U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BRADFORD D. CALDWELL and U.S. POSTAL SERVICE, POST OFFICE, Spokane, WA

Docket No. 03-459; Submitted on the Record;
Issued May 21, 2003

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO, DAVID S. GERSON

The issue is whether appellant was totally disabled for intermittent periods of fractional and whole single days between December 6, 2000 and October 30, 2001, causally related to his accepted employment condition.

The Office of Workers' Compensation Programs accepted that beginning June 1, 1994 appellant, then a 24-year-old letter carrier, sustained a temporary aggravation of a preexisting chondromalacia of the right knee, causally related to his standing and ambulatory duties casing and delivering mail.[1] Appellant received appropriate compensation benefits and returned to limited duty on December 1, 2000.

Thereafter appellant filed claims for compensation for 75+ fractional and whole single days of absence during the period December 6, 2000 and October 30, 2001 for a total in excess of 367 hours. The Office paid compensation for 31 hours of disability during that period.[2]

By decision dated September 13, 2001, the Office denied appellant's claim for the intermittent dates claimed and not paid for the period June 29 to August 24, 2001 finding that there was no medical evidence showing work-related disability for the specific dates and hours claimed.

---

[1] Appellant claimed on February 12, 2001 that his knee problems began in the military, and after receiving an honorable discharge for a 10 percent knee disability, he had mostly sitting jobs until he began working for the employing establishment, which required standing 3 hours per day while casing mail and walking 5 hours per day delivering mail. Appellant sought treatment for his knee problems in January 1999.

[2] These payments amounted to 31.38 hours of compensation, rounded to 31 hours. The following dates and hours were compensated: 4 hours on January 30; 4 hours on January 31; 2.14 hours on February 1; 2.77 hours on February 7; 4 hours on February 23; 4 hours on February 27; 4 hours on February 28; 4 hours on March 28; 0.96 hours on March 30; and 1.57 hours on March 31, 2001.

On October 12, 2001 appellant, through his representative, disagreed with the September 13, 2001 decision and requested an oral hearing before an Office hearing representative.

By decision dated January 10, 2002, the Office rejected appellant's claim for compensation for intermittent hours and dates during the period November 29, 2000 through October 5, 2001, other than the dates already paid,[3] finding that there was no medical evidence to support claimed disability on the other dates and hours.

By letter dated February 8, 2002, appellant, through his representative, requested an oral hearing before an Office hearing representative on the January 10, 2002 decision.

A hearing was held on July 12, 2002 at which appellant testified. Appellant noted that beginning in July 1998 he worked three hours per day standing and five hours per day walking, which caused his knees to worsen, so that by November 2000 he started missing work intermittently and began working limited duty standing and walking for no more than one hour per day. Appellant claimed that since November 2000 he had knee pain which caused him to stop work, take medication and go home early. He alleged that he did not know that he was supposed to see his doctor each time he took off work. Appellant stated that he was unable to get appointments with his doctor and could provide no proof from his doctor of his increased pain. Appellant argued that the medical evidence of record was sufficient as he submitted several reports which explained that his condition was intermittent and chronic and would cause intermittent periods of disability due to periodic exacerbations and that he would periodically have days where he needed to go home early because of his knees and taking pain medications.

By decision dated September 12, 2002, the hearing representative affirmed the January 10, 2002 and September 13, 2001 decisions finding that Dr. Lantsberger's reports were insufficiently rationalized to justify payment for intermittent dates when appellant took off work without seeing a physician. The hearing representative opined that rationale to the effect that a physician told appellant to leave work early when he had pain was insufficient to justify a finding of total disability for the periods claimed.

The Board finds that appellant was not totally disabled for compensation purposes for intermittent periods between December 6, 2000 and October 30, 2001, causally related to his accepted temporary aggravation of preexisting chondromalacia of the right knee.

