U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HARRY F. LOCHER and U.S. POSTAL SERVICE, POSTAL SERVICE & DISTRIBUTION CENTER, Charleston, W. Va.

Docket No. 96-2178; Submitted on the Record;
Issued July 14, 1998

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issues are: (1) whether appellant sustained a recurrence of disability from May 14 to November 23, 1994 causally related to a January 22, 1994 lumbar strain and lumbar radiculopathy; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's claims for reimbursement of medical expenses.

The Office accepted that appellant, then a 43-year-old distribution clerk, sustained a lumbar strain and lumbar radiculopathy in the performance of duty on January 22, 1994.[1]

Appellant submitted periodic reports from February to April 1994 from Dr. David L. Weinsweig, an attending neurosurgeon, stating that appellant was totally disabled for work due to the January 22, 1994 injury through March 7, 1994, when he released appellant to full duty. He subsequently found disability on intermittent dates through mid-May 1994 due to low back pain with radiculopathy into the left leg.[2] He submitted periodic reports through September 1994 and referred appellant to Dr. Ahmet Ozturk, a Board-certified neurologist, affiliated with a pain management clinic, as appellant was not a surgical candidate.[3] In September 26, 1994 form reports, Dr. Weinsweig noted periods of disability through May 13, 1994, with release to full duty as of May 18, 1994.

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[1] The Office initially denied appellant's claim in an April 22, 1994 decision. By decision dated August 9, 1994, the Office vacated the April 22, 1994 denial of appellant's claim, and accepted the conditions of lumbar strain and lumbar radiculopathy. The record indicates that appellant has a 20 percent disability rating from the Veterans Administration due to a lumbar injury and rib fractures sustained in a March 1983 motor vehicle accident.

[2] An April 15, 1994 lumbar magnetic resonance imaging (MRI) study performed for Dr. Weinsweig was normal. In an April 22, 1994 report Weinsweig diagnosed a possible sacroilliitis.

[3] Dr. Ozturk performed lumbar facet block injections on September 21, 1994.

The record indicates that appellant contacted the Mayo Clinic of Rochester, Minnesota, regarding treatment for lumbar pain. In an October 11, 1994 letter, the Mayo Clinic advised appellant to report for examination on December 7, 1994. This letter does not reference Dr. Weinsweig or any other attending physician.

In an October 12, 1994 report, Dr. Weinsweig noted that appellant informed him that day that he was going to the Mayo Clinic for treatment. Dr. Weinsweig characterized this as "quite reasonable. Perhaps they will be able to help him." He noted that appellant presented him with a list of numerous work absences from March through October 1994 and that appellant wanted him to "certify that he was off on those days because of low back pain. I had never told [appellant] to stay off on those days." Dr. Weinsweig noted that appellant had "low back problems which at times will act up." Dr. Weinsweig stated that he would only "certify the dates that [he had] written in [his] chart that [Dr. Weinsweig] told appellant to stay home," but not "other days when [appellant] called into work but not to [Dr. Weinsweig's] office…."[4]

An October 30, 1994 form, from the Mayo Clinic indicates that appellant asserted on October 4, 1994 that Mr. William Broadwater, an Office claims examiner, had authorized him to receive treatment at the Mayo Clinic for lumbar strain and lumbar radiculopathy. The form notes that appellant was "going to have auth[orization] letter faxed" to the Mayo Clinic. There is no letter of authorization from the Office of record.

In a November 14, 1994 letter, the Office advised appellant to submit additional medical evidence in support of his claim within 20 days.[5]

In a December 12, 1994 report, Dr. T.J. Hanson, a Board-certified orthopedic surgeon associated with the Mayo Clinic, noted that appellant was "self-referred" to the Mayo Clinic Spine Center, provided a history of injury and treatment and conducted an orthopedic and neurologic examination. Dr. Hanson diagnosed "[c]hronic musculoligamentous low back pain," "[c]ervical spondylosis," "[d]orsal and upper lumbar compression fractures,"[6] status post two 1983 motor vehicle accidents and a December 1994 motor vehicle accident. Dr. Hanson noted that results of a psychiatric consultation indicated a chronic pain disorder. He recommended physical and occupational therapy, with training in body mechanics.

