U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LEE M. WATTS and DEPARTMENT OF DEFENSE,
DFAS, Denver, CO

Docket No. 00-92; Submitted on the Record;
Issued December 4, 2000

DECISION and ORDER

Before DAVID S. GERSON, A. PETER KANJORSKI,
VALERIE D. EVANS-HARRELL

The issue is whether appellant has met his burden of proof to establish that he sustained a medical condition in the performance of duty on October 23, 1995.

On October 23, 1995 appellant, then a 46-year-old automotive clerk, filed a notice of traumatic injury and claim for compensation contending that he aggravated a prior back, neck and shoulder injury when he slipped on some ice in the parking lot at work.[1] By decision dated February 8, 1996, the Office of Workers' Compensation Programs denied the claim on the basis that fact of injury had not been established. Appellant requested a hearing and by decision dated June 19, 1996, an Office hearing representative found that the case was not in posture for a hearing and remanded the case for further development and the issuance of a *de novo* decision.[2]

By decision dated June 23, 1997, the Office denied the claim on the basis that appellant had not established that he sustained an injury causally related to the October 23, 1995 employment incident.

The Board has reviewed the record and finds that appellant has not established that he sustained an injury causally related to the October 23, 1995 employment incident.

An employee seeking benefits under the Federal Employees' Compensation Act[3] has the burden of establishing the essential elements of his or her claim including the fact that the

[1] The record indicates that appellant filed a prior claim for an October 1990 injury which the Office accepted under case number A12-0119066 for a back sprain, sprain of lumbar region and sprain of right shoulder and arm.

[2] While the case was under development, appellant appealed to the Board. The case was docketed as No. 96-2505. On February 24, 1997 the Board issued an Order Dismissing Appeal and Cancelling Oral Argument as there was no final adverse decision. Docket No. 96-2505 (issued February 24, 1997).

[3] 5 U.S.C. §§ 8101-8193.

individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[4] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.[5]

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered, in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident, which is alleged to have occurred. In this case, there is no dispute that appellant is a federal employee, that he timely filed his claim for compensation benefits and that the employment incident occurred on October 23, 1995, as alleged.

The second component is whether the employment incident caused a personal injury and it generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.[6] In assessing medical evidence, the weight of such evidence is determined by its reliability, its probative value and its convincing quality and the factors which enter in such an evaluation include the opportunity for, and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.[7]

Of the pertinent medical evidence, there is no rationalized medical opinion to establish a causal relationship between appellant's current condition and the October 23, 1995 employment incident. In his reports dated December 1, 1995, January 18, November 25 and December 24, 1996, and January 23 1997, Dr. Don R. Molden, a Board-certified internist, noted that appellant had a history of chronic cervical and lumbar strain associated with frequent muscle spasms of the neck and back respectively which arose from a work-related fall in 1990. He stated that the October 23, 1995 employment incident exacerbated appellant's symptomology. Dr. Molden provided a diagnosis of myofascial pain syndrome and opined that appellant was totally disabled from all work. He, however, did not offer an opinion regarding the current cause of appellant's myofascial pain syndrome or provide an explanation as to why the October 23, 1995 employment-related incident was exacerbating appellant's problems or causing appellant's

[4] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[5] *Daniel J. Overfield,* 42 ECAB 718, 721 (1991).

[6] *Gary R. Sieber*, 46 ECAB 215, 224 (1994); *Melvina Jackson* 38 ECAB 443, 449-50 (1987); *Naomi A. Lilly,* 10 ECAB 560, 573 (1959).

[7] *Thomas A. Faber*, 50 ECAB ____ (Docket No. 97-2212, issued September 28, 1999).

chronic pain. In his reports dated June 17 and November 19, 1996, Dr. Floyd Bralliar, an osteopath, provided a history of a work-related fall in 1990 and stated that the October 23, 1995 employment incident exacerbated appellant's chronic thoracic and muscle strains for the earlier fall injury. He reported his finding on examination and provided a diagnosis of herniated discs at C4-5 and C6 superimposed upon chronic cervical strain; stenosis at the C6-7 level; marked degenerative changes at L4-5 and generally in the lumbosacral spinal region; acute lumbosacral strain; and impingement syndrome, right shoulder. Dr. Bralliar opined that appellant was totally disabled. He, however, did not offer an opinion for the cause of appellant's condition or provide an explanation supported by medical rationale as to why he was experiencing such degenerative changes and how the October 23, 1995 employment incident contributed to or caused such changes. In reports dated June 14, 1996, January 7 and January 9, 1997, Dr. Kasiel Steinhardt, a Board-certified orthopedic surgeon, noted the history of both employment incidents in 1990 and 1995, provided his examination findings and diagnosed chronic sprain, lumbar spine region; chronic cervicodorsal myofascial strain with post-traumatic myofascitis involving right shoulder girdle region; chronic pain sydrome; and emotional reaction secondary to injury and to chronic pain syndrome. He also opined that appellant was totally disabled from any type of work. Although Dr. Steinhardt reviewed the findings of the objective testing of record, which included magnetic resonance image scans, computerized tomography scans, and electromyogram, he did not offer an opinion regarding the cause of appellant's condition.

