U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PHILLIP SOWELL and DEPARTMENT OF THE AIR FORCE, YOUNGSTOWN AIR RESERVE STATION, Vienna, OH

Docket No. 00-2036; Submitted on the Record;
Issued May 17, 2001

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant established that he sustained a recurrence of disability from January 31 to February 7, 2000 as a result of his employment injury of October 6, 1998.

On October 6, 1998 appellant, then a 47-year-old material handler filed a notice of traumatic injury alleging that he experienced lower back pain after he lifted a box weighing approximately 75 to 100 pounds from a truck to a dolly in the performance of duty. The Office of Workers' Compensation Programs accepted the claim for a lumbar strain and paid compensation for wage loss from October 6 until October 12, 1998, when appellant returned to limited duty. Appellant returned to his regular duties on November 9, 1998. He sustained a recurrence of disability on May 3, 1999 and was off work from May 4 to August 15, 1999. On August 16, 1999 appellant was placed on light duty with a 35-pound lifting restriction.

On February 17, 2000 appellant filed a claim for a recurrence of disability for the period of January 31 to February 7, 2000. He noted on his CA-2a form that he had been shoveling snow at home on January 30, 2000 when he experienced a worsening of his lower back pain.

By letter dated February 22, 2000, the Office notified appellant of the factual and medical evidence required to establish a claim for a recurrence of disability.

In a March 9, 2000 report, Dr. Mary Ann Wynd, a Board-certified family practitioner, related that appellant was treated at a local outpatient clinic on January 31, 2000 for complaints of back pain. She indicated that appellant had been given medication and told he could return to work the next day under his usual work restrictions. Dr. Wynd reported that, instead of returning to work, appellant presented to her office for evaluation, at which time it was determined that appellant had experienced "a lumbar strain with exacerbation of pain due to shoveling snow at home." Dr. Wynd stated:

> "I advised [appellant] to return to work on [February 7, 2000], which was a Monday. [He] works Mondays through Thursdays. [Appellant] has a three-hour

drive from Columbus to Youngstown. This drive is rather difficult for [him] and exacerbates his back pain.... [Appellant] indicated that, since he works Monday through Thursday, he would much prefer to begin his work week on the scheduled Monday which was [February 7, 2000] instead of driving to work on a Wednesday February 2, 2000 to only work Thursday [February 3, 2000]. I went along with this request."

In a decision dated April 4, 2000, the Office denied appellant's claim for a recurrence of disability.

The Board finds that appellant has failed to establish that he sustained a recurrence of disability from January 31 to February 7, 2000 as a result of his employment injury of October 6, 1998.[1]

As used in the Federal Employees' Compensation Act,[2] the term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.[3] An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury.[4] This burden includes the necessity of 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 supports that conclusion with sound medical reasoning.[5] An award of compensation may not be made on the basis of surmise, conjecture or speculation or on appellant's unsupported belief of causal relationship.[6]

When an employee who is disabled from the job held when injured, on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable and probative evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this burden, the employee must show a

[1] On June 28, 2000 the Office determined that appellant had a zero percent loss of wage-earning capacity based on his reemployment as a modified materials handler; therefore, the Office concluded that appellant was no longer entitled to compensation for wage loss. He does not challenge the wage-loss determination on appeal.

[2] 5 U.S.C. §§ 8101-8193.

[3] *Richard T. DeVito*, 39 ECAB 668 (1988); *Frazier V. Nichol*, 37 ECAB 528 (1986); *Eldon H. Tietze*, 2 ECAB 38 (1948); 20 C.F.R. § 10.57(17). Disability is not synonymous with physical impairment. An employee who has a physical impairment, even a severe one, but who has the capacity to earn the wages he was receiving at the time of the injury, has no disability as that term is used in the Act and is not entitled to disability compensation; *see Gary L. Loser*, 38 ECAB 673 (1987); *Cf.* 5 U.S.C. § 8107 (entitlement to schedule compensation for loss or permanent impairment of specified members of the body).

[4] *Dominic M. DeScala*, 37 ECAB 369 (1986); *Bobby Melton*, 33 ECAB 1305 (1982).

[5] *Jose Hernandez*, 47 ECAB 288 (1996).

[6] *Ausberto Guzman*, 25 ECAB 362 (1974).

change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.[7]

In this case, the Office accepted that the October 6, 1998 work-related injury caused a lumbar strain. However, there is no medical evidence of record to establish the necessary causal relationship between appellant's alleged recurrence of disability on January 31, 2000 and his accepted work injury. The medical evidence relevant to appellant's recurrence of disability claim consists only of a report from Dr. Wynd, who specifically related that appellant was shoveling snow on January 30, 2000 when he experienced increased symptoms of lower back pain. Although Dr. Wynd categorized appellant's condition on or after January 30, 2000 to be an aggravation of his lumbar back strain, the Board considers the shoveling incident on January 30, 2000 to represent an intervening factor or a new nonwork lumbar injury, not a recurrence of disability causally related to the October 6, 1998 accepted work injury.[8] Because appellant has submitted no rationalized medical evidence to show a change in the nature and extent of his work-related back strain or a change in the nature and extent of the light-duty job requirements, the Office properly denied compensation benefits.[9]

The decision of the Office of Workers' Compensation Programs dated April 4, 2000 is hereby affirmed.

Dated, Washington, DC
May 17, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

[7] *Doris J. Wright*, 49 ECAB 230 (1997); *Sherry A. Hunt*, 49 ECAB 467 (1998).

[8] Dr. Wynd's report is not reasoned to carry appellant's burden of proof as she does not address the definition of a recurrence of disability as set forth in the Office's procedure manual, which is a spontaneous return of symptoms or spontaneous material change in the employment-related condition without an intervening injury. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b)(1) (January 1995).

[9] The Board has no jurisdiction to review medical evidence submitted by appellant subsequent to the Office's final decision on April 4, 2000. *See* 20 C.F.R. § 501.2(c).