U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KEITH ALLISON, SR. and U.S. POSTAL SERVICE,
POST OFFICE, Davie, FL

Docket No. 00-511 and No. 00-946; Submitted on the Record;
Issued March 1, 2001

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether the Office of Workers' Compensation Programs properly terminated appellant's entitlement to compensation benefits for his accepted lumbar and cervical strains; (2) whether appellant established that he developed an emotional condition as a consequence of his accepted back injury; and (3) whether the Office properly declined to reopen appellant's claim for merit review on April 27, 1999.

On August 20, 1996 appellant, then a 57-year-old letter carrier, filed a claim, alleging that he injured his back while in the performance of duty. Appellant stopped work on August 21, 1996 and did not return. The Office accepted appellant's claim for cervical and lumbar strains, placed appellant on the periodic rolls and paid appropriate compensation.

On July 28, 1997 appellant filed a claim, alleging that he developed depression as a result of his accepted August 20, 1996 back injury. In decisions dated March 17 and December 2, 1998, the Office denied appellant's claim. The Office found that, because appellant alleged that his emotional condition was caused by the August 20, 1996 work injury, his claim for this condition should be properly pursued under his back injury claim as a consequential injury. The Office noted that appellant had not shown that work factors caused his emotional condition. In a decision dated October 21, 1999, the Office declined to reopen appellant's emotional claim for merit review.

In a decision dated March 30, 1998, the Office terminated appellant's entitlement to wage-loss compensation and medical benefits, effective March 28, 1998, on the grounds that the weight of the medical evidence established that appellant's accepted cervical and lumbar strains had resolved.[1] The Office further found that appellant had not established that he developed depression as a consequence of his accepted back conditions. In a decision dated March 9, 1999, the Office found the additional medical evidence submitted by appellant to be insufficient to

[1] On February 17, 1998 the Office issued a notice of proposed termination to which appellant did not respond.

warrant modification of the March 30, 1998 termination decision. In a decision dated April 27, 1999, the Office declined to reopen appellant's claim on the merits, on the grounds that the evidence submitted by appellant was duplicative.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.[2] After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.[3] Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.[4] To terminate authorization or medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.[5]

The Board finds that the Office met its burden of proof to terminate appellant's entitlement to compensation for his accepted cervical and lumbar strains.

The medical evidence establishes that the disabling residuals of appellant's accepted cervical and lumbar strains had ceased by March 28, 1998. On March 7, 1997 Dr. David B. Ross[6], appellant's treating physician, released appellant to light-duty work. On July 25, 1997 appellant was seen by Dr. Lynn L. Atkinson, a neurological surgeon, to whom Dr. Ross referred him. Dr. Atkinson opined that appellant had symptoms of cervical and lumbar radiculopathy and ordered additional diagnostic testing. When diagnostic testing revealed no significant disc herniation, spinal stenosis, or nerve root compression requiring surgical intervention, Dr. Atkinson released appellant from her care.

On July 30, 1997 the Office referred appellant for a second opinion to Dr. Basil Yates, a Board-certified neurological surgeon. The Office provided Dr. Yates with a statement of accepted facts, copies of the relevant medical evidence of record and a list of questions to be resolved.

In an August 19, 1997 report, Dr. Yates stated that appellant had no objective evidence of any neurologic impairment secondary to his employment injury and that he could find no organic evidence to substantiate appellant's continuing subjective complaints. On an accompanying work capacity evaluation form, Dr. Yates indicated that appellant had reached maximum medical improvement and could work eight hours a day without limitations.

[2] *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

[3] *Id.*

[4] *Furman G. Peake*, 41 ECAB 361, 364 (1990).

[5] *Id.*

[6] Dr. Ross is a member of the American Board of Neurology and Psychiatry.

Appellant subsequently began treating with Dr. Gail P. Ballweg.[7] In her report dated December 12, 1997, Dr. Ballweg diagnosed multiple neuromuscular complaints, including cervical, lumbar and right shoulder; no evidence of neurological deficit; psychiatric syndrome not clearly defined; chronic pain complaints; and peripheral symmetric polyneuropathy. Dr. Ballweg concluded that from a neurological standpoint, appellant had reached maximum medical improvement and had sustained no permanent impairment relative to his August 20, 1996 employment injury.

On a work capacity evaluation form dated February 4, 1998 and in a note dated February 27, 1998, Dr. Ballweg stated that there was no reason related to appellant's employment injuries why he would be unable to work eight hours a day. She clarified her opinion that from a neurological standpoint, relative to appellant's current injury, appellant would be able to perform his regular job, but appellant did have a peripheral polyneuropathy, the etiology of which had not been fully diagnosed and might be limited in his gait by a progressive neurological deficit, not accident or injury related. These uncontroverted medical reports establish that the residuals of appellant's accepted cervical and lumbar strains ceased by March 28, 1998.

The Board additionally finds that further development of the medical evidence is necessary to determine whether appellant's diagnosed depression is causally related to his employment as a consequential injury.

