

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EDWARD W. YOUNG and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Miami, Fla.

*Docket No. 96-2250; Submitted on the Record;
Issued July 2, 1998*

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's claim for compensation on account of traumatic injury or occupational disease for the period May 17 through August 27, 1995.

The Board has duly reviewed the case record in this appeal and finds that the case is not in posture for decision regarding the Office's denial of appellant's claim for compensation for the period May 17 through August 27, 1995.

On January 26, 1995 appellant, then a respiratory therapist, filed a traumatic injury claim (Form CA-1) assigned number A6-0619029 alleging that on that date he injured his lower back, left side and left leg while pushing a bed with a patient in it.¹ Appellant stopped work on January 26, 1995.

By letter dated May 9, 1995, the Office advised appellant to submit additional factual and medical evidence supportive of his claim.

By decision dated June 19, 1995, the Office found the evidence of record insufficient to establish that appellant sustained a medical condition causally related to the January 26, 1995 employment injury. In an accompanying memorandum, the Office found that the January 26, 1995 injury occurred in the performance of duty and resulted in a low back strain. The Office noted that appellant alleged that the January 26, 1995 employment injury caused or aggravated multilevel congenital spinal stenosis with dorsal epidural lipomatosis, bulging annulus at the L3-4 level eccentric to the left side, diffusely bulging annulus at L4-5, right paracentral disc herniation at L5-S1 and severe degenerative joint disease at the facet joints bilaterally at the L5-S1 vertebrae. The Office, however, found that appellant had failed to submit medical

¹ Previously, on February 5, 1994, appellant filed a Form CA-1 assigned number A6-592316 for a back injury sustained on January 15, 1994. The Office denied appellant's claim on May 9, 1994.

evidence establishing a causal relationship between his current back conditions and the January 26, 1995 employment injury.

In an undated letter, appellant requested reconsideration of the Office's June 19, 1995 decision accompanied by medical evidence.

By decision dated September 14, 1995, the Office vacated its June 19, 1995 decision based on the medical evidence submitted by appellant and accepted appellant's claim for disc herniation at L5-S1.

On September 14, 1995 the Office requested that an Office medical adviser determine whether appellant's April 17, 1995 back surgery was warranted in the treatment of the January 26, 1995 employment injury. On that same date, an Office medical adviser reviewed appellant's medical records and opined that appellant's back surgery was not warranted in the treatment of the January 26, 1995 employment injury.

On September 18, 1995 appellant filed a claim for compensation on account of traumatic injury or occupational disease (Form CA-7) for the period May 17 through August 27, 1995.

By letter dated November 1, 1995, the Office referred appellant along with medical records to Dr. Jerome P. Bettner, a Board-certified orthopedic surgeon, for a second opinion examination to determine whether the back surgery performed on April 17, 1995² was medically indicated for appellant's accepted condition.

Dr. Bettner submitted a November 8, 1995 medical report revealing that the back surgery was medically indicated due to spinal stenosis.

By letter dated December 27, 1995, the Office advised appellant that it had received his Form CA-7 claim for compensation. The Office also advised appellant to submit medical evidence establishing his disability for work during the claimed period.

By letter of the same date, the Office advised Dr. Bettner to clarify his opinion regarding the necessity of the April 17, 1995 back surgery. On May 15, 1996 the Office again requested that Dr. Bettner clarify his opinion.

By letter dated May 14, 1996, the Office advised appellant that it was unable to process his Form CA-7 claim because Dr. Bettner had opined that the back surgery was related to his spinal stenosis condition, which was not work related. The Office then advised appellant that it had sent a second request to Dr. Bettner to clarify his opinion and that it would check appellant's file in 30 days to see if Dr. Bettner's report had been received.

By decision dated June 26, 1996, the Office found the evidence of record insufficient to establish that the January 26, 1995 employment injury resulted in disability for work during the period May 17 through August 27, 1995. In an accompanying memorandum, the Office found

² The Board notes that the Office mistakenly noted that appellant's back surgery was performed on April 12, 1995 rather than April 17, 1995.

that appellant had failed to respond to its requests for medical evidence supportive of his disability from work during the claimed period.³

An employee seeking benefits under the Federal Employees' Compensation Act⁴ has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act, and that the claim was filed within the applicable time limitation of the Act.⁵ The claimant also has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of the employment. As part of this burden, the claimant must present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, establishing causal relationship.⁶

Proceedings before the Office are not adversarial in nature and the Office is not a disinterested arbiter; once the Office undertakes to develop the medical evidence, it has the responsibility to do so in a fair and impartial manner.⁷ When the Office refers appellant to a physician to determine whether conditions for which compensation is claimed are causally related to factors of employment, it has a responsibility to have an evaluation done which will resolve the issues in the case.⁸

In this case, the Office advised Dr. Bettner on two separate occasions to submit a supplemental medical report clarifying his opinion regarding whether appellant's back surgery was due to the January 26, 1995 employment injury. Dr. Bettner did not respond to either request. Although the Office advised appellant that his Form CA-7 claim could not be processed until it received Dr. Bettner's supplemental medical report, the Office rendered a decision denying appellant's claim. Inasmuch as Dr. Bettner failed to submit a supplemental medical report, "the Office had an obligation to go further than it did in developing the medical evidence."⁹

On remand, the Office should refer appellant along with a statement of accepted facts and medical records to an appropriate Board-certified specialist for examination to determine whether appellant's back surgery was related to the January 26, 1995 employment injury and

³ The Board notes that subsequent to its June 26, 1996 decision, the Office received additional medical evidence. The Board, however, cannot consider evidence that was not before the Office at the time of the final decision; *see* 20 C.F.R. § 501.2(c)(1).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁷ *Walter A. Fundinger, Jr.*, 37 ECAB 200 (1985); *Barbara A. Burda*, 33 ECAB 497 (1982); *Joseph M. Howard*, 31 ECAB 903 (1980).

⁸ *Andrew G. Nastos*, 34 ECAB 519 (1983); *Richard W. Kinder*, 32 ECAB 863 (1981).

⁹ *Walter A. Fundinger, Jr.*, *supra* note 7 at 205.

whether appellant was totally disabled for work during the period May 17 through August 27, 1995 due to the January 26, 1995 employment injury. After such development of the case record as the Office deems necessary, an appropriate decision shall be issued.

The June 27, 1996 decision of the Office of Workers' Compensation Programs is hereby vacated and the case is remanded for further development in accordance with this decision.

Dated, Washington, D.C.
July 2, 1998

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member