U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of STAN REPA and U.S. POSTAL SERVICE,
POST OFFICE, Naples, FL

Docket No. 00-2192; Submitted on the Record;
Issued May 24, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof to establish that he sustained a back injury in the performance of duty.

The Board has duly reviewed the case record on appeal and finds that this case is not in posture for a determination of whether appellant sustained a back injury in the performance of duty. Further development of the medical evidence is required.

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of proof to establish the essential elements of his claim.[2] When an employee claims that he sustained an injury in the performance of duty, he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He must also establish that such event, incident or exposure caused an injury.[3]

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office of Workers' Compensation Programs 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. The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[4]

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[1] 5 U.S.C. §§ 8101-8193.

[2] *See Margaret A. Donnelley*, 15 ECAB 40 (1963).

[3] *See generally John J. Carlone*, 41 ECAB 354 (1989); *see also* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. §§ 10.5(a)(15), 10.5(a)(16) ("traumatic injury" and "occupational disease or illness" defined).

[4] *John J. Carlone*, *supra* note 3.

On May 8, 1998 appellant, then a 56-year-old letter carrier, filed a notice of traumatic injury, Form CA-1, alleging that, on December 5, 1997, while getting into a car driven by another mail carrier, the car rolled forward trapping his foot under the tire, wrenching and twisting his back and pulling him from the vehicle. Appellant further explained that, when the incident occurred, he was seated in the car but was still in the process of pulling his legs up into the vehicle when the car rolled over his foot. Appellant further stated that he did not immediately report the incident because his cuts and bruises seemed minor and he did not want to jeopardize the job of the driver of the vehicle. In addition, appellant explained that he was scheduled to undergo shoulder surgery on December 17, 1997 and thought that he would have ample time to recuperate before returning to work. Appellant additionally stated that he was working in a light-duty position, because of his shoulder condition and was released to this light duty on December 29, 1997, following the surgery. He stated that it was not until after he resumed city carrier work, having been released to full duty on April 28, 1998, that he realized that his back injuries were worse than he initially thought. In support of his claim, appellant submitted a statement from Marie Weber, the driver of the car, who confirmed the basic events of December 5, 1997, as recounted by appellant.

By letters dated May 21 and June 29, 1998, the Office requested that appellant submit additional factual and medical evidence. The Office specifically asked appellant whether he had ever experienced prior back problems and requested that he submit a rationalized medical report from his treating physician, explaining the nature of appellant's condition and its causal relationship, if any, to the employment incident. On June 16 and July 22, 1998 appellant submitted narrative statements further explaining why he believed the December 5, 1997 incident had caused his back condition and submitted additional medical evidence in support of his claim. Appellant explained that he had experienced prior backaches and had been treated by a chiropractor, but had never had to call in sick.

In a decision dated August 5, 1998, the Office denied appellant's claim on the grounds that the record contained no well-rationalized medical evidence to establish that he had sustained an employment-related back injury, as alleged.

On September 3, 1998 appellant requested a review of the written record and submitted additional medical evidence in support of his claim. In a decision dated December 16, 1998, an Office hearing representative affirmed the Office's prior decision, finding insufficient medical evidence to establish a causal relationship between the established December 5, 1997 incident and appellant's current back condition.

By letter dated September 7, 1999, appellant, through counsel, requested reconsideration of the Office's prior decision and submitted additional medical evidence in support of his request. In a decision dated April 11, 2000, the Office found the additional evidence insufficient to warrant modification of the prior decision.

It is undisputed that, on December 5, 1997, appellant's left foot became stuck under a car tire when a car he was getting into unexpectedly rolled forward. In addition, the evidence establishes that he subsequently developed back pain and sought medical attention for his complaints. The question, therefore, becomes whether the December 5, 1997 incident caused or aggravated the back conditions for which he seeks compensation.

Causal relationship is a medical issue,[5] and the medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,[6] must be one of reasonable medical certainty,[7] and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incidents or factors of employment.[8]

The relevant medical evidence of record consists of a numerous progress notes and medical reports from appellant's treating and consulting physicians, the vast majority of which either do not address at all, or do not fully explain, the causal relationship, if any, between appellant's diagnosed conditions and the December 5, 1997 work incident. The earliest medical evidence of record consists of treatment notes dated December 10 and 12, 1997, from appellant's treating chiropractor, who indicated that appellant complained of back pain after falling out of a car. X-ray reports contained in the record dated May 11, 1998, reveal chronic degenerative spondylosis of the lumbar and thoracic spine and degenerative osteoarthritis of the left hip. In a June 15, 1998 treatment note, Dr. Dareld Morris, II, a pain management specialist, noted the history of the December 5, 1997 car incident and reviewed the x-rays which revealed degenerative changes. Dr. Morris stated that appellant's painful back symptoms were partly due to his degenerative changes, but as appellant had had no prior similar complaints, he believed appellant's symptoms were due in part to the December 5, 1997 incident. On July 13, 1998 appellant began treating with Dr. Joseph Kandel, a Board-certified neurologist. In his initial report, Dr. Kandel noted the history of the December 5, 1997 incident and further noted appellant's history of chiropractic treatment. He diagnosed a herniated disc at L4-5, L5 radiculopathy, lumbar strain, sprain and spasm, lumbar facet syndrome and myofascial pain. Dr. Kandel ordered magnetic resonance imaging (MRI) and nerve conduction studies but did not give an opinion as to causal relationship between the diagnosed conditions and appellant's work incident. The MRI performed on July 16, 1998 revealed multifocal mild disc protrusions, greatest at L1-2 and L2-3, but with a more significant central disc protrusion and right lateral extrusion at L5-S1 with S1 nerve root involvement. In a follow-up report dated August 10, 1998, he stated, without further explanation, that barring any additional triggering or traumatic effect, appellant's diagnosed conditions were directly related to the December 5, 1997 work incident. The record contains numerous additional progress notes from Dr. Kandel, in which the physician does not address the cause of appellant's conditions. In a report dated October 29, 1998, Dr. Michael D. Lusk, to whom appellant was referred by Dr. Kandel, confirmed the diagnoses of a herniated disc at L5-S1 and preexisting spinal stenosis at L3-4, but did not offer an opinion as to the cause of appellant's diagnosed conditions. Appellant also submitted a report of Dr. James R. Speigel, a chiropractor. However, under section 8101(2) of the Act,

