U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONALD S. STAPLES and U.S. POSTAL SERVICE,
POST OFFICE, Minneapolis, MN

Docket No. 98-2371; Submitted on the Record;
Issued May 12, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant sustained a recurrence of disability on September 18, 1996 that was causally related to his September 10, 1992 employment injury.

In a decision dated November 14, 1997, a hearing representative of the Office of Workers' Compensation Programs found that appellant's condition and disability on and after September 18, 1996 were causally related to his bowling activities and not to his employment injury of September 10, 1992. The facts of this case are well set forth in the hearing representative's decision and are hereby incorporated by reference.

The Board finds that appellant did not sustain a recurrence of disability on September 18, 1996 that was causally related to his September 10, 1992 employment injury.

It is an accepted principle of workers' compensation law that, when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause which is attributable to the employee's own intentional conduct. As is noted by Larson in his treatise on workers' compensation, once the work-connected character of any injury has been established, the subsequent progression of that condition remains compensable so long as the worsening is not shown to have been produced by an independent nonindustrial cause and so long as it is clear that the real operative factor is the progression of the compensable injury, associated with an exertion that in itself would not be unreasonable under the circumstances. A different question is presented, of course, when the triggering activity is itself rash in light of the claimant's knowledge of his condition.[1]

[1] *See generally* 1 A. Larson, *The Law of Workmen's Compensation* § 13.00 (1993).

In the case of *John R. Knox*,[2] the claimant sustained a left knee injury in the performance of duty, which the Office accepted for medial collateral ligament sprain. He reinjured his left knee playing basketball. The Board affirmed the rejection of his claim for a recurrence of disability, noting that the triggering episode for the reinjury was the exertion that the claimant placed on his knee during a basketball game. Given the circumstances of the later injury, the Board held, the claimant's disability was not the result of the natural consequences or progression of his employment injury; rather, the basketball injury constituted an independent intervening cause attributable to the claimant's own intentional conduct. The Board found that given the claimant's knowledge of his left knee condition, playing basketball was not a reasonable activity.

In the present case, appellant sustained an injury while in the performance of his duties when he lifted a tub of flats on September 10, 1992. He stopped work that day. The Office accepted his claim for lumbar strain and a bulging disc at the L4-5 level. Appellant received compensation for temporary total disability through December 7, 1992. He returned to work but sustained a recurrence of disability on April 10 and September 27, 1993. As appellant would later explain, his back got better to a point, but he never recovered completely from his employment injury. He still had a ruptured disc. Although he wore a back brace and did exercises, he just lived with the pain. Appellant took medication on a daily basis in order to perform his duties at the employing establishment.

It is in this context that appellant reinjured his back while bowling on September 18, 1996. As appellant described it, "The way I reinjured my back was that I had joined a bowling league which I know now was a bad decision." Appellant thought that because it had been over two years since he had any real problems with his back that bowling in a league would be alright, but, he acknowledged "now I know better." He filed a claim for a recurrence of disability on September 18, 1996 that was causally related to his September 10, 1992 employment injury. The Office denied this claim on November 25, 1996. The hearing representative's decision on November 14, 1997 followed.

Consistent with its holding in the case of *John R. Knox*, the Board finds in the present case that appellant's disability beginning September 18, 1996 was not the result of the natural consequences or progression of his employment-related low back injury; rather, his bowling activities constituted an independent intervening cause attributable to appellant's own intentional conduct. Given appellant's knowledge of the nature of his low back condition, particularly his awareness that he still suffered from a bulging intervertebral disc, a condition that caused him continuing pain and for which he took medication on a daily basis in order to perform his duties, the Board finds that appellant acted unreasonably in deciding to join a bowling league. Because

[2] 42 ECAB 193 (1990).

his bowling activities legally broke the chain of causation to the September 10, 1992 employment injury, appellant's low back condition is no longer compensable.[3]

The November 14, 1997 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
May 12, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

[3] On appeal, appellant argues that the Office's acceptance of a recurrence of disability beginning September 27, 1993, a recurrence occasioned by the lifting of firewood, militates in favor of accepting the recurrence occasioned by his bowling. The test in such cases is whether the triggering activity is reasonable under the circumstances. This is a legal question, not a medical one. Without ruling on the firewood incident, the Board notes only that the Office's acceptance of such a recurrence is not necessarily inconsistent with the denial of appellant's current claim. The lifting of firewood may not have been unreasonable under the circumstances.