U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CALVIN L. LOVETT and U.S. POSTAL SERVICE,
POST OFFICE, Fort Worth, Tex.

Docket No. 98-462; Submitted on the Record;
Issued July 12, 1999

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant's condition or disability after August 15, 1991 was causally related to his June 14, 1991 employment injury.

On the prior appeal of this case,[1] the Board found that the Office of Workers' Compensation Programs had sufficient medical evidence to support the termination of appellant's compensation benefits as of August 15, 1991. Noting that the burden of proof shifted back to appellant to support his claim of continuing disability with probative medical evidence, the Board further found that the reports of Dr. R.J. West, appellant's orthopedic surgeon, were sufficient to require further development of appellant's claim. The facts of this case as set forth in the Board's prior decision are hereby incorporated by reference.

Upon return of the case, the Office obtained an opinion from Dr. Farooq I. Selod, a Board-certified orthopedic surgeon, who concluded that appellant could have had lower back pain keeping him from resuming his normal activities for approximately six months, or through December 31, 1991. The Office found that this created a conflict in medical opinion with Dr. West and referred appellant, together with the case record and a statement of accepted facts, to Dr. Javier Arena, a Board-certified orthopedic surgeon, to resolve the matter.[2]

In a report dated May 22, 1996, Dr. Arena related appellant's history of injury, complaints and symptoms. He described his findings on physical examination, diagnosed low back syndrome and commented as follows:

> "The patient's physical examination is absolutely normal. I find no objective findings to correlate with his symptoms. Furthermore, there is a strong tendency

---

[1] Docket No. 93-2038 (issued February 13, 1995).

[2] *See* 5 U.S.C. § 8123(a).

> of the patient to exaggerate symptoms. Some of the tests performed to detect individuals who are faking are strongly positive. [Appellant] has undergone an electromyogram, a [magnetic resonance imaging scan] of the lumbosacral spine, and a bone scan, which are basically normal. This goes along with the physical findings. I find no reason why [appellant] should not return to work in his regular occupation. He has been instructed on ancillary measures using the treatment of similar conditions. At present, I find no evidence of disability."

In a supplemental report dated June 26, 1996, Dr. Arena stated that it was difficult to determine the time that appellant returned to a preexisting injury condition; however, most back injuries take anywhere between two to four months for the individual to recover enough to return to work. Dr. Arena reported that during his examination of appellant on May 21, 1995, he found no residuals from the lumbar strain injury of June 24, 1991. He stated that he felt that it would have been reasonable for appellant to return to work six months later, "to give him the benefit of the doubt."

In a decision dated July 23, 1996, the Office denied appellant's claim on the grounds that the weight of the medical evidence established that appellant's June 14, 1991 employment injury resolved no later than December 31, 1991. In a decision dated September 18, 1997, the Office affirmed the denial of appellant's claim.

The Board finds that this case is not in posture for a determination of whether appellant's condition or disability after August 15, 1991 was causally related to his June 14, 1991 employment injury.

The Office found that the weight of the medical evidence rested with the opinion of Dr. Arena, the impartial medical specialist selected to resolve the conflict between appellant's attending physician, Dr. West, and the Office referral physician, Dr. Selod. The Board finds, however, that Dr. Arena's opinion is of limited probative value because it lacks sufficient rationale to establish that residuals of appellant's employment injury resolved within six months. Dr. Arena based his opinion solely on the general observation that most back injuries take anywhere between two to four months for the individual to recover enough to return to work. A general observation of average healing times is not determinative of whether residuals in appellant's specific case ceased by December 31, 1991.[3] Dr. Arena offered no analysis of the medical record. He failed to

[3] *See Patrick P. Curren*, 47 ECAB 247 (1995) (finding a medical opinion based on average healing time to be of limited probative value). *Cf. Gaetan F. Valenza*, 35 ECAB 763 (1984); *Kenneth S. Vansick*, 31 ECAB 1132 (1980) (newspaper clippings, medical texts, and excerpts from publications are of no evidentiary value in establishing the necessary causal relationship as they are of general application and are not determinative of whether the specific condition claimed was causally related to the particular employment injury involved).

review appellant's medical history around or after December 31, 1991 and he pointed to no clinical findings or other evidence that would support that residuals had ceased. Further, the Board notes that the issue in this case is not limited to the accepted lumbar strain. In its prior decision, the Board noted that Dr. West had obtained a bone scan on May 1, 1992 that revealed positive findings for a lumbar disc or possible fracture at L4, which conditions he attributed to the employment injury. The Board found this evidence sufficiently probative to require further development. The issue, therefore, is not simply whether residuals of the accepted lumbar strain resolved by December 31, 1991 but, more broadly, whether appellant's diagnosed condition or disability after December 31, 1991 is causally related to the incident that occurred at work on June 14, 1991.

When the Office secures an opinion from an impartial medical specialist for the purpose of resolving a conflict in the medical evidence and the opinion from the specialist requires clarification or elaboration, the Office has the responsibility to secure a supplemental report from the specialist for the purpose of correcting a defect in the original report. When the impartial medical specialist's statement of clarification or elaboration is not forthcoming or if the specialist is unable to clarify or elaborate on the original report or if the specialist's supplemental report is also vague, speculative, or lacks rationale, the Office must submit the case record together with a detailed statement of accepted facts to a second impartial specialist for a rationalized medical opinion on the issue in question.[4] Unless this procedure is carried out by the Office, the intent of section 8123(a) of the Federal Employees' Compensation Act[5] will be circumvented when the impartial specialist's medical report is insufficient to resolve the conflict of medical evidence.[6]

As the Office has already once sought clarification from Dr. Arena, and as his opinion is of limited probative value to resolve the conflict, the Office shall obtain a well-reasoned opinion from a second impartial medical specialist. After such further development of the evidence as may be necessary, the Office shall issue an appropriate final decision on appellant's entitlement to compensation benefits.

[4] *See Nathan L. Harrell*, 41 ECAB 402 (1990).

[5] 5 U.S.C. § 8123(a) provides the following: "An employee shall submit to examination by a medical officer of the United States, or by a physician designated or approved by the Secretary of Labor, after the injury and as frequently and at the times and places as may be reasonably required. The employee may have a physician designated and paid by him present to participate in the examination. If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."

[6] *Harold Travis*, 30 ECAB 1071 (1979).

The September 18, 1997 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Dated, Washington, D.C.
July 12, 1999

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member