U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RUBEN TREJO and DEPARTMENT OF THE ARMY,
ARMY DEPOT, Corpus Christi, TX

Docket No. 03-983; Submitted on the Record;
Issued July 29, 2003

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant met his burden of proof in establishing that he sustained an injury on January 28, 2002 causally related to factors of his federal employment; and (2) whether the Office of Workers' Compensation Programs properly found that appellant abandoned his request for an oral hearing before an Office hearing representative.

On January 29, 2002 appellant then a 49-year-old sheet metal mechanic, filed a traumatic injury claim alleging that he experienced pain in his left foot, hip, knees, back, shoulder, groin, arm and neck on January 28, 2002 while performing his federal duties. He stated: "[I] slipped while crossing over floorboard entering aircraft. I got down to my work, after cleaning up the hydraulic fluid from areas under [the] floorboards. I started to get up. As I was getting up I felt a pain in my lower back and down my left leg, which cause me to fall on my left side…." Appellant did not stop work.

Appellant submitted a treatment note from Dr. Larry Grabhorn, a Board-certified physician in preventive medicine, dated January 28, 2002. In the note, he stated that appellant presented with back pain that began three and a half hours prior, which he related had resulted from "getting up from lying down in Chinook." The note further indicated that appellant felt tingling in his legs and toes and pain in his hips and buttocks. Dr. Grabhorn stated that appellant could return to work with restrictions and recommended that he see a physician named Dr. Holcomb. In an accompanying report, Dr. Grabhorn diagnosed appellant with low back pain, which he again related resulted from him getting up from lying down in the Chinook. He indicated a date of injury of January 27, 2002 in the report.

In a letter dated February 22, 2002, the Office advised appellant that the evidence submitted was insufficient to establish that he sustained an injury on January 28, 2002 and requested that additional medical evidence be submitted with a medical explanation as to how the reported work incident caused or aggravated the claimed injury.

Appellant then submitted three narrative progress reports from Dr. John D. Halcomb, a Board-certified orthopedic surgeon, dated February 1, March 1 and 19, 2002. In the February 1, 2002 report, he stated:

> "[Appellant] has known severe cervical degenerative changes. We have indicated him to the U.S. Department of Labor for anterior cervical discectomy interbody fusion…. [O]n this past Monday, January 28, 2002, [appellant] while at work at the Corpus Christi Army Depot, slipped and fell on hydraulic fluid. Although there might not have been a puddle of the fluid, his shoes were coated and quite slippery. He developed immediate pain in his lower back, right buttock and right leg. [Appellant] has developed muscle spasms…."
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> "He has bilateral, left greater than right, muscle spasm in the paravertebral muscles on the left. That tenderness continues down into the region of the right sciatic notch. He also has pain radiating into his groin. [Appellant] has difficulty driving and sitting because of the pain in his buttock. He is limping.
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> "I think [appellant] probably has a degree of lumbar spinal stenosis if not, an acute disc herniation."
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> * * *
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> "After the fall [he] has developed an addition to his neck and left arm pain, right arm pain in the similar distribution.
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> "[Appellant] is clearly unsuitable for work at the present time. He should be considered temporarily totally disabled…."

In a March 1, 2002 report, Dr. Halcomb stated that appellant had degenerative disc disease, spinal stenosis and continual neck pain and right arm pain. "[He] also has known lumbar degenerative disc disease with mechanical back pain, since the time of the fall he [has] had increased pain in each leg. At some point in the future we [wi]ll need to do a further assessment."

In the March 19, 2002 report, Dr. Halcomb stated:

> "[Appellant] tells me that he sustained an injury as previously described, however, evidently there is some dispute as to the mechanism of his injury and whether he indeed sustained a workers' compensation injury."
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> * * *
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> "[He] has had an MRI [magnetic resonance imaging] of his cervical spine that clearly points to nerve root encroachment with a protrusion at 4-5 that touches the cord. There is also increased thickening of the posterior longitudinal ligament.

[Appellant] has neural foraminal spurring at 5-6 on the left. He has slight protrusions at 6-7."

* * *

"[Appellant] previously underwent an MRI in October 2000, that showed degenerative changes in his lumbar spine with slight encroachment into the neural foramina particularly at L4-5. There is a central bulging at L5-S1."

By decision dated March 27, 2002, the Office denied appellant's claim on the grounds that he failed to meet the requirements for establishing that his condition was caused by the claimed injury. The Office accepted that appellant slipped and fell on January 28, 2002, however, found that the medical evidence provided several diagnoses and did not explain what condition was caused by the work-related injury of January 28, 2002.

In a letter dated April 16, 2002, appellant requested an oral hearing scheduled for November 20, 2002. By decision dated December 16, 2002, the Office determined that appellant abandoned his request for a hearing.

The Board finds that appellant has failed to meet his burden of proof in establishing that he sustained an injury on January 28, 2002 causally related to factors of his federal employment.

