U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JON P. CARACTER and U.S. POSTAL SERVICE,
POST OFFICE, Santa Ana, CA

Docket No. 98-2522; Submitted on the Record;
Issued September 27, 2000

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he sustained a traumatic injury in the performance of duty on May 7, 1998.

In the present case, appellant a 32-year-old mail handler, on May 7, 1998, filed a traumatic injury claim alleging that on that day he "was reading mail on the dome and I started feeling pain on the right side of my neck, pain traveling down right side."

In a May 20, 1998 letter, the employing establishment controverted appellant's claim. The employing establishment stated that appellant filed his claim in retaliation for the employing establishment's issuance of a seven-day suspension to appellant on April 23, 1998.

By letter dated June 2, 1998, the Office of Workers' Compensation Programs advised appellant that he needed to submit additional information regarding his claim for compensation, including a detailed narrative medical report explaining how his doctor believed that appellant's federal employment caused his current medical condition.

In a medical report dated May 11, 1998 and received by the Office on June 11, 1998, Dr. Randolph P. Jones, a general practitioner, stated that he had examined appellant on May 7, 1998. He reported that appellant complained of pain from repetitive lifting; that physical examination revealed pain on range of motion of the cervical spine and tenderness on palpation of right paraspinal muscle to the trapezius. Diagnosis was cervical strain with radiculopathy. Dr. Jones relied on x-rays taken that day and prescribed cryomatics, therapy, dispensed cold pack (large), dispensed Extra Strength Tylenol 500 milligrams (mgs.) and Vicodin 500 mgs. A follow-up appointment was scheduled for May 12, 1998. He restricted appellant to moderate work with no lifting over 20 pounds.

In a medical report dated May 19, 1998 and received by the Office on June 11, 1998, Dr. Donald D. Kim, appellant's treating physician and Board-certified in orthopedic surgery, stated that he initially saw appellant on May 11, 1998. Appellant related:

> "[H]is job description is of sorting boxes. [Appellant] works the graveyard shift from 10:30 p.m. to 7:00 a.m. He sorts boxes by manually reading the addresses and tossing the boxes. He noted that some boxes can weigh up to 70 pounds. [Appellant] stated that he developed symptoms referable to his upper back and neck around May 7, 1998. He was working the graveyard shift that night and as he was throwing boxes over his shoulder, to the right and left, he felt a pulling sensation in his upper back. [Appellant] finished his shift, but by the next day he had developed a fairly severe pain. He called in sick, but he was told to come in. It is noted by May 8, 1998, [appellant] was experiencing very severe pain and he was sent to an industrial clinic. He went to the [East] Edinger [Medical] Clinic where he had x-rays done. He was given Vicodin and Extra Strength Tylenol and told to take it. [Appellant] has not worked since then, however, because of fairly severe pain he was referred for an orthopedic opinion."

Upon examination, Dr. Kim determined that appellant had cervical musculoligamentous strain and sprain and thoracic musculoligamentous strain and sprain as a result of "repetitively throwing boxes over the shoulder level and sorting boxed mail." He placed appellant on one week of total disability due to severe pain, prescribed physical therapy three times a week for three weeks and adjusted his medication. Dr. Kim also submitted medical reports dated May 11, 18, 19 and 26 and June 1, 1998. In the June 1, 1998 medical report, which the Office received on June 19, 1998, he stated that appellant was released to modified work with no pushing or pulling, or lifting greater than 15 pounds, and limited his stooping and bending.

In a decision dated June 24, 1998, the Office denied appellant's claim on the grounds that the evidence failed to establish fact of injury on May 7, 1998. The Office claims examiner made the following findings regarding the alleged employment incident:

> "On May 7, 1998, the day before you were to start a seven-day suspension for disciplinary action, you filed a Form CA-1, claiming you hurt your neck while reading mail on the dome.
>
> "A review of the information submitted reveals that the medical evidence is insufficient to support your claim for a work-related injury.…
>
> "As of this date we have received the comprehensive medical report from a Dr. Kim dated May 19, 1998. [He] gives a diagnosis of cervical strain and thoracic strain based on a history which differs from the cause of injury you described on your submitted Form CA-1 and this lessens the probative value of the medical report. Other findings such as your complaints of pain and your display of limited motion are subjective in nature. The requested answers to the series of questions that were sent to you have not been received at this time.

