U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT R. MILLMAN and U.S. POSTAL SERVICE,
POST OFFICE, Philadelphia, PA

Docket No. 99-1901; Submitted on the Record;
Issued February 23, 2001

DECISION and ORDER

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

The issue is whether appellant is entitled to continuation of pay for April 29 and 30, 1998.

On April 27, 1998 appellant, then a 51-year-old carrier, filed a claim for an injury occurring on that date when he fell while delivering mail. Appellant requested continuation of pay. In a statement accompanying his claim, appellant related, "I twisted my right foot [and] ankle [and] fell across the walkway -- causing a laceration to my forehead by the bushes on the opposite side of the walkway." In a witness statement dated April 27, 1998, Angel Marquez related that he saw "the mailman fall down in front of my neighbors house [and] [bump] his head." The Office of Workers' Compensation Programs accepted appellant's claim for a fracture of the fifth metatarsal.

In a report dated April 27, 1998, a physician with Somerton Industrial Medicine and Rehabilitation described appellant's injury as occurring when he twisted his right foot and scraped his face on a bush during a fall.[1] He noted that he should rule out a fracture of the fifth metatarsal and diagnosed a laceration of the left glabella. The physician opined that appellant should not work for two days and should return for a follow-up appointment on April 28, 1998.

In a form report and medical report dated April 28, 1998, the physician with Somerton Industrial Medicine diagnosed a fracture of the right fifth metatarsal and found that appellant could return to limited-duty employment consisting of "sitting only."

On April 28, 1998 the employing establishment offered appellant a limited-duty position answering the phone in a sitting and sedentary position. The employing establishment noted that he would be transported to and from work and could elevate and ice his foot if necessary.

[1] The record indicates that appellant chose Somerton Industrial Medicine to treat him for his injury.

By letter dated May 1, 1998, the employing establishment controverted appellant's request for continuation of pay. An official with the employing establishment stated that, following his appointment on April 28, 1998, appellant returned to sedentary duties for the remainder of the day but refused transportation to work on April 29, 1998. She related that the employing establishment had not received documentation in support of appellant's absence from work.

In a disability certificate dated May 1, 1998, Dr. Avrom S. Brown, an osteopath, found that appellant was totally disabled from April 27 to May 1, 1998.

In a letter dated May 8, 1998, the Office requested that appellant provide a narrative report from Dr. Brown in support of his claim for continuation of pay.

By letter dated May 12, 1998, appellant related that he did not receive proper medical care at the time of his injury and was not examined for a concussion even though he had hit his head when he fell. Appellant stated that, while at work on April 28, 1998, he telephoned his physician who told him to go to the emergency room to be evaluated for possible internal bleeding of the head. Appellant related that he subsequently visited his primary care physician who told him to go the emergency room for an electroencephalogram (EEG). Appellant stated that he returned to sedentary employment after the EEG test revealed that he did not have a concussion.

By decision dated June 10, 1998, the Office denied appellant's claim for continuation of pay on the grounds that the evidence did not establish that he was totally disabled and as he was provided a limited-duty assignment by the employing establishment.

In a letter received by the Office on June 18, 1998, appellant requested reconsideration of his claim. In support of his request, appellant submitted hospital notes dated April 28, 1998, in which a physician instructed appellant to rest and receive follow-up care from his physician. By decision dated September 1, 1998, the Office denied modification of its prior decision.

On October 26, 1998 appellant requested reconsideration and submitted a report dated October 7, 1998 from Dr. Brown. In his report, Dr. Brown related that appellant telephoned him on April 28, 1998 and described a headache and vomiting "thought to be the result of his hitting his head on the concrete on the date of his injury." He stated that he had referred appellant to the emergency room for evaluation and noted that appellant was using blood thinning medication. Dr. Brown further related that he had treated appellant on April 29, 1998 for findings "consistent with a cerebral concussion [and] postconcussion syndrome" and had referred him for an EEG.

In a form report dated December 1, 1998, Dr. Brown found that appellant was totally disabled from April 27 through May 3, 1998 and checked "yes" that the disability was caused or aggravated by the employment injury.

By decision dated February 3, 1999, the Office denied appellant's request for reconsideration on the grounds that the evidence was insufficient to warrant modification of its prior decision.

The Board finds that appellant is not entitled to continuation of pay from April 29 through 30, 1998.

Section 8118 of the Federal Employees' Compensation Act provides for payment of continuation of pay, not to exceed 45 days and subject to specified conditions, to an employee who has filed a claim for a period of wage loss due to a traumatic injury.[2] Section 10.204(a)(3) of Title 20 of the Code of Federal Regulations provides that, where pay is continued after an employee stops work due to a disabling traumatic injury, such pay shall be terminated when the employing establishment receives evidence that the attending physician has found the employee to be partially disabled and the employee refused suitable work, which has been offered by the employing establishment, in accordance with section 10.207 or fails to respond to such offer within five workdays of receipt of the offer.[3]

Appellant received treatment following his injury from a physician with Somerton Industrial Medicine. The physician released him to return to his sedentary employment on April 28, 1998. On that date, the employing establishment offered appellant limited duty within these restrictions. Appellant performed the limited-duty employment on April 28, 1998 but did not work on April 29 or 30, 1998.

In support of his claim for disability on April 29 and 30, 1998, appellant submitted a disability certificate dated May 1, 1998 from Dr. Brown, an osteopath, who found that appellant was totally disabled from April 27 to May 1, 1998. Dr. Brown, however, did not provide a diagnosis, address causation, or provide any rationale for his disability finding. Consequently, his report is of little probative value.[4]

In a report dated October 7, 1998, Dr. Brown related that, on April 28, 1998, appellant telephoned him and described a headache and vomiting possibly due to striking his head on concrete at the time of his injury. Dr. Brown noted that appellant was on blood thinning medication and indicated that he had referred appellant to the emergency room for evaluation. He further related that he saw appellant in his office on April 29, 1998 for symptoms of a concussion. Dr. Brown, however, did not address the issue of whether appellant was disabled from sedentary employment on April 29 and 30, 1998. Additionally, appellant indicated in a statement in support of his claim that he did not see Dr. Brown until May 1, 1998. It therefore appears that Dr. Brown based his finding that appellant was disabled on April 29 and 30, 1998 on a telephone conversation with appellant. The Board has held that the medical opinion of a physician who has had the opportunity to personally examine a claimant has greater probative value than a physician who has not performed a personal examination.[5] Consequently, the opinion of the Somerton Industrial Medicine physician who examined appellant on April 28,

[2] 5 U.S.C. § 8118.

[3] 20 C.F.R. § 10.204(a)(3).

[4] *See Anna C. Leanza*, 48 ECAB 115 (1996).

[5] *Dean E. Pierce*, 40 ECAB 1249 (1989).

1998 and found that he could resume sedentary work as of that date has greater probative value than the opinion of Dr. Brown, who did not examine appellant until after the dates in question.

In a form report dated December 1, 1998, Dr. Brown found that appellant was totally disabled from April 27 through May 3, 1998 and checked "yes" that the disability was caused or aggravated by the employment injury. The Board has held, however, that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion has little probative value and is insufficient to establish a claim.[6]

The decisions of the Office of Workers' Compensation Programs dated February 3, 1999, September 1 and June 10, 1998 are hereby affirmed.

Dated, Washington, DC
February 23, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

[6] *Lee R. Haywood*, 48 ECAB 145 (1996).