An individual who claims a recurrence of disability due to an accepted employment injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury. This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound

[3] Compensation had been paid for January 30 and 31, February 1, 7, 23, 27 and 28, and March 28, 30 and 31, 2001.

medical reasoning.[4] Causal relationship is a medical issue and can be established only by medical evidence.[5]

Further, an employee returning to light duty, or whose medical evidence shows the ability to perform light duty, has the burden of proof to establish a recurrence of temporary total disability by the weight of reliable, probative and substantial evidence and to show that he cannot perform the light duty.[6] As part of his burden, the employee must show a change in the nature and extent of the injury-related conditions or a change in the nature and extent of the light-duty requirements.[7] Appellant has not provided such rationalized medical evidence showing a change in the nature and extent of his injury-related condition for the dates and hours claimed.

In this case, appellant returned to limited duty standing and walking no more than one hour per day on December 1, 2000 but experienced trouble with pain in his knees which caused him to leave work on December 6, 9, 20, 21 and 29, 2000.[8] He did not seek medical attention on these dates to confirm that he had suffered a painful relapse causing temporary total disability at those times or at times reasonably contemporaneous thereto. Therefore, appellant did not provide rationalized medical evidence establishing a change in the nature and extent of his injury-related conditions and he did not allege that there had been a change in the nature and extent of his light-duty job-related requirements. The medical evidence of record submitted prior to these absences consisted of two reports from Dr. Timothy Grothman, a chiropractor, who did not diagnose a spinal subluxation as demonstrated by x-ray to exist and therefore cannot be considered to be a physician under the Federal Employees' Compensation Act. As Dr. Grothman cannot be considered a physician under the Act, his reports have no probative value, particularly on a nonspinal issue.[9] Additionally, appellant submitted several reports from a Department of Veterans Affairs (VA) physician's assistant. The Board has held that a report of a physician's assistant is entitled to no medical weight because physician's assistants are not physicians pursuant to 5 U.S.C. § 8101(2).[10] Further, the record also contains reports from a VA

[4] *Stephen T. Perkins*, 40 ECAB 1193 (1989); *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.121(a).

[5] *Mary J. Briggs*, 37 ECAB 578 (1986); *Ausberto Guzman*, 25 ECAB 362 (1974).

[6] *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

[7] *Id.*

[8] Appellant testified that he actually started having knee trouble in November 2000 which caused him to reduce his three hours per day of standing and five hours per day of walking and to begin working limited duty walking and standing for no more than one hour per day, but this claim does not cover absences from November 2000.

[9] Section 8101(2) of the Act, 5 U.S.C. §§ 8101-8193, provides that the term "'physician' ... includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist." *See also Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board held that medical opinion, in general, can only be given by a qualified physician). A "physician" includes only physicians who have an M.D. or D.O. degree, surgeons, podiatrists, dentists, clinical psychologists, optometrists and chiropractors within the scope of their practice as defined by state law. *Sheila A. Johnson*, 46 ECAB 323 (1994).

[10] *Lyle E. Dayberry*, 49 ECAB 369 (1998).

nurse practitioner, which additionally have no probative value and do not constitute probative medical evidence.[11] Accordingly, these reports provide no medical support for appellant's December 2000 through October 2001 periodic absences, as the authors are not physicians under the Act.[12]

Appellant continued with periodic absences from January through October 2001, leaving work when his knees became too painful and when he had to take pain medication. In support of these absences, appellant submitted a January 25, 2001 sick slip from Dr. Robert McFarland, a Board-certified family practitioner, which indicated that appellant had significant knee problems and would be "missing work at least intermittently until these have resolved." On January 28, 2001 he diagnosed appellant with a severe flare-up of bilateral knee pain due to meniscal disruption in the right knee and he opined that appellant was unable to work as a letter carrier. Dr. McFarland's reports, however, did not mention appellant's actual condition on the specific dates in question nor did they provide any reason how or why he approved appellant's total disability for the dates and hours claimed. Further, as these reports did not provide objective examination results documenting disability contemporaneous with the claimed recurrences of total disability, these reports do not provide any medical rationale for appellant's periodic past absences in December 2000 and on January 5, 13, 16, 17, 19 and 2001 or for prospective absences on January 29, 30 or 31, 2001.[13]

