U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN B. SOLTIS and U.S. OFFICE OF PERSONNEL MANAGEMENT, BOYERS, PA

Docket No. 99-2290; Submitted on the Record;
Issued November 6, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
VALERIE D. EVANS-HARRELL

The issue is whether appellant has met his burden of proof to establish that he sustained a recurrence of disability on November 9, 1997, causally related to his accepted May 9, 1991 employment injury, such that he had to decrease his light-duty work hours from full time to part time.

In this case, the Office of Workers' Compensation Programs accepted that on May 9, 1991, appellant, then a 37-year-old personnel investigator, sustained cervical, dorsal and lumbar sprains, post-concussion syndrome, memory impairment, organic mood disorder and depression as a result of an employment-related motor vehicle accident. Appellant was off work from May 9 through June 6, 1991. He returned to work June 7, 1991, but missed intermittent periods from work through March 22, 1992. Appellant worked steadily from March 26, 1992 to December 1, 1992, when he suffered a recurrence of disability and stopped work. On April 21, 1997 appellant returned to full-time light duty in a different position and at a lower grade level than he held at the time of injury. Effective November 9, 1997, appellant reduced his work schedule to 24 hours a week, stating that he was medically unable to continue working full time. By decision dated July 31, 1998, the Office denied appellant's claim for a recurrence of disability on the grounds that the medical evidence did not establish a causal relationship between appellant's need for a reduced work schedule and his accepted employment injuries. By letter dated August 20, 1998, appellant requested an oral hearing, which was held on February 8, 1999. In a decision dated April 21, 1999, an Office hearing representative affirmed the Office's prior decision.[1]

[1] The Office hearing representative additionally affirmed a December 2, 1997 preliminary overpayment decision, which found that appellant had been overpaid $7,852.72 for the period April 21 through September 13, 1997. The Office hearing representative noted that at the hearing, appellant, who was represented by counsel, stated that he no longer contested the overpayment decision and agreed to pay back the overpaid amount at a rate of $300.00 a month. The Board notes that while the issue of overpayment is within the jurisdiction of the Board, appellant, who is represented by counsel on appeal, specifically appealed only the Office's denial of appellant's claim for recurrence of disability.

The Board has duly reviewed the entire case record on appeal and finds that this case is not in posture for decision.

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.[2] Furthermore, appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between his recurrence of disability and his accepted employment injury.[3] This burden includes the necessity of furnishing 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 employment factors and supports that conclusion with sound medical reasoning.[4]

Appellant has submitted medical evidence in an attempt to establish a 1997 change in the nature and extent of his injury-related condition. In an October 10, 1997 report, entitled "Doctor's Statement on Reasonable Accommodation," Dr. Randon Simmons, a treating Board-certified psychiatrist, noted appellant's history of injury and his clinical findings and stated that appellant had Axis I conditions of mood disorder due to post-concussive encephalopathy with major depressive like features and cognitive disorder secondary to post-concussive encephalopathy. Dr. Simmons further stated:

> "Decreased concentration and impaired short-term memory results in difficulty with sustained tasks. Mood disorder reacts to environmental stressors, including work environment. Sleep disorder results in daytime fatigue. Irritability resulting from mood disorder and sleep deprivation results in conflicts with coworkers and family. Accommodations should include reduced responsibility tasks, which do not require sustained effort or which do allow for frequent breaks. Work environment should allow for frequent breaks from routine. Mood disorder responds to circadian (day-night) cycle; work environment should allow for exposure to daylight and should not involve rotating shifts or night shifts. Reduced day or part-time work may be necessary."

[2] *Terry R. Hedman*, 38 ECAB 222 (1986).

[3] *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

[4] *See Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

In a January 2, 1998 addendum to his October 10, 1997 report, Dr. Simmons stated that he understood that the wording of his original report was not precise enough to convey the actual intent of his report and amended the final paragraph of the report to state:

> "Attempts at accommodations referenced previously were not sufficient to relieve the depression and sleep disorder. A reduced workday or part-time work is necessary."

In response to an Office request for additional explanation, appellant's counsel asked Dr. Simmons to further clarify his reasons for the change in his original statement of reasonable accommodation. In a letter dated February 16, 1999, Dr. Simmons stated, in pertinent part:

"I was asked to edit the original statement in order to make my intent clearer. The initial statement 'may be necessary' was intended to mean that, if the other accommodations by themselves were not sufficient, part-time work would be necessary. As it turned out, the other accommodations were not sufficient alone and part-time work was recommended. There was no change in intent or recommendations between the two reports, only an attempt to be more clear in the wording."

In a letter dated June 15, 1998, Dr. Robert L. Eisler, a treating Board-certified psychiatrist who first saw appellant on February 10, 1998, also offered an explanation for the reduction in appellant's work hours, stating:

> "The symptoms have been somewhat stable since his first visit with me, but at the level of his brain dysfunction this would be expected and his abilities are seriously impaired especially in any full-time situation. Just prior to my involvement with this patient and while he was under the care of Dr. Simmons, his psychiatrist in Butler, PA, there seems to have been a significant worsening of this patient's condition requiring adjustments in treatment and work conditions. Since coming to my office both he and his wife do report increased fatigue and I have noted increased agitation which I believe is part of his organic mood disorder and, therefore, due to the original accident. Also the environment in which he works is not conducive to mood stabilization or decreased stress…. The serious nature of this patient's organic mood disorder and results of his [traumatic brain injury] and limited energy preclude full-time work."

While the reports by Drs. Simmons and Eisler raise an uncontroverted inference of causal relationship between appellant's 1997 recurrence of disability and his accepted employment injury and are sufficient to require further development of the case record by the Office.[5]

On remand, the Office should further develop the medical evidence by referring appellant and a statement of accepted facts to an appropriate Board-certified specialist for a rationalized medical opinion on the issue of whether appellant's employment-related conditions worsened to the extent that he could no longer perform his light-duty job, full time, beginning in

[5] S*ee John J. Carlone*, 41 ECAB 354 (1989).

November 1997. After such development of the case record as the Office deems necessary, the Office should issue an appropriate decision.

The decision of the Office of Workers' Compensation Programs dated April 21, 1999 is set aside in part and the case is remanded for further proceedings consistent with this decision.

Dated, Washington, DC
November 6, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Valerie D. Evans-Harrell
Alternate Member