U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LOWELL L. BROWN and U.S. POSTAL SERVICE, POST OFFICE, Birmingham, Ala.

Docket No. 96-2205; Submitted on the Record;
Issued June 16, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS, BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof to establish his claim that his surgery on August 23, 1994 surgery and subsequent condition, resulted from his accepted employment injury on July 24, 1989.

The Board has duly reviewed the record in the present case and finds that appellant has not met his burden of proof to establish his claim that his surgery on August 23, 1994 surgery and subsequent condition, resulted from his accepted employment injury on July 24, 1989.

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 the injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[2] These are the essential elements of each and every claim regardless of whether the claim is predicated upon a traumatic injury due to one single incident, or an occupational disease due to events occurring over a period of time.[3] As part of this burden, the claimant must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.[4] Rationalized medical evidence is evidence which relates a work incident or factors of employment to a claimant's condition, with stated reasons of a physician.[5] The fact that a

[1] 5 U.S.C. §§ 8101-8193.

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

[3] The Office's regulations clarify that a traumatic injury refers to an injury caused by a specific event or incident or series of events or incidents occurring within a single workday or work shift whereas occupational disease refers to an injury produced by employment factors which occur or are present over a period longer than a single workday or shift. *See* 20 C.F.R. §§ 10.5(a)(15),(16).

[4] *See Kathryn Haggerty*, 45 ECAB 383 (1994); *Lucrecia M. Nielson*, 42 ECAB 583 (1991).

[5] *Gary L. Fowler*, 45 ECAB 365 (1994); *Debra A. Kirk-Littleton*, 41 ECAB 703 (1990); *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (finding that a medical opinion not fortified by medical rationale is of little probative value).

condition manifests itself or worsens during a period of employment does not raise an inference of causal relationship between a claimed condition and employment factors, since the symptoms may be revelatory of an underlying condition.[6]

Appellant, a 45-year-old letter carrier, sustained a right ankle injury at work on July 18, 1989 when his foot gave way and turned. Appellant was treated by Dr. Hank S. Lee, a general surgeon, who diagnosed a right ankle sprain and recommended three days off from work. The record indicates that appellant returned to work on July 24, 1989. In August 1989, the Office accepted appellant's claim for a right ankle sprain and authorized continuation of pay for the three days appellant was off work.

Three months after surgery on August 23, 1994, appellant filed a claim for a recurrence of total disability, claiming that his ankle spur diagnosed in June 1994, for which he underwent surgery, was due to his prior employment injury. Appellant reported that since the July 24, 1989 employment injury, his right leg gave way on an intermittent basis, with frequency of the incidents increasing over the five-year period. He reported that during this period, he sought treatment in the fall of 1993, and again in June 1994, when x-rays were taken. Appellant stated that based on the x-rays, he was diagnosed with a spur, and that his physician had explained to him that a spur was due to an old injury. He attributed his condition to the injury in July 1989 due to the lack of a prior injury.

Appellant submitted reports from Dr. L. Wayne Weathers, a specialist in cardiovascular diseases, who evaluated appellant twice, and diagnosed a right ankle sprain due to an incident in the fall of 1993. He also submitted reports from Dr. Alan Axelrouth, a podiatrist , who provided a history of right ankle symptoms for four or five years, with an increase in symptoms over the last year. Dr. Axelrouth noted that appellant complained that his foot felt as if he were stepping on a nail. Dr. Axelrouth diagnosed calcaneal spurs of both feet and ligamentous laxity of the right ankle with arthritis and provided an injection. While Dr. Axelrouth provided a history of symptoms for four or five years, he did not provide a specific history of the employment injury and explain how appellant's continued condition was due to that incident. He referred appellant to Dr. Lawrence J. Lemark, an orthopedic surgeon, who on August 8, 1995 also provided a history of symptoms for five years without specific reference to the employment injury. Dr. Lemark diagnosed right ankle anterior impingement, which was confirmed at the time of surgery. He reported that surgery also revealed grade IV chondromalacia of the anterior portion of the talar dome and neck.

Upon receipt of an Office letter, appellant provided a subsequent statement dated March 9, 1995, with further medical evidence. In a February 20, 1995 disability note, Dr. Lemark stated that appellant was totally disabled for one year and possibly would not be able to return to his prior position. In a March 24, 1995 report, Dr. Lemark reported, "it is possible that spur formation may occur following an ankle sprain [ankle trauma]."

The Board notes that Dr. Lemark's report is insufficient to establish causal relationship, since it does not address the specific employment injury and relate the condition to the incident with rationale. Furthermore, the report by Dr. Lemark is speculative.[7]

[6] *Ruby I. Fish*, 46 ECAB 276 (1994); *see also Marion Thornton*, 46 ECAB 899 (1955) (with respect to claims for aggravations of underlying conditions).

Following an initial decision dated May 26, 1995, by which the Office denied appellant's claim for a recurrence of total disability, a hearing was held on January 25, 1996. Appellant testified that he did not return to his employment, and that he retired on disability effective June 30, 1995. He testified that with respect to the July 24, 1989 fall at work, he did not remember if he tripped over something on the ground or whether his right leg just gave way spontaneously. Appellant testified however, that because of the lack of prior problems, he felt that his continued condition and need for surgery was due to that incident.

While appellant was advised of the type of medical evidence required to meet his burden of proof, he did not submit any new evidence following the hearing. Instead, he resubmitted the previous report by Dr. Lemark which is speculative in nature, and does not relate appellant's continued condition to the specific work injury, with an explanation. Accordingly, the Office hearing representative properly found by decision dated June 18, 1996 that appellant had not met his burden of proof to establish a recurrence of total disability due to his employment injury.

The decision of the Office of Workers' Compensation Programs dated June 18, 1996 is hereby affirmed.

Dated, Washington, D.C.
June 16, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

[7] A physician's statement that a work factor or incident "could well have been" the cause of a particular condition is speculative and is considered of diminished probative value; *see William S. Wright*, 45 ECAB 827 (1994).