U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATRICK C. CAIN and DEPARTMENT OF COMMERCE, BUREAU OF THE CENSUS, Jeffersonville, IN

Docket No. 00-904; Submitted on the Record;
Issued December 17, 2001

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he developed a stomach and heart condition in the performance of duty.

On June 25, 1999 appellant, then a 57-year-old geography clerk, filed a claim alleging that he sustained a stomach and heart condition as a result of eating Mexican food at an office party. Appellant stopped work on May 20, 1999 and did not return.

Accompanying appellant's claim was a treatment note from Dr. Nandalal Yepuri, an internist, dated May 20, 1999 and two notes from Dr. S. Nasraty, a Board-certified family practitioner, dated June 28 and July 26, 1999. The treatment note from Dr. Yepuri indicated that appellant was being treated for hypertension and chest pain and would be off work for three weeks. The June 28, 1999 note from Dr. Nasraty indicated that appellant was being followed for atrial fibrillation, hiata hernia and chest pain. He noted that appellant was worried about having a heart attack at work. The July 26, 1999 note indicated that appellant was being referred to Dr. Lowell D. Katz, a Board-certified colon and rectal surgeon, for evaluation.

In letters dated August 19 and 23, 1999, the Office of Workers' Compensation Programs advised appellant of the type of factual and medical evidence needed to establish his claim and requested that he submit such evidence. The Office particularly requested that appellant submit a physician's reasoned opinion addressing the relationship of his claimed condition and specific employment factors.

In response to the Office's request appellant submitted a treatment note and disability certificate from Dr. Katz, both dated August 23, 1999, a report from Dr. Michael R. Sharp, a chiropractor dated September 16, 1999 and two narrative statements. The disability certificate from Dr. Katz indicated that appellant was under his care from May 20 to August 31, 1999. Dr. Katz's treatment note indicated a history of appellant's condition noting that in May 1999 appellant ate something, which made him sick and he experienced symptoms of diarrhea and vomiting for 8 to 10 days. Dr. Katz noted that appellant's symptoms resolved with medication.

He diagnosed appellant with upper gastrointestinal symptoms and possibly a relapse of pancreatitis. The report from Dr. Sharp indicated that he treated appellant on September 4, 1999 for mid-back pain, gastrointestinal pain and reflux. He noted a history of appellant's condition which began after attending a luncheon. Appellant indicated that he experienced vomiting and diarrhea and thereafter moderate to severe pain in the lumbar area. Dr. Sharp took an x-ray of the throacic spine and diagnosed appellant with chronic subluxation of the thoracic spine and reflexive muscle spasms. He noted that because of the lack of other injury and proximity of the trauma of severe vomiting, he concluded appellant's back injury was aggravated by the vomiting episode. Appellant's narrative statements noted that he became ill on May 7, 1999 as a result of eating a Mexican dish at an office luncheon. He noted that he delayed seeking treatment because he was incapacitated. Appellant further indicated that prior to the incident he was being treated for hypertension and heart problems.

On November 1, 1999 the Office issued a decision and denied appellant's claim for compensation under the Federal Employees' Compensation Act.[1] The Office found that the medical evidence was not sufficient to establish that his medical condition was caused by employment factors.

The Board finds that appellant has failed to establish that he sustained an injury in the performance of duty, causally related to factors of his federal employment.

An employee seeking benefits under the Act 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 Act, that the claim was filed within the applicable time limitation of the Act, 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 is causally related to the employment injury."[2] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[3]

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another.

The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[4] In some traumatic injury cases this component can be established by an employee's uncontroverted statement on the Form CA-1.[5]

[1] 5 U.S.C. §§ 8101-8193.

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

[3] *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

[4] *Elaine Pendleton, supra* note 2.

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

An alleged work incident does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statement must be consistent with the surrounding facts and circumstances and his subsequent course of action.[6]

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.[7]

Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[8]

In the instant case, it is not disputed that appellant attended a luncheon at work on May 7, 1999. However, he has not submitted sufficient medical evidence to support that any stomach or heart condition is causally related to the employer sponsored luncheon. On August 19 and 23, 1999 the Office advised appellant of the type of medical evidence needed to establish his claim. Appellant did not submit any medical report from an attending physician addressing how the food served at the employer sponsored luncheon may have caused or aggravated his stomach or heart condition.

