U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CLARENCE E. SOLTAU, JR. and U.S. POSTAL SERVICE, POST OFFICE, Lacey, WA

Docket No. 99-1394; Submitted on the Record;
Issued August 21, 2000

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS, MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation on the grounds that he had no continuing disability from the accepted work injury.

On May 29, 1996 appellant, then a 40-year-old distribution clerk, filed a claim for occupational disease, alleging that heavy and repetitious type work caused a rotator cuff tear and cervical radiculopathy.

In a medical report dated July 1, 1996, Dr. Daniel T. Conrad, appellant treating physician and Board-certified in family practice, stated: "I think the distinct factors of his federal employment were his heavy-duty lifting, pushing and pulling of carts and postal material, which contributed to the medical problem that he now has. On a more-probable-than-not basis, I think his employment was a causal factor in his cervical radiculopathy.

On August 20, 1996 the Office accepted appellant's claim for an episode of cervical neuritis.

On August 29, 1996 the Office medical adviser recommended against authorizing surgery for appellant's condition of degenerative disc disease, which he considered as a preexisting medical condition. On the same day the Office denied appellant's request for surgery.

In a November 20, 1996 medical report, Dr. John H. Aberle, a second opinion consultant and Board-certified in orthopedic surgery, noted that appellant's condition of disc narrowing, degenerative changes and osteophyte formation observed on the radiographs and magnetic resonance imaging (MRI) scan were "naturally or spontaneously occurring conditions which themselves are not related to his work activities."

On September 10, 1996 Dr. John F. Howe, Board-certified in neurological surgery, performed a left surgical radiculopathy on appellant.

In a supplemental medical report dated January 9, 1997, Dr. Aberle noted some objective findings sufficient to warrant surgery but did not categorically find that appellant's surgery was related to his work-related injury.

On January 11, 1997 Dr. Henry A. Tanz, appellant's treating physician and Board-certified in orthopedic surgery, requested authorization for a left shoulder surgery and opined that appellant's "symptoms are consistent with left shoulder impingement and arthritis, more likely than not related to his on-the-job exposure.

The Office medical adviser recommended against further surgery on the grounds that the condition which is subject to the surgery, left shoulder, was not an accepted injury.

On February 20, 1997 Dr. Tanz performed a left shoulder acromioclavicular excision and removal of calcific deposit left supraspinatus tendon.

In a medical report dated June 11, 1997, Dr. Richard G. McCullum, Board-certified in orthopedic surgery and a second opinion physician, stated that upon examination and review of appellant's medical records appellant's cervical degenerative arthritis and left shoulder acromioclavicular arthritis were not work related. In a supplemental medical report dated June 25, 1997, Dr. McCullum stated that appellant's shoulder condition was not related to the work-related injury.

On September 17, 1999 the Office referred appellant to Dr. Larry Brinkman, Board-certified in orthopedic surgery and an impartial medical specialist, for an opinion regarding a conflict in medical opinion between appellant's treating physicians, Drs. Conrad and Tanz, with Dr. McCullum.

In a medical report dated October 7, 1997, Dr. Brinkman stated that appellant had multiple level degenerative disc disease of the cervical spine primarily at C5-6, which is the result of naturally occurring progressive degenerative disc disease only temporarily aggravated by employment, a preexisting degenerative arthritis of the left acromioclavicular joint, causing left shoulder bursitis and impingement and possible left sided carpal tunnel syndrome unrelated to the work-related injury but possibly causing shoulder pain. He noted that there was no medical literature linking appellant's neck arthritis to lifting and throwing mailbags as required in his employment. Dr. Brinkman found that any aggravation of appellant's condition ceased when he stopped work.

On March 20, 1998 the Office proposed termination of appellant's compensation on the grounds that the medical evidence established that he no longer had residuals of his work-related injury. By decision dated April 27, 1998, the Office terminated appellant's compensation.

On May 4, 1998 appellant requested an oral hearing. A hearing was held on November 18, 1998 and a medical report from Dr. William Thieme, Board-certified in orthopedic surgery, was submitted. Dr. Thieme stated that based on his examination of appellant

he found: status post cervical fusion C5-6 and probable solid fusion a 6-7, left shoulder acromioplasty, distal clavicular resection for impingement symptoms and degenerative arthritis with residual weakness and pain. He then noted that appellant's preexisting conditions were aggravated by his employment.

In a decision issued and finalized on January 21, 1999, the hearing representative affirmed the Office's April 27, 1998 decision terminating benefits.

