U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CURTIS J. LAMBDIN and DEPARTMENT OF HEALTH & HUMAN SERVICES, SOCIAL SECURITY ADMINISTRATION, Baltimore, Md.

Docket No. 97-629; Submitted on the Record;
Issued September 2, 1998

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant established that he sustained an injury in the performance of duty.

On June 8, 1995 appellant, then a 39-year-old program analyst, filed a notice of traumatic injury, claiming that while on travel status he pinched a nerve in his cervical spine because airline staff improperly moved him from his wheelchair to a coach seat. In support of his claim, appellant submitted a May 22, 1995 report from Dr. Howard Hoffberg, Board-certified in preventive medicine and rehabilitation, and treatment notes from Dr. George E. Berley, a practitioner in internal medicine.

On August 17, 1995 the Office of Workers' Compensation Programs asked appellant to submit additional medical evidence, specifically a rationalized medical opinion explaining how the lifting incident caused or aggravated appellant's condition. Appellant responded that during a May 7 to 16, 1995 business trip he was lifted from wheelchair to aisle chair to coach seat and back again 19 times; at least 17 times airline personnel used improper techniques, resulting in pain in his left neck, shoulder and arm.[1]

On September 21, 1995 the Office denied the claim on the grounds that the evidence was insufficient to establish that appellant sustained an injury in the performance of duty. The Office noted that none of the reports provided a history of injury consistent with that reported by appellant and that the physicians' diagnoses varied.

Appellant requested reconsideration and submitted a September 13, 1995 report from Dr. Hoffberg who stated that, absent any supervening trauma, appellant developed radicular pain in his left upper extremity on May 11, 1995. Dr. Hoffberg explained that due to the weakness of his shoulder muscles, preexisting cervical fusion and degenerative changes as well as the

[1] Appellant described himself as a quadriplegic disabled for 21 years.

paralysis of his lower extremities, appellant was "more susceptible" to injury from improper lifting and transferring techniques. Appellant also submitted an August 28, 1995 report from Dr. Jorge R. Ordonez, a Board-certified neurosurgeon, who initially treated appellant after his diving accident in 1974. Dr. Ordonez related that appellant noted neck pain following the lifting incidents but stated that the pain was nonradicular and mainly related to some degree of cervical spondylosis and perhaps some foramina compression.

On December 7, 1995 the Office denied appellant's request on the grounds that the medical evidence submitted in support of reconsideration was insufficient to warrant modification of its prior decision. The Office noted that while Dr. Hoffberg and Dr. Ordonez alluded to a possible relationship between appellant's cervical problems and the airplane lifting incidents in May 1995, neither physician provided an opinion on whether these incidents caused any injury.

Appellant again requested reconsideration and submitted a February 8, 1996 report from Dr. Nathan J. Rudin, a practitioner in preventive medicine, who found "no clear clinical evidence of cervical radiculop[at]hy" and diagnosed a myofascial pain syndrome, with cervical spondylosis perhaps playing a role. Dr. Rudin responded to appellant's question by stating that "it is certainly possible" that the May 1995 lifting incidents described by appellant could have initiated his pain symptoms, although appellant's scoliosis, significant upper extremity use, and possible hypermobility at the cervical segments above and below his fusion were certainly perpetuating his pain.

On October 24, 1996 the Office denied appellant's request on the grounds that the medical evidence was insufficient to warrant modification of its prior decision. The Office noted that Dr. Rudin provided no diagnosis of a condition that resulted from the May 1995 mishandling and was equivocal in his opinion that appellant's current condition resulted from work factors.

The Board finds that appellant has failed to meet his burden of proof in establishing that his cervical condition was sustained in the performance of duty.

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 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 or specific condition for which compensation is claimed is causally related to the employment injury.[3] 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.[4]

[2] 5 U.S.C. §§ 8101-8193 (1974).

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

[4] *Id.*

In a claim for compensation based on a traumatic injury, the employee must establish fact of injury by submitting proof that he or she actually experienced the employment accident or event in the performance of duty and that such accident or event caused an injury as defined in the Act and its regulations.[5] The Office's regulations define traumatic injury as a wound or other condition of the body caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected.[6] The injury must be caused by a specific event or incident or series of events of incidents within a single workday or shift.[7]

In determining whether an employee sustained an injury in the performance of his duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components considered in conjunction with one another.[8] The first component to be established is that the employee actually experienced the employment incident at the time, place and in the manner alleged. In some cases, this first component can be established by an employee's uncontroverted statement that is consistent with the surrounding facts and circumstances and his subsequent course of action.[9] The second component, whether the employment incident caused a personal injury, generally must be established by medical evidence.[10]

In this case, Dr. Hoffberg stated that appellant was susceptible to injury if improperly transferred from his wheel chair and developed radicular pain on May 11, 1995, but provided no diagnosis of any injury resulting from the incidents. Dr. Ordonez also noted neck pain but thought it mainly related to cervical spondylosis. Dr. Rudin expressed the possibility that the lifting incidents could have precipitated appellant's neck pain, but opined that appellant's ongoing scoliosis and cervical condition perpetuated the symptoms.

None of their reports discussed how the lifting incidents in May 1995 caused a pinched nerve at C4-5 as alleged by appellant.[11] None of their reports stated that appellant was disabled from work because of the neck injury sustained while on travel status. None of their reports

[5] *Gene A. McCracken*, 46 ECAB 593, 596 (1995).

[6] 20 C.F.R. § 10.5(15).

[7] *Richard D. Wray*, 45 ECAB 758, 762 (1994).

[8] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995); *see Elaine Pendleton*, 40 ECAB 1143, 1147 (1989).

[9] *Edgar L. Colley*, 34 ECAB 1691, 1695 (1983).

[10] *John J. Carlone*, 41 ECAB 354, 357 (1989). Every injury does not necessarily cause disability for employment. *Donald Johnson*, 44 ECAB 540. 551 (1993). Whether a particular injury causes disability for employment is a medical issue which must be resolved by competent medical evidence. *Debra A. Kirk-Littleton*, 41 ECAB 703, 706 (1990).

[11] *See O. Paul Gregg*, 46 ECAB 624 (1995) (finding that when an employee claims an injury under the Act, he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident, or exposure occurring at the time, place and in the manner alleged, and that the event, incident, or exposure caused an "injury" as defined by the Act).

specifically attributed appellant's complaints of intermittent shoulder and neck pain to the May 1995 mishandling of his person on airplanes. Thus, the Board finds that appellant has failed to meet his burden of proof in establishing that he sustained an injury caused by the May 1995 incidents.[12]

The October 24, 1996 and December 7, 1995 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
September 2, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

[12] *See Alberta S. Williamson*, 47 ECAB ___ (Docket No. 94-1762, issued May 7, 1996) (finding that appellant failed to submit a rationalized medical report based on a complete factual and medical background explaining why her condition was contracted in the performance of duty).