U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL W. PETROULES and U.S. POSTAL SERVICE, POST OFFICE, Lowell, MA

Docket No. 99-1021; Submitted on the Record;
Issued August 1, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON, A. PETER KANJORSKI

The issues are: (1) whether appellant has met his burden of proof in establishing that he sustained a recurrence of disability on or about April 12, 1996; and (2) whether the Office of Workers' Compensation Programs properly refused to reopen appellant's case for a merit review under 5 U.S.C. § 8128(a).

On February 4, 1995 appellant, then a 38-year-old letter carrier, filed a claim for compensation benefits alleging that he sustained an injury to his lower back and buttocks, when delivering mail, he slipped and fell down steps onto his back and buttocks. The Office accepted that he sustained an employment-related lower back strain and paid him appropriate compensation benefits. Appellant did not stop work but began performing limited-duty work.

Accompanying appellant's claim were two attending physician's reports and two duty status reports. The attending physician's report dated February 21, 1995 prepared by Dr. Venkata Satyam, a Board-certified internist, noted back and cervical strain due to a fall while at work. The duty status report of the same date prepared by Dr. Satyam noted that appellant could return to work on limited duty with a lifting and carrying restriction of 20 pounds. His report dated March 7, 1995 prepared by Dr. Milton A. Drake, a Board-certified internist, indicated low back strain and possible disc disease. The duty status report of the same date prepared by Dr. Drake noted that appellant could return to regular work on full-duty status but was subject to a lifting and carrying weight restriction of 20 pounds. The duty status report indicated that appellant's usual work requirement required lifting up to 20 pounds.

On February 6, 1997 appellant filed a Form CA-2a, notice of recurrence of disability. He indicated a recurrence of back pain intermittently occurring since the employment-related injury of February 4, 1995. Appellant did not stop work at this time, but sought medical treatment on April 12, 1996.

By letter dated February 26, 1997, the Office requested detailed factual and medical evidence from appellant from March 1995 to the present, stating that the information submitted was insufficient to establish a recurrence on the above date. The Office also requested information from the employing establishment, particularly whether appellant continued to be on limited duty from the date of the employment-related injury in February 1995.

On March 6, 1997 appellant submitted progress notes; x-ray reports of the lumbar spine; as well as an attending physician report and duty status report dated March 7, 1995 (both reports were previously submitted by appellant). The progress notes dated April 12 through June 24, 1996 were prepared by Dr. Charles D. Kemos, an internist, and document recurrent low back pain starting in April 1996. The x-ray reports of the lumbar spine dated March 7, 1995 and May 23, 1996 noted degenerative disc disease.[1] The medical records did not mention the cause of appellant's condition.

The employing establishment submitted Form CA-3 dated March 11, 1997, a duty status report dated March 7, 1995 and appellant's job description. The Form CA-3 and duty status report noted appellant returned to full duty March 7, 1995.

By decision dated April 7, 1997, the Office denied appellant's claim for recurrence of disability on the grounds that he did not submit sufficient medical evidence to establish that he sustained a recurrence of disability on or about April 12, 1996 which was causally related to the accepted employment injury sustained February 4, 1995.

Thereafter, appellant submitted two medical reports from Dr. Drake dated April 18 and September 17, 1997. In his April 18, 1997 report, he noted appellant had localized tenderness in the central portion of the lumbosacral spine. Dr. Drake stated that the localized tenderness probably represented disc degeneration, probably secondary to the fall since appellant was asymptomatic prior to this time. He further stated that the fall appellant experienced on February 4, 1995, was causative of the symptoms he treated him for on March 7, 1995. In his September 17, 1997 report, Dr. Drake indicated that he restricted appellant from carrying more than 20 pounds to prevent recurrence of back pain.

Appellant requested an oral hearing before an Office hearing representative which was held October 20, 1997.[2] He submitted medical reports from Dr. Drake dated October 14, 1997,

[1] By letter dated March 31, 1997, appellant submitted duplicative medical records of those sent March 6, 1997. Attached to these medical records were copies of prescriptions and hospital bills for which appellant requested reimbursement.

[2] Appellant submitted letters dated August 28, September 10, 15 and 18, 1997, alleging that his supervisor made false statements on the Form CA-2a dated February 10, 1997. He specifically alleges that he was subject to a weight restriction of 20 pounds by his physician which was not observed by the employing establishment. By letter dated December 3, 1997, a human resource analyst addressed and refuted appellant's concerns.

and Dr. Maria A. Ponsillo, a Board-certified internist, dated September 26, 1997, as well as a chronological narrative prepared by appellant.[3] Dr. Drake's report addressed causal relationship and noted that, in the absence of a previously related injury, appellant's injury of February 5, 1995 was the precipitating factor for the smoldering chronic nature of his continuing pain. Dr. Drake further stated that the intermittent pain appellant experienced between March 7, 1995 and April 1996 without seeking medical attention, did not eliminate the fact that this pain was related to the original injury.