In a December 22, 1994 letter, the Office advised appellant that in order to process these claims, he must submit "medical documentation finding [him] totally disabled for work or capable of only returning to work on a limited basis "as a result of the accepted injury and that Dr. Weinsweig's October 12, 1994 report, did not establish those criteria. The Office also stated

[4] In an October 19, 1994 duty status report, Dr. Weinsweig proscribed climbing, bending, kneeling, twisting, pulling and pushing, limited reaching, driving, fine manipulation and simple grasping to 4 hours per day, and lifting to 25 pounds. This form report does not contain a referral for treatment at the Mayo Clinic.

[5] In a November 25, 1994 letter, the Office asked Dr. Weinsweig to indicate whether appellant was able to perform the duties of a mail processor from March 17 to October 26, 1994. There is no response of record from Dr. Weinsweig.

[6] November 28, 1994 x-rays showed narrowed C3 and C5 interspaces, "anterior compression of the body of T8 and slight anterior wedging of T11 and T12," and "slight anterior wedging of the body of L2."

that a review of the file showed that the Office did not authorize his treatment at the Mayo Clinic and requested that appellant submit a referral from his physician to the Mayo Clinic with "rationale on the need for their services in connection to" the accepted conditions.

A February 1, 1995 Office telephone memorandum indicates that a claims examiner spoke to appellant on that date regarding the type of medical evidence needed to support the claimed periods of disability and the need for an unequivocal referral from his physician to the Mayo Clinic with an explanation of necessity of treatment.

In a March 10, 1995 report, Dr. Weinsweig noted appellant's Mayo Clinic evaluation, concurred with the diagnosis of chronic pain disorder and released him to full duty.

In March 27, 1995 form reports, Dr. Weinsweig reiterated previous diagnoses of lumbar strain and lumbar radiculopathy and checked boxes indicating that the conditions were work related.

By decision dated June 26, 1995, the Office denied compensation for intermittent periods of wage loss from May 14 to November 23, 1994 on the grounds that appellant did not submit sufficient medical evidence substantiating total disability for work for the claimed period due to the accepted conditions. The Office also denied appellant's request for reimbursement for medical expenses for treatment at the Mayo Clinic, as there was no evidence of a referral from Dr. Weinsweig, that such treatment was not available in appellant's home area, or that the treatment was medically necessary due to the accepted injury.

Appellant requested an hearing before a representative of the Office's Branch of Hearings and Review held February 8, 1996. At the hearing, appellant asserted that he was absent from work intermittently on 82 days from May 14 to November 23, 1994 due to back pain, but that Dr. Weinsweig did not direct him to stay home from work on those dates. Appellant stated that the Office paid some bills from the Mayo Clinic, but never authorized treatment. He noted that Dr. Weinsweig thought it would be a "good idea" to get a second opinion. Appellant stated that he was medically able to perform light duty from October 19 to November 6, 1994, but that the employing establishment did not provide him with light duty and only provided him with four hours per day light duty from November 7 to 23, 1994

By decision dated April 3 and finalized April 4, 1996, the Office hearing representative affirmed the June 26, 1995 decision. The hearing representative found that appellant had failed to establish total disability for any dates from May 14 to November 23, 1994, or that his treatment at the Mayo clinic was necessary in order to treat residuals of the accepted January 22, 1994 injury.

The Board finds that appellant has not established that he was disabled for work for the period May 18 to November 23, 1994.

When an employee claims a recurrence of disability causally related to an accepted employment injury, he or she has the burden of establishing by the weight of the reliable, probative and substantial medical evidence that the claimed recurrence of disability is causally related to the accepted injury. As part of this burden, appellant must submit rationalized medical

evidence based on a complete and accurate factual and medical background showing causal relationship.[7] Appellant's assertion of causal relationship, unsupported by medical evidence, is an insufficient basis on which to award compensation.[8]

In this case, appellant must establish through the submission of rationalized medical evidence that he was totally disabled for work for 82 intermittent days from May 14 to November 23, 1994. The Office advised appellant by December 22, 1994 letter and February 1, 1995 teleconference of the type of medical evidence needed to establish causal relationship. However, appellant did not submit such evidence in support of his claim.

