U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANTHONY EILAND and DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Cleveland, Ohio

Docket No. 97-1055; Submitted on the Record;
Issued January 20, 1999

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issues are: (1) whether appellant has established entitlement to further wage-loss compensation for intermittent periods between May 18, 1995 and September 24, 1996; and (2) whether appellant has established that he sustained a recurrence of disability causally related to his accepted May 18, 1995 employment injury.

The Board has duly reviewed the record and concludes that appellant has not met his burden of proof in this case.

On May 26, 1995 appellant, then a 36-year-old housekeeping aid, filed a claim for compensation, alleging that on May 18, 1995 he injured his head and neck as a result of a fall at work. In a June 2, 1995 medical report, appellant's treating physician stated that appellant sustained a cervical strain and contusion at work on May 18, 1995, and that he was unable to work from May 31 to June 11, 1995. In medical reports dated June 20, July 19 and August 16, 1995, appellant's treating physicians noted that he was unable to work from June 2 to June 20, 1995, on July 19, 1995, and from August 3 to August 16, 1995.

On August 18, 1995 the Office of Workers' Compensation Programs advised appellant that it had accepted his claim as a result of a fall on May 18, 1995 for cervical strain and that continuation of pay was authorized only for time lost from work as a result of scheduled medical appointments. The Office advised appellant that his doctor needed to explain appellant's intermittent periods of total disability from work.

On September 24, 1996 appellant filed a claim for intermittent wage loss for 67 days from May 18, 1995 to September 24, 1996. On that same day, appellant filed a notice of recurrence of disability alleging back pain as a result of the accepted injury.

In a letter dated November 8, 1996, the Office informed appellant of the definition of a recurrence of disability and requested that appellant supply factual information surrounding his

claimed recurrence of disability and a rationalized medical report from his physician relating how his present condition was causally related to the May 18, 1995 accepted injury. The Office also notified appellant that his accepted injury was for cervical strain and that his claim for a recurrence of disability based on back pain was not supported by the evidence of record, nor did the medical evidence support total disability to June 21, 1995.

By decision dated December 9, 1996, the Office denied that appellant's claim for intermittent disability and recurrence of disability were causally related to his accepted employment injury.

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his or her claim[2] including the fact that the individual is an "employee of the United States" within the meaning of the Act,[3] that the claim was timely filed within the applicable time limitation period of the Act,[4] 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.[5]

Establishing whether an injury, traumatic or occupational, was sustained in the performance of duty as alleged, *i.e.*, "fact of injury," and establishing whether there is a causal relationship between the injury and any disability and/or specific condition for which compensation is claimed, *i.e.*, "causal relationship," are distinct elements of a compensation claim. While the issue of "causal relationship" cannot be established until "fact of injury" is established, acceptance of fact of injury is not contingent upon an employee proving a causal relationship between the injury and any disability and/or specific condition for which compensation is claimed. An employee may establish that an injury occurred in the performance of duty as alleged but fail to establish that his or her disability and/or a specific condition for which compensation is claimed are causally related to the injury.[6]

In the present case, the Office accepted appellant's claim for cervical strain. However, the Office notified appellant that it would provide compensation for scheduled medical appointments but that he would need to provide medical evidence to support his claim for additional wage loss. Appellant did not support his claim with medical evidence which would have supported his claim that his time lost from work was causally related to his work-related injury.

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[1] 5 U.S.C. §§ 8101-8193.

[2] *See Daniel R. Hickman*, 34 ECAB 1220 (1983).

[3] *James A. Lynch*, 32 ECAB 216(1980).

[4] 5 U.S.C. § 8122.

[5] *See supra* note 2.

[6] As used in the Act, the term "disability" means incapacity because of an injury in employment to earn wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity; *see Frazier V. Nichol*, 37 ECAB 528 (1986).

In multiple medical reports submitted from June 20, 1995 to June 18, 1996, appellant's treating physicians noted intermittent total disability based on appellant's cervical strain. However, none of these reports provided a rationalized medical opinion explaining why appellant's cervical strain resulted in his being totally disabled from work.

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 disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.[7]

In support of his notice of recurrence of disability, appellant submitted multiple medical reports which indicated that he had been treated for his claimed neck condition. However, none of the medical reports of record support, with any rationalized medical opinion, any causal relationship between appellant's neck condition and the accepted injury. Appellant's treating physician, Dr. Daniel Tinman, a general practitioner, noted in a June 16, 1995 report a lack of specific medical findings and no medical reason to justify total absence from work. In a June 16, 1995 medical report, Dr. Douglas Flagg, Board-certified in internal medicine, stated that he could find no objective evidence for appellant's underlying pathology to explain his symptoms. He also ruled out further diagnostic testing. In an October 10, 1995 medical report, Dr. Michael D. Eppig, Board-certified in internal medicine, stated that he could find no evidence of an anatomic injury and that appellant's x-rays were entirely normal. He noted further that a diagnosis of cervical sprain was appropriate but that there was no specific disability as a result of his injury.

In multiple medical reports, Dr. Mark A. Roth, appellant's treating physician and Board-certified in internal medicine, stated that appellant's medical condition after May 18, 1995 was causally related to the work-related injury of that date and that appellant had been asymptomatic prior to the injury. The Board has held that an award of compensation may not be based on surmise, conjecture or speculation or upon appellant's belief that there is a causal relationship between his condition and his employment.[8] The Board has previously held that the opinion of a physician that a condition is causally related to an employment injury because the employee was asymptomatic before the employment injury was insufficient, without supporting medical rationale, to establish causal relationship.[9] Without medical rationale supporting causal relationship, Dr. Roth's opinion is merely surmise and conjecture.

The medical evidence of record therefore does not support, with rationalized medical evidence, a finding that appellant sustained a recurrence of disability based on the accepted injury.

[7] *Lourdes Davila*, 45 ECAB 139 (1993).

[8] *William S. Wright*, 45 ECAB 498 (1994).

[9] *Thomas D. Petrylak*, 39 ECAB 276 (1987).

The decision of the Office of Workers' Compensation Programs dated December 9, 1996 is hereby affirmed.

Dated, Washington, D.C.
January 20, 1999

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member