U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EDWARD SCHOENING and DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION, Tampa, FL

Docket No. 99-59; Submitted on the Record;
Issued October 20, 1999

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether appellant is entitled to compensation during the period December 15, 1983 to November 9, 1984; and (2) whether appellant's employment-related condition of the cervical spine resolved by June 8, 1998.

The Office of Workers' Compensation Programs accepted that appellant sustained a lumbosacral muscle sprain and a cervical strain in an employment injury on December 14, 1983. Pursuant to a September 4, 1990 decision and order of the Board on a prior appeal,[1] appellant submitted a claim on January 30, 1991 for compensation for 64 hours from December 15, 1983 to January 7, 1984, 10 hours from January 9 to February 17, 1984, 22 hours from June 7 to September 29, 1984, and 2 hours on November 9, 1984. Appellant indicated that he received paid leave for these absences from work. By decisions dated June 8, 1998, the Office found that appellant was entitled to continuation of pay for June 12, 1984, but that he was not entitled to compensation for any other period between December 15, 1983 and November 9, 1984. The Office also found that appellant no longer suffered from a cervical strain causally related to his December 14, 1983 employment injury, but that appellant was entitled to compensation beginning September 28, 1985 on the basis that his accepted chronic lumbosacral strain prevented him from performing the duties of the position he held when injured.

The Board finds that the Office properly denied compensation for the claimed periods between December 15, 1983 and November 9, 1984.

Appellant has the burden of proving that he was disabled for work as a result of an employment injury. This burden includes the necessity of submitting medical opinion evidence establishing such disability and its relationship to an employment injury.[2] Whether an

[1] 41 ECAB 977.

[2] *David H. Goss*, 32 ECAB 24 (1980).

employment injury causes an employee to be disabled for work is a medical issue which must be resolved by competent medical evidence.[3] Appellant has not submitted any competent medical evidence stating that he was disabled during any of the periods claimed between December 15, 1983 and November 9, 1984, and has therefore not met his burden of proving his entitlement to compensation during these periods.

An employee is also entitled to compensation for time missed from work due to medical treatment for an employment-related condition.[4] The Office authorized continuation of pay for the time appellant missed from work on June 12, 1984 for treatment by Dr. Eddy Berges, a Board-certified neurologist. There is no evidence that any of the other time appellant missed from work between December 15, 1983 and November 9, 1984 was for medical treatment of an employment-related condition. Although appellant was seen by a chiropractor during this period, the Board held in a prior appeal[5] that the services of this chiropractor were not reimbursable under the Federal Employees' Compensation Act. It follows that any time missed to obtain these services is also not reimbursable.

The Board further finds that the Office improperly found that appellant's employment-related condition of the cervical spine resolved by June 8, 1998.

As the Office has determined that appellant is entitled to compensation for disability due to the effects of his chronic lumbosacral strain, the only effect of the Office's June 8, 1998 decision finding that appellant no longer suffers from an employment-related cervical strain is that the Office will no longer pay for treatment of the cervical strain. To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further treatment.[6]

The evidence does not establish that appellant no longer has residuals of his employment-related condition of cervical strain which require further treatment. Appellant's attending physician, Dr. Edward N. Feldman, an orthopedic surgeon, has repeatedly indicated that chronic cervical sprain is a permanent condition causally related to appellant's December 14, 1983 employment injury. The Office's referral physician, Dr. Rupert A. Schroeder, a Board-certified orthopedic surgeon, stated in a February 23, 1998 report that the cervical sprain appellant sustained on December 14, 1993 "appears to have pretty much subsided." This opinion is not sufficient to establish that appellant's cervical strain has completely resolved or that further treatment of this condition was not required. The Office did not meet its burden of proof.

The decision of the Office of Workers' Compensation Programs dated June 8, 1998 is affirmed insofar as it determined that appellant is not entitled to compensation during the period December 15, 1983 to November 9, 1984, except for June 12, 1984. Insofar as this decision

[3] *Debra A. Kirk-Littleton*, 41 ECAB 703 (1990).

[4] *Vincent E. Washington*, 40 ECAB 1242 (1989).

[5] Docket No. 93-1751 (issued May 9, 1994).

[6] *Furman G. Peake*, 41 ECAB 361 (1990).

found that appellant no longer suffered from an employment-related cervical sprain, the Office's June 8, 1998 decision is reversed.

Dated, Washington, D.C.
October 20, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member