U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT E. GODBEY and U.S. POSTAL SERVICE,
POST OFFICE, Fort Worth, Tex.

Docket No. 97-1854; Submitted on the Record;
Issued June 16, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has established that he sustained a low back injury on August 7, 1995 in the performance of duty, causally related to factors of his federal employment.

On January 21, 1997 appellant, then a 46-year-old letter carrier, filed a Form CA-1 claim for traumatic injury alleging that on August 7, 1995 he injured his lower back as he lifted a container of magazines in a twisting motion. Appellant stopped work on August 9, 1995. The employing establishment controverted appellant's claim.

By letter dated February 3, 1997, the Office of Workers' Compensation Programs requested further information from appellant, including an explanation of why he did not file a claim within 30 days, of how the injury occurred, and of who had immediate knowledge. It also requested medical evidence supporting causal relation.

On February 14, 1997 appellant submitted further information and medical evidence. Appellant stated that his injury was reported within 30 days but he "filed the wrong form," that he was casing magazines when he had to step over two trays of letters behind him and pick up a container of magazines twisting and bending, and that the question regarding who had immediate knowledge was "N/A." Appellant also stated that he saw his physician, Dr. Robert V. DeMartini, a Board-certified internist, on August 8, 1995.

An August 28, 1995 report from Dr. S. Sam Finn, a Board-certified neurosurgeon, discussed appellant's symptoms and complaints, and related claims of an October 1994 employment injury.

A November 15, 1995 report from Dr. Huntly G. Chapman, a Board-certified orthopedic surgeon, noted that appellant complained of back pain with left leg sciatica since 1985. Dr. Chapman noted that radiodiagnostic imaging demonstrated multiple disc pathology. He also provided a January 8, 1996 report noting that with reasonable medical probability, appellant's

current problems were caused by his 1985 injury. Dr. Chapman noted that appellant was seen by Dr. DeMartini on August 8, 1995 and by history "aggravated his preexisting condition at that time." Dr. Chapman opined that appellant "suffered injuries to his lumbar discs in 1985 and these injuries have been aggravated by the twisting injury in 1995."

A January 4, 1996 report from Dr. DeMartini noted that he had seen appellant on August 8, 1995 regarding reexacerbation of a prior low back pain injury 10 years earlier. Dr. DeMartini diagnosed "reexacerbation of a low back pain injury sustained while on the job" and opined: "I feel that [appellant's] current disability is directly related to his original injury 10 years ago in 1985." In a second January 4, 1996 report, however, Dr. DeMartini stated that on August 7, 1995 appellant had a "recurrence of low back pain injury that occurred in June of 1985 while working." He explained that appellant's "current condition is a direct result of a reexacerbation of his injury in 1985 and has led up until this point to increased use of narcotic pain medication."

A January 5, 1996 report from Dr. Gary L. Tunell, a Board-certified neurologist, noted that appellant developed low back pain 10 years ago, that there was no specific injury, but that appellant just had gradual onset of progressively severe low back pain. Dr. Tunell noted that in July 1995 appellant had an exacerbation of low back pain.

A March 25, 1996 report from Dr. Julia Bustamante, a Board-certified anesthesiologist specializing in pain management, noted treatment for low back pain secondary to multilevel disc disease and advanced facet hypertrophy. Reports dated May 6 and December 17, 1996 contained similar notations.

A July 31, 1996 report from Dr. DeMartini described appellant's ongoing condition. At a hearing held on September 26, 1996 on the denial of appellant's recurrence claim, Dr. DeMartini testified that he saw appellant in "August 1995 for complaints of an aggravation of his low back pain." He opined that the August 1995 injury was related to the June 1985 injury, and he described what appellant related as happening at that time: "[Appellant described a situation in which he was involved in what [is] termed a twisting, lifting injury, where it [is] an unstable situation, putting undue stress on his already injured back…. And the description of that, and the complaints at the time, made me very concerned about reinjury, and not a new injury." Dr. DeMartini noted that the injury appellant described in August 1995 was very similar to his initial description. Also at that hearing appellant testified, regarding the new injury, that on August 7, 1995 he cased letters in a new configuration, that he bent to pick up a container on magazines "[a]nd that [is] when the trouble started. That [is] when it happened. Having to bend over and pick that case up, and turn it around, put it [down] -- I was unstable."

Multiple other medical records were submitted reporting radiodiagnostic testing results revealing disc space narrowing, hypertrophic spurring, degenerative facet changes, and bulging annuli, noting appellant's status upon various admissions and discharges, and recording operative and postoperative procedures and results.

Thereafter on February 27, 1997 appellant submitted a February 13, 1997 report from Dr. Bustamante which noted treatment for pain due to lumbar degenerative changes.

By decision dated March 12, 1997, the Office rejected appellant's claim finding that he failed to establish causal relationship between employment factors and his medical condition. The Office noted that the medical evidence did not provide a physician's opinion on causal relation specifically addressing what work factors were involved.

The Board finds that this case is not in posture for decision.

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. First, the employee must submit sufficient factual evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.[1] 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.[2] In this case appellant has alleged that he sustained a new injury on August 7, 1995 while lifting and twisting, picking up magazines.

However, proceedings under the Federal Employees' Compensation Act are not adversary in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.[3] In the instant case, although none of appellant's treating physicians' reports contain rationale sufficient to completely discharge appellant's burden of proving by the weight of reliable, substantial and probative evidence that he sustained a new injury on August 7, 1995, causally related to factors of his federal employment, they constitute substantial, uncontradicted medical evidence in support of appellant's claim to raise an uncontroverted inference of causal relationship between his employment on August 7, 1995 and his subsequently diagnosed injuries. The evidence is sufficient to require further development of the case record by the Office.[4]

Therefore, upon remand, the Office should create a statement of accepted facts and questions to be answered, and refer appellant, together with the relevant case records, to an appropriate specialist, for a reasoned opinion as to whether appellant sustained a new injury on August 7, 1995, casually related to his federal employment.

Accordingly, the decision of the Office of Workers' Compensation Programs dated March 12, 1997 is hereby set aside and the case is remanded for further development in accordance with this decision and order of the Board.

Dated, Washington, D.C.
June 16, 1999

[1] *John J. Carlone*, 41 ECAB 354 (1989).

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

[3] *William J. Cantrell*, 34 ECAB 1223 (1983).

[4] *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member