U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSEPH R. BRUMBACH and U.S. POSTAL SERVICE,
POST OFFICE, New Brunswick, N.J.

Docket No. 97-347; Submitted on the Record;
Issued September 3, 1998

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he sustained a recurrence of disability after November 28, 1994 that was causally related to his accepted employment injury of lumbosacral strain and contusion.

On December 30, 1993 appellant, then a 56-year-old custodian, filed a claim, alleging that he sustained injuries to his back when he fell down a flight of stairs. The Office of Workers' Compensation Programs accepted appellant's claim for lumbosacral strain and contusion. Appellant returned to work on full duty. On May 23, 1995 appellant filed a claim for recurrence of disability beginning November 28, 1994. In a decision dated August 28, 1995, the Office denied appellant's claim on the grounds that the medical evidence was not sufficient to establish a recurrence. By decision dated July 25, 1996 and finalized July 26, 1996, an Office hearing representative affirmed the Office's August 28, 1995 decision.

The Board has carefully reviewed the entire case record on appeal and finds that this case is not in posture for decision.[1]

Where appellant claims recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of the substantial, reliable, and probative evidence that the subsequent disability for which he claims compensation is causally related to the accepted injury.[2] This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes

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[1] The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal. As appellant filed his appeal with the Board on October 22, 1996, the only decision before the Board is the Office's July 26, 1996 decision. *See* 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

[2] *John E. Blount*, 30 ECAB 1374 (1979).

that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.[3]

In the present case, appellant submitted a narrative report dated July 10, 1995 by Dr. Horatio G. Daub, a Board-certified family practitioner, in which he provided a history of injury and treatment and noted that he did not start to treat appellant until February 2, 1994 as he had been treated by an employing establishment physician initially after the fall. Dr. Daub reported progressive symptoms and pain throughout September and October 1994 and noted that a September 15, 1994 magnetic resonance imaging scan revealed mild to moderate bulging at the L2 to L4 discs. He noted that as of February 15, 1995 appellant could not do any bending, prolonged standing or sitting because of pain and that appellant reported that Dr. Gerald Hayken, a Board-certified orthopedic surgeon, had advised him that he was totally disabled from his employment. Dr. Daub concluded that appellant was disabled continuously since the last time he worked on November 14, 1994 and that he suspected that appellant would not be able to return to his previous occupation which required a lot of lifting and bending type of activity. In a form report dated August 10, 1995, he diagnosed lumbosacral strain and sciatica, noted chronic impaired range of motion and checked a box to indicate that the diagnosed condition was related to appellant's December 30, 1994 fall. Appellant also submitted a report dated March 7, 1995 from Dr. Hayken, who diagnosed mild to moderate bulging annulus at the L2 to L3 with no disc herniation or stenosis, facet joint arthritis, discomfort from radiculopathy rather than a concurrent knee problem, limited range of motion due to pain. He concluded that appellant was suffering from a manifestation of a work-related injury.

While the reports by Drs. Daub and Hayken are not sufficient to establish that appellant's claimed recurrence is causally related to his accepted employment injuries, the Board finds that these reports, given the absence of evidence to the contrary, are sufficient to require further development of the evidence. The Board notes that when an employee initially submits supportive factual and/or medical evidence which is not sufficient to carry the burden of proof, the Office must inform the claimant of the defects in proof and grant at least 30 calendar days for the claimant to submit the evidence required to meet the burden of proof. The Office may undertake to develop either factual or medical evidence for determination of the claim.[4] It is well established that proceedings under the Federal Employees' Compensation Act are not adversarial in nature,[5] and while the claimant has the burden to establish entitlement to compensation, the Office shares the responsibility in the development of the evidence.[6] The Office has the obligation to see that justice is done.[7]

In the present case, as there was an uncontroverted inference of causal relationship, the Office was obligated to request further information from appellant's treating physician. On

[3] *Frances B. Evans*, 32 ECAB 60 (1980).

[4] 20 C.F.R. § 10.11(b); *see also John J. Carlone*, 41 ECAB 354 (1989).

[5] *See, e.g., Walter A. Fundinger, Jr.*, 37 ECAB 200 (1985); *Michael Gallo*, 29 ECAB 159 (1978).

[6] *Dorothy L. Sidwell*, 36 ECAB 699 (1985).

[7] *William J. Cantrell*, 34 ECAB 1233 (1983).

remand, the Office should further develop the evidence by providing Dr. Daub with a statement of accepted facts and requesting that he submit a rationalized medical opinion on whether appellant's claimed recurrence is causally related to his accepted employment injuries of contusion and strain of the lumbosacral spine. After such development as the Office deems necessary, a *de novo* decision shall be issued.

The decision of the Office of Workers' Compensation Programs dated July 26, 1996 is set aside and the case is remanded for further proceedings consistent with this decision.

Dated, Washington, D.C.
September 3, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member