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established.[1] First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.[2] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence to establish that the employment incident caused a personal injury.[3] In this case, the Office has accepted that the incident of exposure occurred as alleged. Therefore, examination of the medical evidence is required.

To establish a causal relationship between appellant's condition and any attendant disability claimed and the employment event or incident, he must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence, which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factor(s). The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of

[1] 20 C.F.R. § 10.5(15), (16) define a traumatic injury as a wound or other condition caused by a specific event or incident within a single workday or shift, whereas an occupational injury is defined as a condition produced in the work environment over a period longer than a single workday or shift. As appellant's exposure occurred only during one work shift, it is being treated as a latent disease or condition arising from a " traumatic" work incident within a single day.

[2] *John J. Carlone*, 41 ECAB 354 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[3] *Id*. For a definition of the term "injury," see 20 C.F.R. § 10.5(a) (14).

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]

In this case, appellant has failed to establish with sufficient medical reasoning that he developed a specific condition causally related to the employment injury. Dr Grabhorn diagnosed appellant with low back pain and generally related the condition to a work event, however, he was unclear about the date of injury and did not explain how appellant's current condition was medically related to the slip and fall, which occurred on January 28, 2002. Dr. Halcomb provided several diagnoses in his reports and hinted that there is some relationship between the diagnoses and appellant's work, but none of the notes provided an opinion with supporting rationale to explain a causal relationship between appellant's diagnosed conditions of degenerative disc disease, spinal stenosis, continual neck, right arm and mechanical back pain, nerve root encroachment with a protrusion at 4-5 and the January 28, 2002 work-related slip and fall. He indicated in the March 19, 2002 report that there was some dispute as to the mechanism of appellant's injury and whether he indeed sustained a workers' compensation injury; however, Dr. Halcomb did not provide an opinion with sufficient medical reasoning that the January 28, 2002 work injury caused any or all of the above conditions.

As appellant has failed to submit rationalized medical evidence establishing that he sustained an injury caused or aggravated by factors of his employment, the Board finds that he has failed to meet his burden of proof.

The Board further finds that the Office properly found that appellant abandoned his request for an oral hearing before an Office hearing representative.

In finding that appellant abandoned his April 16, 2002 request for an oral hearing before an Office hearing representative, the Office noted that the hearing was scheduled for November 20, 2002, that appellant received written notification of the hearing 30 days in advance, that he failed to appear and that the record contained no evidence that he contacted the Office to explain his failure to appear.

The legal authority governing abandonment of hearings rests with the Office's procedure manual. Chapter 2.1601.6.e of the procedure manual, dated January 1999, provides as follows:

"e. Abandonment of Hearing Requests.

"(1) A hearing can be considered abandoned only under very limited circumstances. All three of the following conditions must be present: [T]he claimant has not requested a postponement; the claimant has failed to appear at a scheduled hearing; and the claimant has failed to provide any notification for such failure within 10 days of the scheduled date of the hearing.

"Under these circumstances, [Branch of Hearings and Review] will issue a formal decision finding that the claimant has abandoned his or her request for a hearing

[4] *Judith A. Poet*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

and return the case to the [district office]. In cases involving prerecoupment hearings, hearings and review will also issue a final decision on the overpayment, based on the available evidence, before returning the case to the [district office].

"(2) However, in any case, where a request for postponement has been received, regardless of any failure to appear for the hearing, [Branch of Hearings and Review] should advise the claimant that such a request has the effect of converting the format from an oral hearing to a review of the written record.

"This course of action is correct even if the [Branch of Hearings and Review] can advise the claimant far enough in advance of the hearing that the request is not approved and that the claimant is, therefore, expected to attend the hearing and the claimant does not attend."[5]

In the present case, the Office scheduled an oral hearing before an Office hearing representative at a specific time and place on November 20, 2002. The record shows that the Office mailed appropriate notice to the claimant at his last known address. The record also supports that appellant did not request postponement, that he failed to appear at the scheduled hearing and that he failed to provide any notification for such failure within 10 days of the scheduled date of the hearing. As this meets the conditions for abandonment specified in the Office's procedure manual, the Office properly found that appellant abandoned his request for an oral hearing before an Office hearing representative.[6]

[5] Federal (FECA) Procedure Manual, Part 2 -- *Claims, Hearings and Reviews of the Written Record*, Chapter 2.1601.6.e (January 1999).

[6] On appeal appellant filed a "Motion to Schedule a Rehearing in Corpus Christi" to the Board in which he asserted that he had good cause for failing to appear for scheluled hearing with the Office and now requested that the case be set for rehearing in Corpus Christi because he cannot afford to fly and send counsel to represent him in Washington, DC. Appellant checked yes on the Board's application for review (Form AB-1) that he requested an oral argument, but indicated again that he requested a "rehearing." The Board notes that if requested, oral arguments are held in Washington, D.C. and that the Board does not pay any travel or indicdental expenses related to attending the oral argument.

The December 16 and March 27, 2002 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
July 29, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member