U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THOMAS F. GRIFFITHS and DEPARTMENT OF AGRICULTURE, FOREST SERVICE, FILLMORE RANGER DISTRICT, Fillmore, UT

Docket No. 01-1012; Submitted on the Record;
Issued December 26, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant sustained a recurrence of disability causally related to his accepted October 15, 1992 employment injury.

The Board has duly reviewed the case record and finds that the case is not in posture for a decision.

On October 15, 1992 appellant, then a 64-year-old senior conservationist enrollee, filed a traumatic injury claim, alleging on that date he dislocated and fractured his left wrist when he fell from the roof onto the ground while in the performance of duty. Appellant stopped work on October 16, 1992 and returned to light-duty work on December 16, 1992.[1]

The Office of Workers' Compensation Programs accepted appellant's claim for a left wrist fracture and a minimal T-12 spine fracture.

On March 15, 1999 appellant filed a claim, alleging that he sustained a recurrence of disability due to his October 15, 1992 employment injury.

By decision dated November 30, 1999, the Office found the evidence of record insufficient to establish that appellant sustained a recurrence of disability causally related to his October 15, 1992 employment injury. By letter dated December 28, 1999, appellant requested a review of the written record by an Office representative accompanied by factual and medical evidence.

By decision dated April 13, 2000, the hearing representative set aside the Office's decision and remanded the case to the Office to obtain a second opinion clarifying the diagnosis of appellant's back condition and whether appellant's current back condition was due to his accepted employment injury.

[1] The record reveals that appellant resigned from the employing establishment on April 29, 1993.

In letters dated August 31 and September 12, 2000, the Office referred appellant along with medical records, a list of specific questions and a statement of accepted facts to Dr. Dewey C. Mackay, III, a Board-certified orthopedic surgeon, for a second opinion examination.

Dr. Mackay submitted a September 25, 2000 report finding that appellant had a five percent permanent impairment of the left upper extremity based on the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. Dr. Mackay opined that appellant had preexisting cervical spine degenerative arthritis and degenerative disc disease that an injury could have aggravated and complicated.

An Office medical adviser reviewed appellant's medical records, including Dr. Mackay's report and determined that he had a four percent permanent impairment of the left arm and that his injury did not accelerate the development of his osteoarthritis and degenerative disease of the spine.

In a January 19, 2001 decision, the Office granted appellant a schedule award for a four percent permanent impairment of his left arm.

By decision dated March 20, 2001, the Office found the evidence of record insufficient to establish that appellant sustained a recurrence of disability causally related to his October 15, 1992 employment injury based on the opinions of Dr. Mackay and the Office medical adviser.

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires 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 the employment injury and, who supports that conclusion with sound medical reasoning.[2]

In this case, the Office medical adviser found that appellant's employment injury did not accelerate the development of his osteoarthritis and degenerative disease of the spine. In support of his recurrence claim, appellant submitted a September 29, 1999 report of Dr. Jeffrey G. Randle, a physiatrist and his treating physician. Dr. Randle opined that appellant's current lumbar spine complaints were related to his October 1992 employment injury. He further opined that while it was probable that appellant would have developed degenerative arthritis if he had not been injured, it is well documented that arthritis can be exacerbated due to bony trauma. In a December 17, 1999 report, Dr. Randle noted that according to his chart, appellant suffered a compression fracture at L1. He noted that the T12 vertebral body and the L1 vertebral body were adjacent to one another and that it was not uncommon for physicians, including radiologists to misidentify a vertebral body as one either above it or below it. Dr. Randle stated that it would be rare, however, to identify compression fractures at one level and not identify one on the level adjacent to it. He opined that a compression fracture such as the one sustained by appellant could lead to the development of osteoarthritis and further pain five to ten years after the injury.

[2] *Louise G. Malloy*, 45 ECAB 613 (1994); *Lourdes Davila*, 45 ECAB 139 (1993); *Robert H. St. Onge*, 43 ECAB 1169 (1992).

Dr. Randle further opined that appellant continued to suffer a significant amount of pain and a diminished lack of function due to his current arthritic complaints in his neck, back and wrists. The Board finds that there is a conflict in the medical opinion evidence between the Office medical adviser and Dr. Randle as to whether appellant's current osteoarthritis and degenerative disease of the spine were caused or aggravated by his October 15, 1992 employment injury.

Section 8123(a) of the Federal Employees' Compensation Act provides in pertinent part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."[3] When there are opposing reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a) of the Act, to resolve the conflict in the medical evidence.[4] The Board finds that, since there is a conflict in the medical opinion evidence between the Office medical adviser and Dr. Randle as to whether appellant's back condition was caused or aggravated by his October 15, 1992 employment injury, the Office shall prepare a statement of accepted facts and shall refer appellant for an impartial medical examination. After such further development as necessary the Office shall issue a *de novo* decision.

The March 20, 2001 decision of the Office of Workers' Compensation Programs is hereby set aside and the case is remanded for further proceedings consistent with this decision.

Dated, Washington, DC
December 26, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[3] 5 U.S.C. § 8123(a).

[4] *William C. Bush*, 40 ECAB 1064, 1075 (1989).