U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JUSTIN M. ERICKSON and DEPARTMENT OF AGRICULTURE, FOREST SERVICE, Troy, MT

Docket No. 03-755; Submitted on the Record;
Issued July 1, 2003

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS, MICHAEL E. GROOM

The issue is whether appellant established that he sustained an injury in the performance of duty on July 16, 2002, as alleged.

On July 17, 2002 appellant, then a 25-year-old "dozer boss," filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that on July 16, 2002, when stepping off a vehicle, he twisted the wrong way and felt a sharp pain in his lower back.

Appellant submitted progress notes from St. John's Rehabilitative Service, indicating treatment on several dates between August 5 and 30, 2002, together with a report by a physical therapist, dated August 5, 2002. He also submitted a November 11, 2002 report by Peter Kitts, a nurse practitioner, who noted that appellant had been treated at Libby Clinic since August 2, 2002. Nurse Kitts indicated: "[A]ppellant has been complaining of low back pain which began apparently rather suddenly on July 18, 2002, while at work on a fire in Colorado." He noted that appellant had been conservatively treated without resolution of his low back pain. Appellant also submitted a September 19, 2002 imaging report which Dr. Stephen Becker, a radiologist, interpreted as a normal lumbosacral spine. In an attending physician's report (Form CA-20) dated September 13, 2002, Dr. Allene Whitney indicated that appellant had acute low back pain. The date of injury was listed as August 13, 2002, but the onset of pain was listed as July 18, 2002. Dr. Whitney noted that the onset occurred over two to three days without an isolated injury. He checked a box indicating that she believed that this condition was caused or aggravated by employment, but did not explain her answer despite being asked to do so.

By letter dated November 21, 2002, the Office of Workers' Compensation Programs requested that appellant submit further information. On November 26, 2002 appellant responded to questions from the Office and indicated that the injury occurred when, "After using an [all terrain vehicle] for several days on July 17, 2002 at 1:00 p.m., I stepped off the ATV onto a small log that rolled slightly and I twisted my back wrong and felt a sharp pain in my lower back."

By decision dated December 24, 2002, the Office denied appellant's claim on fact of injury. The Office noted that, although the evidence was sufficient to show that appellant actually

experienced the claimed employment factor, the evidence did not establish that a condition had been diagnosed in connection with this.

The Board finds that appellant has failed to establish that he sustained an injury in the performance of duty on July 16, 2002.

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his or her claim, including the fact that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[2] The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.[3]

Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[4] The mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the condition became apparent during a period of employment, nor the belief of appellant that the condition was caused by or aggravated by employment conditions is sufficient to establish causal relation.[5]

In this case, appellant alleged that he suffered a traumatic injury to his lower back as a result of an employment-related traumatic injury which occurred on July 16, 2002. The Office found that the incident occurred at the time, place and in the manner alleged but that appellant did not submit sufficient medical evidence explaining how his medical condition was caused by his federal employment.

The only physician who submitted a report with regard to causal relationship was Dr. Whitney, who checked a box indicating that he believed that appellant's low back pain was caused or aggravated by his employment. However, Dr. Whitney made no further explanation, despite being asked to do so. The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's condition was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.[6] The Board further notes that Dr. Whitney indicated an onset of disability on July 18,

[1] 5 U.S.C. §§ 8101-8193.

[2] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[3] *Id.*

[4] *See Victor J. Woodhams*, ECAB 351-52; *William E. Enright*, 31 ECAB 426, 430 (1980).

[5] *Manuel Garcia*, 37 ECAB 767, 773 (1986); *Juanita C. Rogers*, 34 ECAB 544, 546 (1983).

[6] *Lucrecia M. Nielson*, 42 ECAB 583, 594 (1991).

2002, but indicates that there was no isolated injury. This tends to contradict appellant's allegation that he sustained an injury on July 16, 2002. The only other physician of record, Dr. Becker, indicated that appellant had a normal spine.

Appellant also submitted reports by a nurse practitioner and physical therapist. However, neither of these persons qualifies as a "physician" as defined by the Act. A "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by state law and chiropractors only to the extent that their reimbursable services are limited to treatment of a subluxation as demonstrated by x-ray to exist.[7] Lay individuals such as physician's assistants, nurse practitioners and physical therapists are not competent to render a medical opinion.[8] Accordingly, these reports are of no probative value.

Appellant has failed to submit sufficient rationalized medical evidence establishing that he sustained an injury causally related to the July 16, 2002 incident. The Board finds that appellant has failed to discharge his burden of proof in this case.

The decision of the Office of Workers' Compensation Programs dated December 24, 2002 is hereby affirmed.[9]

Dated, Washington, DC
July 1, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

[7] 5 U.S.C. § 8101(2).

[8] *See Robert J. Krstyen*, 44 ECAB 227, 229 (1992).

[9] The Board does not have jurisdiction to review evidence submitted by appellant subsequent to the Office's December 24, 2002 decision. The Board cannot review this evidence on appeal, as the Board's jurisdiction is limited to reviewing the evidence and arguments that were before the Office at the time of its final decision; *see Lloyd E. Griffin, Jr.*, 46 ECAB 979 (1995); *Carroll R. Davis*, 46 ECAB 361 (1994). Appellant may submit such evidence to the Office along with a request for reconsideration.