At the hearing, appellant noted he did not lose time from the work due to the claimed recurrence but that he sought compensation benefits.

By decision dated December 29, 1997, the Office hearing representative affirmed the Office's April 7, 1997 decision on the grounds that appellant did not submit sufficient medical evidence to establish a causal relationship between his claimed recurrence of disability and his February 4, 1995 employment injury.

By letter dated January 12, 1998, appellant requested reconsideration of the Office's December 29, 1997 decision. He submitted additional evidence in the form of photographs depicting junk mail and a 46-pound mail satchel.

By decision dated April 14, 1998, the Office denied appellant's request for a merit review on the grounds that the evidence submitted was immaterial and not sufficient to warrant review of the prior decision.

In a letter dated April 20, 1998, appellant requested reconsideration of the Offices April 14, 1998 decision. He submitted medical reports from Dr. Milton Drake dated October 14, September 17 and April 18, 1997; a Form CA-2 dated January 13, 1997; a Form CA-2a dated February 10, 1997; a Form CA-3 dated March 11, 1997 and a letter appellant wrote to the postmaster general dated March 26, 1998.

By decision dated July 20, 1998, the Office denied appellant's request for a merit review on the grounds that the evidence submitted was duplicative and immaterial and not sufficient to warrant review of the prior decision.

The Board finds that the evidence fails to establish that appellant sustained a recurrence of disability on or after April 12, 1996 as a result of his February 4, 1995 employment injury.

Where appellant claims a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury.[4] This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a

[3] On March 29, 1997 appellant resigned from his position from the employing establishment. By letter dated October 21, 1997, addressed to the postmaster, appellant requested reinstatement of his position. By letter dated October 27, 1997, the postmaster denied appellant's request for reinstatement.

[4] *Robert H. St. Onge*, 43 ECAB 1169 (1992).

complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury.[5] Moreover, the physician's conclusion must be supported by sound medical reasoning.[6]

The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.[7] 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.[8] While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.[9]

The Office accepts that appellant sustained an injury in the performance of duty on February 4, 1995. It therefore remains for appellant to establish that his claimed recurrent condition is causally related to that injury.

The medical record in this case lacks a well-reasoned narration from appellant's physicians relating appellant's claimed recurrent condition to the January 4, 1995 employment injury. Dr. Drake, in a report dated April 18, 1997, indicated he examined appellant shortly after the injury and that appellant "probably" had disc degeneration and that this was "probably" secondary to the employment-related injury of January 4, 1995, since he was asymptomatic prior to that time. In his October 14, 1997 report, he opined that the appellant's degenerative disc disease and back problems on and after April 1996 were related to the February 4, 1995 employment injury. However, Dr. Drake has provided no medical rationale in support of his opinion. The opinion on causal relationship was based on the fact that appellant was asymptomatic prior to the work injury. The Board has found that a condition determined to be causally related to an employment injury merely because the employee was asymptomatic before the injury is insufficient, without supporting rationale, to establish causal relation.[10] Likewise,

[5] Section 10.121(b) of the Code of Federal Regulations 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 detailed medical report. The physicians report should include 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 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. 20 C.F.R. § 10.121(b).

[6] *See Robert H. St. Onge supra* note 4.

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

[8] For the importance of bridging information in establishing a claim for a recurrence of disability. *See Robert H. St. Onge, supra* note 4; *Shirloyn J. Holmes*, 39 ECAB 938 (1988); *Richard McBride*, 37 ECAB 738 (1986).

[9] *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

[10] *See Thomas D. Petrylak*, 39 ECAB 276 (1987).

Dr. Drake also offered speculative support for causal relationship by opining that appellant's degenerative disc condition was "probably" work related.[11]

Other treatment records from Dr. Ponsillo dated January 13 to November 20, 1997 indicate that appellant complained of low back pain which he attributed to his employment-related injury of January 4, 1995. He noted that, on January 21, 1997, appellant was referred to the department of neurosurgery, which confirmed a chronic discogenic low back syndrome initiated by a work injury on February 4, 1995. While this provides some support for causal relationship between appellant's February 4, 1995 employment injury and the degenerative disc disease of the lumbar spine, Dr. Ponsillo did not provide a rationalized medical opinion explaining how the February 4, 1995 work incident caused or contributed to the degenerative disc disease for which appellant sought treatment on and after April 12, 1996. Other medical reports submitted by appellant did not specifically address causal relationship between his accepted condition and his claimed recurrence of disability or condition.

