U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of STANLEY C. WYATT and DEPARTMENT OF THE NAVY, MILITARY SEALIFT COMMAND PACIFIC, Oakland, Calif.

Docket No. 97-1666; Oral Argument Held July 7, 1998; Issued September 22, 1998

Appearances: *Stanley Wyatt, pro se*; *Sheldon G. Turley, Jr., Esq.*, for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

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

The issue is whether appellant sustained a recurrence of disability during the period March 7 to June 29, 1992 causally related to his accepted January 9, 1990 employment injury.

The Board has duly reviewed the case record and finds that the evidence of record does not establish that appellant was entitled to wage-loss compensation benefits for the period March 7 to June 29, 1992.

In the present case, the Office of Workers' Compensation Programs accepted that appellant, a third assistant engineer, sustained a low back strain on January 9, 1990 when he pulled open a valve.[1] Appellant stopped work on January 22, 1990 and was paid appropriate medical and wage-loss benefits. On April 12, 1991 the Office informed appellant that his claim had been placed on the periodic roll for payment of wage-loss benefits, effective April 7, 1991. The Office ceased payment of wage-loss benefits as of March 7, 1992. On May 4, 1993 appellant filed a notice of recurrence of disability alleging that on March 7, 1992 he sustained a recurrence of his back condition such that he was again disabled from work until June 29, 1992. By decision dated November 25, 1996, the Office rejected appellant's recurrence claim on the grounds that the evidence of record did not establish causal relationship between the accepted January 9, 1990 low back injury and the March 7, 1992 recurrence of disability.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation

[1] The record indicates that appellant had sustained a previous employment-related back injury in May 1989 as a result of a slip and fall.

without establishing that the disabling condition has ceased or that it is no longer related to the employment.[2]

The Office terminated payment of appellant's wage-loss compensation benefits on March 7, 1992. The evidence of record establishes that the Office met its burden of proof to terminate payment of disability benefits. The evidence establishes that on November 18, 1991 appellant was examined by a physician in a Department of Veterans Affairs orthopedic clinic.[3] This physician noted that appellant had no present complaints of back pain and that physical examination indicated that appellant's low back strain had resolved. The physician also noted that appellant was obese and that appellant desired a note to give him a month off work so that he could finish a weight loss program. The physician concluded by noting that appellant was fit to return to work as of December 18, 1991 and that appellant had been counseled to participate in a weight loss program.

On January 14, 1992 appellant's employing establishment requested that Dr. Glenn Stettin, Board-certified in internal medicine, evaluate appellant's back condition as appellant could be placed in isolated sea duty for long periods of time. Dr. Stettin reported appellant's medical history relating to his back condition and then indicated that in February 1991 appellant had begun physical therapy and a weight loss program with eventual resolution of his symptoms and a 50-pound weight loss. Dr. Stettin stated that appellant was last seen by the orthopedic clinic on November 18, 1991 and that he was found to be fit to return to work as of December 18, 1991.

The record indicates that appellant was seen at the Department of Veterans Affairs medical clinic on February 6 and 19, 1992 for hypertension. The medical records do not indicate appellant was evaluated for back complaints. On February 6, 1992 the progress report indicated that appellant was not fit for duty with blood pressure of 140/100. This notation also indicated that appellant had related that his private medical doctor had restricted his performance of heavy lifting. It was thereafter noted that appellant would be referred back to his private physician. On February 19, 1992 appellant was again seen at the clinic for hypertension and the notation indicated that appellant was referred to his private physician for control of blood pressure and thyroid. A February 20, 1992 notation indicates that appellant had been referred to his private physician for treatment of hypertension and that appellant would be placed on sick leave from February 21 until March 6, 1992. These February 1992 progress notes do not indicate that appellant was evaluated for back complaints. Appellant advised the Office, by telephone call on March 3, 1992 that he had returned to work.

As the medical evidence of record established that appellant's accepted back condition ceased to disable him from work as of December 19, 1991 and as appellant advised the Office on March 3, 1992 that he had returned to work, the Office met its burden of proof to remove appellant from the periodic rolls effective March 7, 1992.

[2] *Patricia A. Keller*, 45 ECAB 278 (1993).

[3] The physician's signature is illegible.

The Board has held that as compensation benefits constitute a property interest that are protected by the due process clause, reduction of benefits prior to the issuance of a notice of proposed reduction of compensation defeats the purpose of the Office's procedures that provide for notice before reduction of benefits since "the claimant must be provided with written evidence or argument to support entitlement to continued compensation."[4] Due process principles are intended to protect a claimant's property interest in continued receipt of wage loss benefits if the Office takes unilateral action to reduce or terminate compensation. Thus, the Office's procedures provide several exceptions to the Office's requirement for notice before the termination of monetary compensation including when the claimant has died, returned to work or failed to report employment earnings.[5] In the typical case, where a claimant has returned to work with no loss of wages, the claimant has no continued property interest in receipt of wage-loss compensation. The Office, however, does have an interest to prevent an overpayment of compensation. The Office, therefore, may terminate compensation benefits after being advised that the claimant has returned to work, without any prior notice of termination of compensation.[6]

In the present case, appellant advised the Office on May 20, 1992 by telephone call that he had not returned to work and that his compensation benefits should be reinstated. On May 4, 1993 appellant filed a notice of recurrence of disability alleging that on March 7, 1992 he had sustained a recurrence of disability causally related to his November 19, 1990 employment injury.

An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability, for which he claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.[7]

The medical evidence appellant submitted in support of his recurrence indicates that on March 5, 1992 appellant was seen for borderline hypertension. A notation also indicates appellant was able to work full time, but with no heavy lifting. This March 5, 1992 form report, however, was not signed by a physician and is, therefore, of no probative value.[8] On April 26, 1992 appellant was seen by Dr. C.H. Braddock, Board-certified in internal medicine, who noted that appellant had a history of hypertension and prior back problems. Dr. Braddock stated that

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[4] *Felix Voyles*, 46 ECAB 895 (1995).

[5] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.6(1)-(5) (August 1995).

[6] *Supra* note 4.

[7] *Dennis J. Lasanen*, 43 ECAB 549 (1992).

[8] *Merton J. Sills*, 39 ECAB 572 (1988). The Board has explained that a medical report only constitutes probative medical evidence if the person completing the report qualifies as "physician" as defined by 5 U.S.C. § 8101(2), an unsigned report lacks proper identification and can not be considered as probative evidence.

appellant's current diagnosis was borderline hypertension. Dr. Braddock concluded that appellant was fit for duty. Appellant was then seen by Dr. Judy Silverman on June 16, 1992. Dr. Silverman indicated that appellant had a history of low back strain and degenerative joint disease, with a questionable herniated disc. Dr. Silverman opined that there was no evidence on examination of a herniated disc, that appellant did not require pain medication and that appellant was able to return to full duty.

A recurrence of disability is defined as spontaneous material change in the medical condition, which resulted from a previous injury without an intervening injury, which again causes disability.[9] Appellant did not meet his burden of proof in this case as he did not submit any probative medical evidence to establish that he had a spontaneous material change in his accepted back condition, which disabled him from work during the period March 7 to June 29, 1992.

The decision of the Office of Workers' Compensation Programs dated November 25, 1996 is hereby affirmed.

Dated, Washington, D.C.
September 22, 1998

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[9] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b) (January 1995).