In his report of October 3, 1996, Dr. Jeffrey M. Hrutkay, a Board-certified orthopedic surgeon and an Office referral physician, reviewed a statement of accepted facts, the medical evidence of record including objective testing and provided the results of his examination. He diagnosed chronic low back pain and right lower extremity pain, chronic right-sided neck and upper back pain and chronic right shoulder pain consistent with impingement syndrome and stated that all of those conditions were present since the work-related injury on October 1, 1990 and were aggravated by the fall on October 23, 1995. He opined, however, that there was little objective evidence to base an aggravation of preexisting injuries other than appellant's complaints and medical records which indicate further injury from a fall on October 23, 1995. Dr. Hrutkay stated that he did not have the medical records prior to the October 1995 employment incident, but the available medical records indicate, by history, that appellant's condition had deteriorated. He stated that, although appellant's examination demonstrated nonorganic signs in the form of positive Waddell's signs as related to his ongoing low back symptoms, there was also evidence of symptom magnification. Dr. Hrutkay stated that, although appellant's chronic pain syndrome was exacerbated by the October 23, 1995 fall, it was difficult to delineate the exact disability but the records support that appellant is totally disabled. Dr. Hrutkay stated that, although it was highly unlikely that appellant would be able to return to gainful employment, he could find no specific objective physical findings on examination which would specifically exclude him from performing his last job as an office automation secretary. Dr. Hrutkay further stated that it was difficult to attribute residuals to either the October 23, 1995 employment incident or the prior injury of October 1, 1990 as this case is dealing primarily with subjective complaints of pain.

In his report of June 5 and June 23, 1997, Dr. Stephen Dinenberg, a Board-certified orthopedic specialist and an Office referral physician, noted the history of the two employment incidents and noted that appellant additionally stated that he was involved in a head-on

automobile accident in 1978 in which he hurt his neck and that he had fallen out of a truck while in the service. He additionally stated that he reviewed the statement of accepted facts along with the medical records for the alleged October 23, 1995 injury and the prior injury of October 1, 1990. Dr. Dinenberg stated that the physical examination of appellant was characterized by injury-type behavior. Because of this injury behavior, even in excess of the usual presentation of Waddell-type of signs, he stated that the physical examination was not of great benefit other than to document that appellant was demonstrating injury behavior. Dr. Dinenberg noted that appellant's specific physical findings were inconsistent with his subjective complaints and his visual presentation of injury. For example, he noted that appellant had bulging and extremely well-toned calf musculature, excellent musculature of the right and left arms with no atrophy, deep tendon reflexes at the biceps, triceps and brachiaordialis which were equal and the ability to move the neck fluidly in unguarded moments. Dr. Dinenberg opined that, although appellant sustained a strain to the cervical and lumbar spine at the time of the October 1, 1990 employment injury, the objective medical evidence failed to establish that he sustained any medical condition as a result of the October 2, 1995 employment incident or is suffering any residuals thereof. He opined that there was no reason why appellant could not perform office automation secretary work at this time.

The reports of Drs. Hrutkay and Dinenberg have the reliablility, probative value and convincing quality with respect to the issue of whether appellant sustained an injury as a result of the October 2, 1995 employment incident. Both Drs. Hrutkay and Dinenberg found no objective evidence to substantiate appellant's complaints of pain. Moreover, both physicians appeared to find that appellant engaged in symptom magnification as the physical findings were inconsistent with appellant's subjective complaints. Additionally, both physicians opined that appellant was not totally disabled from performing his job as an office automation secretary.

Although the medical evidence lends support to a finding that appellant continues to have pain from his 1990 employment injury, which intermittently increases, appellant has submitted no medical evidence, supported by medical rationale and objective findings, that the October 23, 1995 employment incident caused a medical condition or caused his preexisting condition to worsen to any degree. As there is insufficient rationalized medical evidence of record, the Office properly found that appellant failed to establish fact of injury.

The June 23, 1997 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
December 4, 2000

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

Valerie D. Evans-Harrell
Alternate Member