For these reasons, appellant has not met his burden of proof in establishing that he sustained a recurrence of disability or a medical condition beginning on or about April 12, 1996 causally related to his accepted January 4, 1995 employment injury.

The Board further finds that the Office properly refused to reopen appellant's case for a merit review under 5 U.S.C. § 8128(a).

To require the Office to reopen a case for reconsideration, section 10.138(b)(1) of Title 20 of the Code of Federal Regulations provides in relevant part that a claimant may obtain review of the merits of his claim by written request of the Office identifying the decision and specific issues(s) within the decision which the claimant wishes the Office to reconsider and the reasons why the decision should change and by:

"(i) Showing that the Office erroneously applied or interpreted a point of law; or

(ii) Advancing a point of law or fact not previously considered by the Office; or

(iii) Submitting relevant and pertinent evidence not previously considered by the Office."[12]

Section 10.138(b)(2) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in paragraphs (b)(1)(i) through (iii) of this section will be denied by the Office without review of the merits of the claim.[13] Where a claimant fails to submit relevant evidence not previously of record or advance legal contentions not previously considered, it is a matter of discretion on the part of the Office whether to reopen

[11] Speculative and equivocal medical opinions regarding causal relationship have no probative value; *see Alberta S. Williamson,* 47 ECAB 569 (1996); *Frederick H. Coward, Jr.,* 41 ECAB 843 (1990); *Paul E. Davis,* 30 ECAB 461 (1979).

[12] 20 C.F.R. § 10.138(b)(1).

[13] 20 C.F.R. § 10.138(b)(2).

a case for further consideration under section 8128 of the Federal Employees' Compensation Act.[14]

The only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgement, or actions taken which are contrary to both logic and probable deductions from established facts.[15] The Board does not find in the case record of such abuse of discretion.

In support of his request for reconsideration on January 12, 1998, appellant submitted two photographs which depicted junk mail and a 46-pound mail satchel. He indicated that his current lower back ailments were caused by the injury on February 4, 1995, and the fact that he continued to carry a mailbag, as depicted in the photographs, which weighed in excess of the doctor ordered weight restriction. The Office, in its decision dated April 14, 1998, properly found that the evidence submitted by appellant was insufficient to warrant a review of its prior decision. Appellant's claim for recurrence was denied based on a failure to provide rationalized medical evidence to support a causal relationship between appellant's condition and the February 4, 1995 employment-related injury.[16] The photographs have no probative value regarding the causal relationship between appellant's accepted February 4, 1995 injury and his condition in April 1996.

In support of his request for reconsideration, on April 20, 1998, appellant submitted reports from Dr. Drake dated April 18, September 17 and October 14, 1997; Form CA-2 dated January 13, 1997; Form CA-2a dated February 10, 1997; Form CA-3 of March 11, 1997; and a letter to the postmaster dated March 26, 1998. This evidence was duplicative of evidence already contained in the record,[17] and was previously considered by the hearing representative and found deficient. Therefore, the Office properly determined that this evidence did not constitute a basis for reopening the case for a merit review under 20 C.F.R. § 10.138.

Appellant has not shown that the Office erroneously applied or interpreted a point of law; he has not advanced a point of law or fact not previously considered by the Office; and he has not submitted relevant and pertinent evidence not previously considered by the Office.

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[14] *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

[15] *Daniel J. Perea*, 42 ECAB 214 (1990).

[16] While appellant also claimed that he sometimes worked outside of his physical restrictions, the hearing representative previously considered this argument in her December 29, 1997 decision and found that any such restrictions were prophylactic in nature. The Board concurs that the restriction was prophylactic in nature as Dr. Drake, in his September 17, 1997 report, indicated that he imposed the lifting restriction "to avoid a recurrence of low back pain." *See Mary A. Geary*, 43 ECAB 300, 309 (1991) (finding that fear of future injury is not compensable under the Act); *Pat Lazzara*, 31 ECAB 1169, 1174 (1980) (finding that appellant's fear of a recurrence of disability upon return to work is not a basis for compensation).

[17] Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case; *see Daniel Deparini*, 44 ECAB 657 (1993); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

It is for the above reasons that the July 20 and April 14, 1998 and December 29, 1997 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
August 1, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member