It is an accepted principle of workers' compensation law and the Board has so recognized, that when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause which is attributable to the employee's own intentional conduct. The subsequent injury "is compensable if it is the direct and natural result of a compensable injury."[8]

On November 11, 1996 appellant's treating physician, Dr. Ross, referred appellant to Dr. Judith Abramson, a clinical psychologist, for evaluation. In report dated November 15, 1996, she diagnosed a major depressive episode and indicated by check marks that this condition was totally disabling and was causally related to appellant's August 20, 1996 employment injury. In a narrative report dated January 12, 1997, Dr. Abramson explained the causal relationship between appellant's diagnosed adjustment disorder with depressed mood and his accepted employment injury. She stated that appellant had worked since his early teens and that work has been a coping mechanism for him since that time. Dr. Abramson related that appellant became anxious and depressed when he could not work, that idleness diminished his self-esteem and negatively affected his self-worth and that at the time of her recent examination, he felt so disgusted with himself that he was contemplating suicide to make it easier on his wife and family. In a follow-up report dated April 1, 1997, Dr. Abramson clarified that appellant's diagnosed depression was related to his current employment injury and not to an incident which occurred in 1994 for which his treating physician prescribed Buspar.

[7] Dr. Ballweg is a member of the American Board of Neurology and Psychiatry.

[8] *Frank Barone*, 30 ECAB 1119 (1979).

The record also contains several reports from Dr. Arnold S. Zager,[9] to whom the Office referred appellant for a second opinion. In his initial report dated February 21, 1997, Dr. Zager noted that appellant had a history of employment-related back injuries in 1994 and 1996 and that subsequent to the second work injury he became progressively more depressed to the degree that he contemplated suicide. Dr. Zager diagnosed major depression, single episode and added that appellant had not experienced such a disorder before. He explained that appellant's work-related back injuries contributed to his diagnosed condition because they interfered with his ability to carry out his job, impacted his marital relations with his wife and led to feelings of low self-esteem and self-worth. Dr. Zager concluded that appellant was psychiatrically disabled from gainful employment as he could not function in day-to-day work activities, either in a light-duty or full-duty capacity, due to his emotional state.

On an accompanying work capacity evaluation form, Dr. Zager reiterated his conclusion that appellant was totally disabled due to his diagnosed major depression. In response to an Office request for additional clarification, Dr. Zager submitted a report dated May 23, 1997, in which he noted that while appellant had previously been prescribed Buspar for anxiety, he had never received treatment by a mental health professional. He explained that he suspected that appellant may have been under distress because of a prior back injury and was then further aggravated by the 1996 back injury. However, appellant did not develop major depression until the August 1996 work injury occurred. Thus, Dr. Zager opined that appellant's diagnosed depression was not an aggravation of any preexisting condition. On an accompanying work capacity evaluation form, Dr. Zager reiterated his earlier conclusion that appellant was totally disabled for his usual work.

The record also contains a report dated July 20, 1997 from treating physician Dr. William S. Rea,[10] submitted by appellant in support of his February 1, 1999 request for reconsideration. In his report, Dr. Rea diagnosed major depression, single episode and stated that appellant developed his condition in response to continued pain, which was a direct result of his employment-related back injury and that, therefore, appellant's depression was a complication of his work-related injury.

The only contrary report is that of appellant's treating physician, Dr. Ballweg, who noted on a February 4, 1998 work capacity evaluation form that there was no reason relative to appellant's work injuries that he could not work eight hours a day. Dr. Ballweg found that appellant's psychiatric syndrome was not clearly delineated. Section 8123(a) of the Federal Employees' Compensation Act provides: "If there is a 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."[1]

Consequently, the case will be referred to an impartial medical specialist to resolve the conflict in the medical opinion evidence between the employee's physician, Dr. Ballweg and the government physician, Dr. Zager, on whether appellant's diagnosed depression is a consequence of his accepted August 20, 1996 back injury. On remand, the Office should double this case file

[9] Dr. Zager is a member of the American Board of Neurology and Psychiatry.

[10] Dr. Rea is a member of the American Board of Neurology and Psychiatry.

with appellant's claim No. 06-0682690 and then refer the case, including the combined case files and a statement of accepted facts, to an appropriate specialist for a rationalized opinion on this matter.[11] After such further development as the Office deems necessary, the Office should issue an appropriate decision regarding appellant's claim.

The March 9, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed insofar as it determined that appellant's accepted August 20, 1996 work injuries resolved as of March 28, 1998. The March 9, 1999 decision is set aside and the case is remanded to the Office for further proceedings on whether appellant's diagnosed depression was related to his accepted back injury as a consequential injury. The decisions dated October 21 and April 27, 1999 and December 2, 1998 are also set aside in light of this decision.

Dated, Washington, DC
March 1, 2001

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member

[11] FECA Bulletin No. 97-10 (issued February 15, 1997) provides that cases should be doubled when a new injury is reported for an employee who has filed a previous injury claim for the same part of the body