In an August 20, 2001 report, Dr. Paula Lantsberger, a Board-certified occupational medicine specialist, stated that appellant had had numerous days when he left work early because of pain in his knees and noted that he supposedly put up with the pain as long as he could and then he took his pain medication, which caused him to be unable to drive and to have difficulty concentrating efficiently to perform his work-related activities. She noted that appellant had been going home early, that he was able to tolerate driving only on his route and now indicated that truck driving hurt his knees, that he claimed that when he pushed on the gas pedal his knees would ache, that after a morning of casing his knees were throbbing and aching, and that when he then drove the truck to deliver his route his knees continued to hurt.

By report dated August 28, 2001, Dr. Lantsberger noted that she advised appellant that when his knees became so acutely painful that he has to take his pain medications, he had to leave the office, go home and then take the medications once he is in a position where he is not going to have to drive. On an accompanying Form CA-17 Dr. Lantsberger indicated that appellant had a chronic condition and may "need one [to] two days a week off duty." In a September 18, 2001 report, she reiterated that appellant did have a "chronic medical condition [with] which he needs periodic days off due to his work-related injury.… He has had periodic days to where his knees are particularly painful and he has gone home early or has been absent from work. It is well noted that with the chronic nature of the knee injury that he will have periodic exacerbations. This is particularly aggravated if he does more walking or standing."

[11] *See Diane Williams*, 47 ECAB 613 (1996); *Joseph N. Fassi*, 42 ECAB 677 (1991) (a medical report signed by a nurse does not constitute probative medical evidence).

[12] 5 U.S.C. §§ 8101-8193.

[13] *See, e.g., Ronald Ricca*, (Docket No. 97-375, issued October 8, 1998).

In an October 24, 2001 report, Dr. Lantsberger opined that appellant's moderate grade chondromalacia in the medial femoral condyle was related to the amount of walking on his routes and that he continued to have new pain even when doing more limited duty. She noted that appellant associated his knee pain with time spent standing on concrete floors. No dates of disability were identified.

The Board finds that these reports do not document exacerbations of appellant's knee conditions for the dates claimed nor do they provide any reason why Dr. Lantsberger approved appellant's total disability for the dates and hours claimed without examining him reasonably contemporaneous with those dates. Further, as these reports did not provide objective examination results, they do not provide any medical rationale based upon objective evidence for appellant's periodic past absences in from December 2000 through October 2001. As these reports did not contain findings contemporaneous with the claimed recurrences of disability, they did not establish a change in the nature and extent of his injury-related condition on the dates and at the times alleged. Therefore, these reports do not establish appellant's entitlement to compensation for those dates and times.

The second opinion physician, Dr. Charles Larson, a Board-certified orthopedic surgeon, did not find upon examination of appellant any significant permanent aggravation of any preexisting condition and he opined that appellant was not disabled for work. This report, therefore, does not support appellant's claimed intermittent recurrences of temporary total disability.

Dr. Arnold G. Peterson, a Board-certified orthopedic surgeon, examined appellant, noted that he had full range of motion of the knees and opined that he did not find any orthopedic knee problems but instead speculated that appellant might have a rheumatological condition. This report also does not support appellant's claimed intermittent recurrence of disability for the period December 2000 through October 2001.

Appellant argued that he had submitted sufficient medical reports which established that he had a chronic condition that was intermittent and would require intermittent absences from work, however, the Board finds that these reports were insufficiently rationalized and were not sufficiently contemporaneous to the absences to actually document any objective change in the nature and extent of appellant's injury-related condition, that would entitle him to compensation under the Act for temporary total disability for the dates and hours claimed. Therefore, appellant has not met his burden of proof to establish his compensation entitlement for the intermittent dates and hours claimed.

Accordingly, the decisions of the Office of Workers' Compensation Programs dated January 10 and September 12, 2002 are hereby affirmed.

Dated, Washington, DC
May 21, 2003

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member