The Board finds that appellant has no disabling residuals of the accepted work injury and that, therefore, the Office properly terminated appellant's compensation.

Under the Federal Employees' Compensation Act,[1] when employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for the periods of disability related to the aggravation.[2] When the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation has ceased,[3] even if the employee is medically disqualified to continue employment because of the effect work factors may have on the underlying condition.[4]

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened to order to justify termination or modification of compensation benefits.[5] After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.[6] Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.[7] To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.[8]

In situations were there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.[9]

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[1] 5 U.S.C. §§ 8101-8193.

[2] *Richard T. DeVito*, 39 ECAB 668, 673 (1988); *Leroy R. Rupp*, 34 ECAB 427, 430 (1982).

[3] *Ann E. Kernander*, 37 ECAB 305, 310 (1986); *James L. Hearn*, 29 ECAB 278, 287 (1978).

[4] *John Watkins*, 47 ECAB 597 (1996); *Marion Thornton*, 46 ECAB 899, 906 (1995).

[5] *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

[6] *Id.*

[7] *Furman G. Peake*, 41 ECAB 361, 364 (1990).

[8] *Id.*

[9] *Nathan L. Harrell*, 41 ECAB 401, 407 (1990).

In assessing medical evidence, the number of physicians supporting one position or another is not controlling; the weight of such evidence is determined by its reliability, its probative value and its convincing quality. The factors that comprise the evaluation of medical evidence include the opportunity for, and the thoroughness of, physical examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[10] In cases where the Office has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[11]

In this case, the Office accepted appellant's claim for an episode of cervical neuritis. The Office subsequently denied appellant's treating physician's requests for surgeries and referred appellant and the case file to a Dr. McCullum for a second opinion. He found that appellant's neck and left shoulder condition was not work related and that his cervical spine condition was temporarily aggravated by work. Thus, Dr. McCullum's opinion conflicted with that of appellant's treating physician and the Office referred appellant for an impartial medical examination to Dr. Brinkman.

In an October 7, 1997 medical report, Dr. Brinkman stated that he had examined appellant's musculoskeletal system of the cervical and thoracic spine and upper shoulders which he determined to be unremarkable. Dr. Brinkman noted cervical muscle spasm and recurrent tenderness in the dorsal spine but had exaggerated responses to light touch palpitation, he noted that it was impossible to conduct range of motion on his shoulders because appellant would become "rigid and virtually not allow any motion in internal or external rotation or abduction beyond the 90 degrees position which he could hold for an extended period of time." His tendon reflexes were unremarkable, had a positive Tinel's sign and marked exaggerated response to palpitation of the ulnar nerve to the cubital tunnel. Dr. Brinkman also stated that appellant's muscle testing was not valid because appellant frequently "gave way." He noted a familiarity with appellant's x-rays including MRIs of the shoulder, cervical and lumbar spine, which he read revealing collapse of the C5-6 disc space and encroachment at C5-6 bilaterally. Dr. Brinkman found that appellant had a degenerative disc disease of the cervical spine, degenerative arthritis, impingement syndrome and calcific bursitis of the left shoulder as well as possible carpal tunnel syndrome. He noted that the degenerative disc disease of the cervical spine and calcific bursitis of the left shoulder were only temporarily aggravated by appellant's employment which was established by the lessening of the symptoms when appellant was not at work. Dr. Brinkman added that the kind of activity that appellant engaged in as a mailhandler would not cause arthritis. In summary he stated that appellant "had preexisting cervical degenerative arthritis and preexisting left shoulder acromioclavicular arthritis which were temporarily aggravated by the injury, but that aggravation ceased when [appellant] stopped doing work-related activity that was causing the aggravation without any permanent residual."

[10] *Connie Johns*, 44 ECAB 560, 570 (1993).

[11] *Gary R. Sieber*, 46 ECAB 215, 223 (1994).

The Board finds that the weight of the medical opinion is represented by Dr. Brinkman's opinion as the impartial medical examiner. Dr. Brinkman stated that he had reviewed Drs. Conrad's and Tanz' reports, noting that both doctors stated that appellant had a naturally progressive condition which they also attempted to attribute to his employment.

Given Dr. Brinkman's thorough physical examination of appellant, his review of the medical and factual evidence and his status as an impartial medical examiner, his report represents the weight of the medical evidence and establishes that appellant had no objective evidence of any residuals of the accepted work injury. Therefore, the Office properly terminated appellant's compensation.

The decisions of the Office of Workers' Compensation Programs dated January 21, 1999 and April 27, 1998 are affirmed.

Dated, Washington, D.C.
August 21, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member