[5] *Mary J. Briggs*, 37 ECAB 578 (1986).

[6] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[7] *See Morris Scanlon*, 11 ECAB 384-85 (1960).

[8] *See William E. Enright*, 31 ECAB 426, 430 (1980).

chiropractors are only considered physicians and their reports consider medical evidence, to the extent that treat spinal subluxations as demonstrated by x-ray to exist. As Dr. Speigel did not diagnose a lumbar subluxation as shown by x-rays to exist, he is not considered a physician under the Act and is report is of no probative medical value.[9]

While the majority of the medical reports of record, as summarized above, are of limited probative value as they do not contain rationalized, well-explained medical opinions discussing the causal relationship between the December 5, 1997 employment incident, appellant's preexisting back conditions and the current diagnoses, the record does contain a May 6, 1999 deposition from Dr. Kandel, in which the physician offers a much more detailed opinion than previously contained on the record. He testified that appellant had described being in usual health when on December 5, 1997, he injured his back when a car rolled over his right foot, causing him to twist his body. Dr. Kandel noted that appellant further stated that he did not seek immediate medical attention as he did not think his injuries were serious and was scheduled for surgery soon afterwards and would be able to recuperate. Appellant explained that it was not until he was tapered off his pain medication for his shoulder and returned to full duty that he realized the extent of his back pain. He stated that when he first examined appellant on July 13, 1998 he noted weakness in both legs, especially those muscles supplied by the fifth lumbar nerve root, decreased sensation in the L5 dermatome and spasm between the fourth and fifth lumbar and fifth lumbar and first sacral joints, all indicating nerve root irritation. Dr. Kandel noted his initial diagnoses was L4-5 disc herniation with L5 radiculopathy and that this initial diagnosis was confirmed by subsequent MRI. Dr. Kandel stated that he felt that appellant's back complaints were directly related to the December 5, 1997 incident, explaining that the history of the incident was consistent with the mechanism of injury, that a twisting and a traction trauma to the nerve root commonly produced disc changes and that appellant's clinical examination was consistent with this and showed no signs of symptom magnification, embellishment or misdirection. Dr. Kandel further stated that, while appellant's preexisting joint changes would cause appellant occasional back strain, his current nerve root irritation, disc protrusion and disc herniation were a "very different process."

While Dr. Kandel attempts to distinguish between appellant's preexisting condition and his current diagnosed back condition in terms of being very different processes, without a more detailed explanation his May 6, 1999 testimony is insufficient to meet appellant's burden of proof, especially in light of the fact that x-rays of appellant's lumbar and thoracic spine taken on May 11, 1998 revealed only degenerative changes and not a herniated disc. Nonetheless, the Board finds that the May 6, 1999 deposition of Dr. Kandel, taken together with the remaining medical evidence of record, raises an inference of causal relationship, either direct or by aggravation, sufficient to require further development of the case record by the Office.[10] Additionally, the Board notes that in this case the record contains no medical opinion contrary to

[9] In assessing the probative value of chiropractic evidence, the initial question is whether the chiropractor is a physician under 5 U.S.C. § 8101(2). A chiropractor cannot be considered a physician under the Act unless it is established that there is a subluxation as demonstrated by x-ray to exist. *Thomas R. Horsfall*, 48 ECAB 180 (1996).

[10] *See John J. Carlone, supra* note 3 (finding that the medical evidence was not sufficient to discharge appellant's burden of proof but remanding the case for further development of the medical evidence given the uncontroverted inference of causal relationship raised).

appellant's claim and further notes that the Office did not seek advice from an Office medical adviser or refer the case to an Office referral physician for a second opinion. The Board will set aside the Office's April 11, 2000 decision and remand the case for further development of the medical evidence. Following such further development as may be necessary, the Office shall issue an appropriate final decision on appellant's claim.

The April 11, 2000 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.[11]

Dated, Washington, DC
May 24, 2001

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

[11] Subsequent to the Office's final decision appellant submitted a new medical and factual evidence to the Office and further submitted additional evidence to the Board on appeal. The Board cannot consider this evidence on appeal, however, as it was not before the Office at the time of the final decision; *see Dennis E. Maddy*, 47 ECAB 259 (1995); 20 C.F.R. § 501.2(c).