Appellant's treating physician Dr. Yepuri, in a note dated May 20, 1999, indicated that appellant was being treated for hypertension and chest pain and would be off work for three weeks. The June 28, 1999 note from Dr. Nasraty indicated that appellant was being followed for atrial fibrillation, hiata hernia and chest pain. The medical records submitted most contemporaneously with the date of the alleged injury,[9] specifically, the May 20, 1999 note from Dr. Yepuri and the June 28, 1999 note from Dr. Nasraty did not mention a work-related injury.[10] Additionally, neither physician provided a rationalized explanation as to how any food served at an employer sponsored luncheon caused appellant's condition and why appellant's condition was

[6] *Rex A. Lenk*, 35 ECAB 253, 255 (1983).

[7] *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

[8] *James Mack*, 43 ECAB 321 (1991).

[9] The Board has consistently held that contemporaneous evidence is entitled to greater probative value than later evidence; *see Katherine A. Williamson*, 33 ECAB 1696 (1982); *Arthur N. Meyers*, 23 ECAB 111 (1971).

[10] *See Cowan Mullins*, 8 ECAB 155, 158 (1955) (where the Board held that a medical opinion based on an incomplete history was insufficient to establish causal relationship).

not the result of his preexisting conditions of hypertension or chest pain.[11] Therefore, these reports are insufficient to meet appellant's burden of proof.

In Dr. Katz's note dated August 23, 1999, he indicated that appellant's stomach condition occurred when appellant "ate something which made him sick after which he had vomiting and diarrhea for [8] to [10] days." Dr. Katz noted that appellant's symptoms resolved with medication. He noted a diagnosis of upper GI symptoms, possibly a relapse of pancreatitis. However, Dr. Katz did not, in this report or other notes, indicate knowledge that appellant sustained an injury while eating at the employing establishment.[12] Additionally, Dr. Katz's notes neither included a rationalized opinion regarding the causal relationship between appellant's stomach and heart condition and the food served at the employer sponsored luncheon nor did he explain why appellant's symptoms were not due to his preexisting conditions.[13] Thus, this report is insufficient to meet appellant's burden of proof.

The September 16, 1999 report from Dr. Sharp, a chiropractor indicated that he treated appellant on September 4, 1999 for mid-back pain, gastrointestinal pain and reflux. The Board has held that a medical opinion, in general, can only be given by a qualified physician.[14] Pursuant to sections 8101(2) and (3) of the Act[15] the Board has recognized chiropractors as physicians to the extent of diagnosing spinal subluxations according to the Office's definition[16] and treating such subluxations by manual manipulation.[17] The Board has held chiropractic opinions to be of no probative medical value on conditions beyond the spine.[18] As a chiropractor may only qualify as a physician in the diagnosis and treatment of spinal subluxation, his opinion is of probative medical value only with regard to the spine.[19] Although Dr. Sharp did diagnose a spinal subluxation as demonstrated by x-ray to exist and, therefore, is considered a physician, his opinion is probative only with regard to the spine. In this case, appellant is not alleging a spinal injury but a stomach and heart condition and, therefore, Dr. Sharp's opinion is of no probative value.

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[11] *See Theron J. Barham,* 34 ECAB 1070 (1983) (where the Board found that a vague and unrationalized medical opinion on causal relationship had little probative value).

[12] *Supra* note 10.

[13] *Supra* note 11.

[14] *See George E. Williams,* (44 ECAB 530) (1993); *Charley V.B. Harley,* 2 ECAB 208, 211 (1949); *Donald J. Miletta,* 34 ECAB 1822 (1983) (medical evidence must be in the form of a reasoned opinion by a qualified physician based on a complete and accurate factual and medical history of the employee whose claim is being considered).

[15] 5 U.S.C. §§ 8101(2) and (3).

[16] 20 C.F.R. § 10.400(e).

[17] *See e.g., Christine L. Kielb,* 35 ECAB 1060, 1061 (1984).

[18] *Raymond F Young,* 33 ECAB 1234 (1982) (radiculitis affecting knee and leg); *Garland R. Hyder,* 30 ECAB 1356 (1979).

[19] 5 U.S.C. § 8101(2) provides: "The term 'physician' includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine."

The remainder of the medical evidence fails to provide an opinion on the causal relationship between this incident and appellant's diagnosed condition. For this reason, this evidence is not sufficient to meet appellant's burden of proof.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.[20] Causal relationships must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence and the Office, therefore, properly denied appellant's claim for compensation.

The November 1, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
December 17, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

[20] *See Victor J. Woodhams*, 41 ECAB 345 (1989).