U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GERRY QUACKENBUSH and DEPARTMENT OF THE ARMY, WATERVLIET ARSENAL, Watervliet, N.Y.

Docket No. 97-2460; Submitted on the Record;
Issued June 8, 1999

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS, BRADLEY T. KNOTT

The issue is whether appellant established that his recurrence of disability was causally related to a September 1991 work injury.

The Board has carefully reviewed the case record and finds that appellant has failed to meet his burden of proof in establishing that his back condition is causally related to employment factors.

Under the Federal Employees' Compensation Act,[1] an employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the recurrence of the disabling condition for which compensation is sought is causally related to the accepted employment injury.[2] As part of this burden the employee must submit rationalized medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the current disabling condition is causally related to the accepted employment-related condition,[3] and supports that conclusion with sound medical reasoning.[4]

Section 10.121(b) provides that when an employee has received medical care as a result of the recurrence, he or she should arrange for the attending physician to submit a medical report covering the dates of examination and treatment, the history given by the employee, the findings, the results of x-ray and laboratory tests, the diagnosis, the course of treatment, the physician's

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[1] 5 U.S.C. §§ 8101-8193.

[2] *Dennis J. Lasanen*, 43 ECAB 549, 550 (1992).

[3] *Kevin J. McGrath*, 42 ECAB 109, 116 (1990).

[4] *Lourdes Davila*, 45 ECAB 139, 142 (1993).

opinion with medical reasons regarding the causal relationship between the employee's condition and the original injury, any work limitations or restrictions and the prognosis.[5]

Thus, the medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated, or aggravated by the accepted injury.[6] In this regard, medical evidence of bridging symptoms between the recurrence and the accepted injury must support the physician's conclusion of a causal relationship.[7] Neither the fact that appellant's condition became apparent during a period of employment nor appellant's belief that his condition was caused by his employment is sufficient to establish a causal relationship.[8]

Further, when an employee, who is disabled from the job he held when injured, returns to a light-duty position, or the medical evidence of record establishes that he can perform the light-duty position, the employee has the burden of establishing by the weight of the reliable, probative, and substantial evidence that he cannot perform such light duty.[9] As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.[10]

In this case, appellant, then a 47-year-old tools and parts attendant, filed a notice of traumatic injury on January 24, 1991 after he slipped while getting into his transport wagon and strained his right groin muscle. Appellant was placed on light duty -- no lifting, pulling, pushing or carrying greater than 25 pounds -- until April 29, 1991, but apparently lost no time from work.

On October 23, 1991 appellant filed a second notice of traumatic injury, claiming that on September 27, 1991, two weeks after he had returned to regular duty, he experienced back spasms and neck and right hip pain while unloading tools from his wagon. Appellant was placed on permanent light duty only with no lifting of more than 15 pounds by Dr. Russell N.A. Cecil, a Board-certified orthopedic surgeon who diagnosed spondylolisthesis.[11]

On September 24, 1994 appellant filed a notice of recurrence of disability and submitted a medical form from Dr. Cecil indicating that his lumbar sprain and disc disease were aggravated by employment. Subsequently, appellant was terminated by the employing establishment due to the lack of light-duty work.

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[5] 20 C.F.R. § 10.121(b).

[6] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

[7] *Leslie S. Pope*, 37 ECAB 798, 802 (1986); *cf. Richard McBride*, 37 ECAB 748, 753 (1986).

[8] *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

[9] *Richard E. Konnen*, 47 ECAB 388, 389 (1996).

[10] *Gus N. Rodes*, 46 ECAB 518, 526 (1995); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

[11] Spondylolisthesis is defined as the forward displacement of one vertebra over another, usually of the fifth lumbar over the sacrum. *Dorland's Illustrated Medical Dictionary* (27th ed. 1988).

On October 18, 1994 the Office of Workers' Compensation Programs informed appellant that his physician needed to provide a rationalized medical report explaining how his lumbar disc disease was related to the September 27, 1991 injury. On December 8, 1995 the Office provided appellant with 30 days to submit medical evidence establishing that his lumbar disc disease was causally related to the 1991 injury.

On April 11, 1996 the Office denied the claim on the grounds that the medical evidence failed to establish that appellant was injured in the performance of duty. On March 12, 1997 appellant requested reconsideration, which was denied on April 29, 1997 on the grounds that the evidence submitted in support of appellant's request was insufficient to warrant modification.

The Board finds that appellant has failed to meet his burden of proof in establishing that his recurrence of disability was causally related to the September 1991 injury.

Initially, the Board finds that appellant did sustain an injury in September 1991, whether traumatic or occupational, based on Dr. Cecil's October 16, 1991 treatment notes and the fact that appellant was placed on light duty, eventually on a permanent basis. Appellant was still on light duty because of chronic low back pain when he filed a notice of recurrence of disability in September 1994, apparently after being notified that he would be terminated. Appellant lost no time from work but later claimed compensation from January 5, 1995 when he was terminated.

In support of his claim, appellant submitted an August 30, 1994 form report on which Dr. Cecil indicated by a check mark that appellant's lumbar condition was related to his employment but provided no rationale for this conclusion.[12] A November 15, 1994 report from Dr. Cecil reiterated appellant's complaint that his back pain had become worse with time but did not address the cause of his condition.

In his January 8, 1996 report, Dr. Cecil related his treatment of appellant since October 1991, including office visits in April and on August 22, 1994 when appellant complained of persistent back pain on sitting, bending and lifting and informed Dr. Cecil that he was about to be laid off because of his inability to do his regular job.

Dr. Cecil stated that appellant had a permanent partial disability related to lumbar degenerative disc disease, but was capable of light-duty work. He added that appellant had reached maximum medical improvement and concluded that the September 27, 1991 injury at work caused his back problems, "given the absence of back complaints prior" to that date.

[12] *See Ruth S. Johnson*, 46 ECAB 237, 242 (1994) (finding that a causation opinion that consists only of checking "yes" to a form question has little probative value and is thus insufficient to establish causal relationship).

Dr. Cecil failed to explain with medical rationale how heavy lifting in September 1991 resulted in or aggravated appellant's degenerative disc disease three years later. Therefore, Dr. Cecil's report is insufficient to establish a causal relationship between appellant's claimed recurrence of disability and the 1991 injury.[13]

Indeed, Dr. Cecil stated that appellant was last seen on December 5, 1995, with the same complaints and the same normal physical examination. Thus, appellant has failed to show that the degree or extent of his back condition had changed.[14] Further, nothing in the record indicates that the permanent light-duty job had changed appellant in any way.[15]

The April 29, 1997 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
June 8, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

[13] *See Kimper Lee*, 45 ECAB 565, 574 (1994) (finding that a physician's rationale that appellant's condition was related to a previous lifting injury because appellant reported no similar problem prior to that accepted injury was insufficient to establish a causal relationship).

[14] *See Glenn Robertson*, 48 ECAB ___ (Docket No. 95-639, issued February 20, 1997) (finding that appellant failed to submit rationalized medical evidence explaining how and why he was unable to perform his light-duty position).

[15] *Cf. Fallon Bush*, 48 ECAB ___ (Docket No. 95-2237, issued July 15, 1997) (finding that appellant established a change in the nature of his light-duty position when he was assigned to work nights and medical opinions limited him to working days because his arthritic hip became worse in the late afternoon and evening).