Dr. Weinsweig, appellant's attending neurosurgeon, noted periods of disability ending on May 13, 1994 and released appellant to full duty as of May 18, 1994. In an October 12, 1994 report, Dr. Weinsweig stated that he did not direct appellant to stay home from work due to low back pain for the claimed dates between May 13 and November 23, 1994 and that appellant did not call his office on those dates to request a medical authorization to remain off work. At the February 8, 1996 hearing, appellant acknowledged that Dr. Weinsweig did not tell him to remain off work during the period in controversy. Thus, the record establishes that Dr. Weinsweig did not find appellant disabled for work on the dates claimed.

Consequently, appellant has failed to establish a causal relationship between his back condition for the period May 14 to November 23, 1994 and the accepted January 22, 1994 injury, as he failed to submit rationalized medical evidence explaining how and why residuals of the accepted January 22, 1994 injury would disable him for work for the claimed period.

The Board also finds that the Office properly denied reimbursement of medical expenses related to treatment at the Mayo Clinic.

Section 8103(a) of the Federal Employees' Compensation Act provides, in pertinent part:

> "The United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances and *supplies prescribed or recommended by a qualified physician*, which the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of monthly compensation…." (Emphasis added.)

The Act's implementing regulations at 20 C.F.R. § 110.401(b) provide that while a claimant has the initial choice of physicians, an "employee who wishes to change physicians must submit a written request to the Office fully explaining the reasons for the request. The Office may approve the request in its discretion if sufficient justification is shown for the request."

The Office's obligation to pay for medical treatment under section 8103 of the Act extends only to treatment of employment-related conditions. The burden of proof rests with the

[7] *See Armando Colon*, 41 ECAB 563 (1990).

[8] *Ausberto Guzman*, 25 ECAB 362 (1974).

claimant in establishing that the treatment requested is necessitated by the effects of an accepted work-related condition. Such proof must include the submission of rationalized medical opinion evidence explaining the causal relationship between the accepted injury and the condition, for which treatment is sought and why the treatment is required in order to cure, give relief, or reduce the severity of the accepted condition.[9]

Appellant's attending physician, Dr. Weinsweig did not prescribe treatment from the Mayo Clinic. Appellant first informed Dr. Weinsweig of his desire to go to the Mayo Clinic on October 12, 1994, after appellant had already contacted the clinic for an appointment. The Mayo Clinic sent appellant a letter dated October 11, 1994, confirming a December 7, 1994 appointment, indicating that appellant had arranged for evaluation at the clinic prior to his October 12, 1994 appointment with Dr. Weinsweig. Dr. Weinsweig only stated that it was "quite reasonable" for appellant to seek treatment at the Mayo Clinic, but did not refer appellant to the clinic, or explain why the accepted lumbar strain with radiculopathy would necessitate treatment there.

The record contains no indication that the Office authorized appellant to receive any services from the Mayo Clinic. Appellant stated at the February 8, 1996 hearing that the Office had not authorized him to receive treatment at the Mayo Clinic. The clinic's October 11, 1994 letter directing him to report for evaluation is addressed to appellant only and does not reference the Office or any physician. Although an October 30, 1994 clinic form notes appellant's assertion that the Office had authorized treatment, there is no letter or other communication from the Office of record authorizing appellant to be treated at the Mayo Clinic. Also, Dr. Hanson, a physician associated with the Mayo Clinic, stated in his December 12, 1994 report, that appellant was "self-referred," evincing the clinic's belief that appellant had not been referred by a physician or the Office.

The Office advised appellant by December 22, 1994 letter and February 1, 1995 teleconference of the need for an unequivocal referral from Dr. Weinsweig to the Mayo Clinic, including an explanation as to why such treatment was necessary to treat the accepted conditions of lumbar strain and lumbar radiculopathy. However, appellant did not provide such evidence and the record demonstrates that Dr. Weinsweig or other attending physician did not refer appellant to the Mayo Clinic.

The Board notes the fact that the Office apparently paid some bills related to appellant's treatment at the Mayo Clinic does not constitute authorization for treatment by the Office and does not obligate the Office to reimburse appellant for other medical expenses at the Mayo Clinic.

As appellant did not provide sufficient medical evidence to establish that his accepted lumbar condition required the treatment rendered by the Mayo Clinic, the Office properly denied appellant's request for reimbursement of medical expenses.

[9] *Debra S. King*, 44 ECAB 203 (1992).

The decision of the Office of Workers' Compensation Programs dated April 3 and finalized April 4, 1996 is hereby affirmed.

Dated, Washington, D.C.
July 14, 1998

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member