremities but did have occasional back spasm, which would become worse after heavy activities such as work or softball.

In a November 5, 1999 report, Dr. John D. Campbell, a Board-certified psychiatrist and neurologist,[2] noted appellant's history of injury and treatment. In particular, Dr. Campbell indicated that approximately two months prior, while appellant was making an arrest, he was attacked. The person who attacked him was held in a "bear hug" by appellant. In the struggle, appellant was slammed into the wall, injuring his back and also sustained a twisting injury as a result of this struggle. That evening, appellant indicated that he had back pain, which he described as muscle aches and the next night, he was markedly worse and had bilateral leg pain. He described his pain as starting in the 1eft sacroiliac area and going down into both buttocks radiating anteriorly into the thighs and stopping at the knee. Dr. Campbell indicated that appellant had no pain distal to the knee and indicated that appellant felt that his left anterior thigh was "burning," that he has muscle spasms in his hamstrings as calf muscles bilaterally. He diagnosed lumbar radiculopathy.

After denial of the claim, appellant requested reconsideration on September 12, 2001 and submitted additional evidence.

In a March 9, 2000 report, Dr. Gary P. Colon, a Board-certified neurological surgeon, noted appellant's history of injury and treatment. He indicated that appellant was about five weeks past his posterior L5-S1 lumbar fusion with lumbar interbody fusion, pedicle screws and rods on a redo back surgery after having a microdiscectomy four years ago. Dr. Colon indicated that appellant was doing well and returned to work earlier than usual. He explained that, "Although this was not a workers' comp[ensation] case, appellant did have his injury after being involved in an altercation some time in the past where he was 'jumped' by a suspect." He began having significant back pain as well as pain going down into both legs and much worsened disc problems at the L5-Sl, even though he had prior microsurgery at this level some years prior.

In an April 18, 2000 report, Dr. Colon indicated that he saw appellant again in the clinic. He explained that appellant was "trying to get workers' comp[ensation] disability as this happened during an altercation while at work on September 9, 1999 where he was 'jumped' by a suspect." Dr. Colon opined that this was most likely a reexacerbation of his disc at L5-S1.

[2] The report contains the typed signatures of Dr. Campbell and Mr. Eurich, a nurse practitioner.

In a magnetic resonance imaging (MRI) scan dated June 26, 2001, Dr. Pamela Caslowitz, a Board-certified diagnostic radiologist, indicated that an MRI scan of the right shoulder was taken, which indicated that appellant had a minimal partial undersurface tear in the critical zone of the supraspinatus tendon. Dr. Caslowitz could not exclude mild impingement due to acromioclavicular joint hypertrophy and down sloping acromion, with minor degenerative changes of the glenohumeral joint with minimal subacromial bursitis.

In reports dated May 1, August 20 and October 29, 2001, Dr. Havig discussed appellant's right upper extremity and diagnosed partial thickness tear, right rotator cuff, with tendinitis.

On March 12 and 15, 2002 the Office received two similar reports dated September 28, 2001 and March 8, 2002 from Drs. Colon and Campbell.[3] Both physician's indicated that appellant reexacerbated or had a reherniation of the disc at L5-S1 and this was caused by the September 9, 1999 incident.

By decision dated May 14, 2002, the Office denied modification of the Board's June 1, 2001 decision.

The Board finds that appellant has not met his burden of proof to establish that he sustained an injury in the performance of duty on September 9, 1999.

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 filed within the applicable time limitation 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."[4] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.[5]

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another.

The first component to be established is that the employee actually experienced the employment incident, which is alleged to have occurred.[6]

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[3] The report from Dr. Campbell appears to contain Dr. Colon's name in the first paragraph; however, it appears that he signed the report on September 28, 2001.

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

[5] *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

[6] *Elaine Pendleton, supra* note 4.

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.[7]

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. 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 of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[8] The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[9]

In the present case, the Office found that the incident occurred in the time, place and manner alleged.

The Board finds, however, that the medical evidence submitted by appellant does not contain a sufficiently rationalized medical opinion relating his back condition or need for surgery to the September 9, 1999 incident. There are no reports of record which address causal relationship or factors of appellant's employment.[10]

Appellant submitted reports from Dr. Havig dated September 23 and December 7, 1999.[11] In these reports, Dr. Havig noted that he had treated appellant for an injury sustained on the job and that his condition and back pain was related to the work-related incident. In his September 23, 1999 report, he described the September 9, 1999 incident, indicating that appellant was jumped on the back and was pushed into a door where the knob hit him in the low back. However, his report did not explain the nature of the relationship between the diagnosed condition and the injury.[12] Dr. Havig does not explain how the incident caused or aggravated appellant's back condition. While noting in general a prior history of back surgery, Dr. Havig did not provide a full history of appellant's preexisting back condition or explain how the September 9, 1999 incident caused or contributed to disability after that date. The Board has

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[7] *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

[8] *Victor J. Woodhams,* 41 ECAB 345, 351-52 (1989).

[9] *James Mack,* 43 ECAB 321 (1991).

[10] A claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which compensation is claimed was caused or adversely affected by employment factors. *Ronald C. Hand*, 49 ECAB 113 (1997).

[11] This was received by the Office on December 19, 1999.

[12] *Charles E. Burke,* 47 ECAB 185 (1995).

long held that medical opinions not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet appellant's burden of proof.[13]

In a November 5, 1999 report, received by the Office on March 12, 2002, Dr. Campbell also described that he was treating appellant for the September 9, 1999 employment incident and diagnosed lumbar radiculopathy. His report did not contain a rationalized opinion on the issue of causal relationship.[14]

Dr. Colon, in his March 9, 2000 report, indicated that appellant sustained his injury after being involved in an altercation at work on September 9, 1999 after being jumped by a suspect and this was most likely a reexacerbation of the disc at L5-S1. His report is not fully rationalized and appears speculative.[15]

Additionally, two identical reports were submitted from Drs. Colon and Campbell in which the physicians agreed that appellant reexacerbated or had a reherniation of the disc at L5-S1 and this was caused by the September 9, 1999 incident. However, they did not provide a rationalized opinion explaining the basis for their conclusions or fully addressing appellant's medical history pertaining to his back. The Board has held that medical opinion evidence not fortified by medical rationale is of little probative value in establishing causal relationship.[16]

It is further noted that the reports from the nurse are not probative as nurses are not considered physicians under the Act. Health care providers such as nurses, acupuncturists, physician's assistants and physical therapists are not physicians under the Act. Thus, their opinions on causal relationship do not constitute rationalized medical opinions and have no weight or probative value.[17]

The Board finds that the medical evidence does not establish a causal relationship between appellant's September 9, 1999 incident and treatment for his back condition following that date.

The May 14, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
May 9, 2003

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[13] *Carolyn F. Allen,* 47 ECAB 240 (1995).

[14] *Id.*

[15] The Board has held that an opinion which is speculative in nature has limited probative value in determining the issue of causal relationship. *Arthur P. Vliet,* 31 ECAB 366 (1979).

[16] *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).

[17] *Jan A. White,* 34 ECAB 515, 518 (1983).

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member