U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GEORGE E. SAUNDERS and U.S. POSTAL SERVICE,
POST OFFICE, Flat River, MO

Docket No. 99-1304; Submitted on the Record;
Issued September 26, 2000

DECISION and ORDER

Before DAVID S. GERSON, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether appellant is entitled to a schedule award for permanent impairment of his right and left lower extremities.

On March 26, 1987 appellant, then a 43-year-old custodian, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that, on March 12, 1987, while he was lifting mail, he sustained pains in his lower back. He stopped work on March 13, 1987. This case was accepted for herniated disc at L5-S1 and appellant received compensation for wage loss and medical benefits.

On April 15, 1997 the Office of Workers' Compensation Programs issued a notice of proposed termination of compensation for wage loss and medical benefits because the medical evidence established that there was no continuing disability from the accepted work-related condition of herniated disc at L5-S1. Dr. Thomas F. Satterly, Jr., appellant's treating physician, stated that appellant was totally disabled due to low back pain. Dr. Brian E. Healy, a Board-certified orthopedic surgeon, to whom appellant was referred for a second opinion, stated in his medical report dated May 18, 1994 that appellant had suffered a work-related lumbar strain that had resolved and that he was capable of returning to regular duty as a custodian. As a conflict existed, the Office referred appellant to Dr. Jerome C. Piontek, a Board-certified orthopedic surgeon, who concluded that appellant sustained a low back strain on the date of injury and that the strain had resolved. Dr. Piontek further opined that appellant's mild degenerative disc disease would have reached the degree found on the date of the examination absent a work injury.

In response to the proposed termination, appellant submitted, *inter alia*, a medical report dated May 13, 1997 by Dr. Satterly, who reiterated his belief that appellant was still totally disabled as a result of his work injuries.

By decision dated July 18, 1997, appellant's medical and wage-loss benefits were terminated, effective August 17, 1997, as the Office found that "the current medical evidence demonstrated that the accepted injury had resolved."

On March 25, 1998 appellant filed a claim for a schedule award and submitted a medical report dated March 2, 1998 by Dr. Griffith C. Miller, a family practitioner, who he found that appellant was permanently and totally disabled. Utilizing the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, he determined that appellant had a 30.25 percent impairment to the left lower extremity due to radiculopathy from his spinal nerve root injuries on the left side, and a 15.42 percent impairment of the right lower extremity due to spinal nerve injuries at L4-5 and S1.[1] Although Dr. Miller noted that appellant sustained an injury at work on March 12, 1987, he provided no specific opinion as to whether the aforementioned disability was causally related to appellant's work injury.

In a letter dated April 7, 1998, the Office informed appellant that his claim for a schedule award could not be processed because by formal decision on July 19, 1997 appellant's compensation had been terminated. In a letter dated April 10, 1998, the Office explained that a formal decision had been issued declaring that appellant's accepted condition had resolved with no residuals, and that, if appellant disagreed, he should follow his appeal rights.

On July 10, 1998 appellant requested reconsideration. In a decision dated July 17, 1998, the Office denied appellant's request for a schedule award finding that appellant failed to establish any residual impairment as a result of his injury of March 12, 1987 and that this condition had resolved.

The Board finds that appellant is not entitled to a schedule award for permanent impairment of the right and left lower extremities.

[1] Dr. Miller arrived at this conclusion as follows:

> "According to the fourth edition of A.M.A., *Guidelines*, page 131, due to the fact that [appellant] has involvement of spinal nerves L4-5, S1 on the left, due to the sensory deficit the maximum that he can have is 15 percent. Due to the motor deficit the maximum he can have is 91 percent and according to page 130, Table 83. Then we must go to page 48, Table 11 to determine the sensory deficit which I feel is 50 percent in the left leg. Thus he would have 7.5 percent impairment to the left lower extremity. As far as motor deficit is concerned the maximum that can be given is 91 percent according to page 49, Table 12. I feel 25 percent is appropriate, therefore, he has 22.75 percent to the left lower extremity due to the motor deficit. This added with the sensory deficit equates to 30.25 percent impairment to the left extremity due to his radiculopathy from his spinal nerve root injuries on the left side. Due to the right radiculopathy according to page 13, Table 83 the maximum can be given for sensory deficit is 15 percent. In accordance with page 48, Table 11 I feel 30 percent is appropriate, therefore, he has a total of 4.5 percent impairment to the right lower extremity to due the sensory deficit. Due to the motor deficit the maximum that can be given is 91 percent. According to page 49, Table 12, I feel that 12 percent is appropriate, 12 percent times 91 equals 10.9 percent impairment to the left lower extremity due to motor deficit. This added with the sensory deficit of 4.5 percent equates to 15.42 percent impairment to the right lower extremity due to the spinal nerve injuries of L4-5 and S1.

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the limitation period of the Act,[3] 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.[4] These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[5]

When an employee claims a disability causally related to an accepted employment injury, he or she has the burden of establishing by the weight of the reliable, probative and substantial medical evidence that the claimed recurrence of disability is causally related to the accepted injury. As part of this burden, appellant must 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 employment factors and supports that conclusion with sound medical reasoning. An award of compensation may not be made on the basis of surmise, conjecture or speculation, or on appellant's unsupported belief of causal relation.

In this case, appellant submitted the report of Dr. Miller which indicated that appellant had a 30.25 percent impairment to the left extremity due to his radiculopathy from his spinal nerve root injuries on the left side, and a 15.42 percent impairment of the right lower extremities due to spinal nerve injuries at L4-5 and S1. However, Dr. Miller did not conclude that this impairment was causally related to appellant's March 12, 1987 accepted injury.

While Dr. Miller detailed appellant's impairments and provided measurements of physical limitation in 1998, he did not relate any of these impairments to the March 12, 1987 employment injury. Therefore, his opinion is insufficient to establish the requisite causal relationship and appellant has failed to meet her burden of proof.

[2] 5 U.S.C. §§ 8101-8193.

[3] 5 U.S.C. § 8122.

[4] *Louise F. Garnett*, 47 ECAB 639, 643 (1996).

[5] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

The decision of the Office of Workers' Compensation Programs dated July 17, 1998 is affirmed.

Dated, Washington, DC
September 26, 2000

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member