> "In order for further consideration to be given under the Federal Employees' Compensation Act, the evidence must demonstrate that: (1) a specific event, incident or exposure occurred at the time, place and in the manner alleged; and (2) a medical condition exists for which compensation is claimed. You have failed to meet the first requirement above.
>
> "Upon the foregoing findings of fact, your claim for all benefits under the Act is hereby rejected for the following reason: Fact of injury is not established."

The Office claims examiner did not identify how appellant's history of injury differed from that of Dr. Kim. Further, his conclusion that appellant's complaints of pain and limited range of motion are subjective in nature implies a medical conclusion that such conditions are not work related. The description of appellant's pain as subjective may indeed be accurate, however, the implied conclusion that the condition is not work related is not supported by medical evidence in the record. In the absence of any medical training on the claims examiner's part and, in view of his failure to introduce into the record any evidence respecting his personal qualifications as a medical expert, the Board can give no weight to his implied conclusion that because appellant's pain and lack of range of motion are subjective medical findings they are not causally related to appellant's injury.

The Board finds that appellant has met his burden of proof in establishing the occurrence of the work incident at the time, place and in the manner alleged.

In this connection, the Board notes that, if the factual evidence is conflicting as to whether an employment-related work incident occurred, a claims examiner may not simply state that the evidence is conflicting and deny the claim. The claims examiner must evaluate the factual evidence, identify the evidence relied on and the reasons supporting why he or she discredits appellant's version of the employment incident if a finding is made that the incident did not occur at the time, place and in the manner alleged. In the instant case, the Board does not find such inconsistencies in the evidence as to cast doubt as to whether the incident occurred as alleged by appellant. To the contrary, the Board finds that appellant reported to his supervisor a consistent history of the employment incident. The Board notes that appellant's description of his injury contained in his Form CA-1 and his history of injury as related to Drs. Kim and Jones are all consistent regarding the manner, time and place of injury. Each history of injury further elaborated on how the injury occurred, the symptoms appellant experienced, the progressive nature of the pain and the various regimens of medication, physical therapy and other modalities of treatment appellant underwent. Specifically, there are no inconsistencies in the factual evidence regarding the manner, date and time of injury. For example, appellant noted in his initial claim that he was "reading mail on the dome" when he began to feel pain on the right side of his neck. In a more elaborate but nonetheless consistent description of his activities as he related them to Dr. Kim on May 19, 1998, appellant explained that in order to properly sort boxes he needed first to read the address labels and then distribute the boxes by tossing them over his right or left shoulder. Appellant's use of the phrase "reading mail on the dome" as he used it in his initial claim is but a partial description of the complete physical requirement, which included tossing boxes of upwards of 70 pounds in order to effect a proper distribution. It was during this process of reading address labels attached to boxes and then distributing the boxes by

tossing them over his shoulders that he felt a "pulling sensation in his upper back." Appellant's characterizations of his activities, from his initial claim to his relating a history of injury to the doctors of record is consistent and credible. Therefore, to the extent that the claims examiner made an "implied" finding that the employment incident did not occur as alleged by appellant, that finding is hereby reversed.

Turning next to the issue of whether appellant sustained an injury as a result of the May 5, 1998 incident, the Board notes that Drs. Jones and Kim diagnosed appellant with medical conditions consistent with appellant's subjective symptoms and related these conditions to appellant's employment requirements. For example, in his May 7, 1998 medical report, Dr. Jones diagnosed appellant with cervical strain with radiculopathy caused by repetitive lifting, noting that his physical examination revealed pain on range of motion of the cervical spine and restricted appellant from his usual work but authorized moderate work with no lifting over 20 pounds.

Further, Dr. Kim found that appellant had cervical musculoligamentous strain and sprain and thoracic musculoligamentous strain and sprain as a result of his employment activities. In his May 19, 1998 report, Dr. Kim noted familiarity with appellant's work requirements and history of injury and treatment, noting that appellant related symptoms referable to his upper back and neck around May 7, 1998. Based on his examination, he found that appellant had cervical musculoligamentous strain and sprain and thoracic musculoligamentous strain and sprain and related those conditions to appellant's work requirements. It is noted that Drs. Jones and Kim released appellant to a modified work requirement with Dr. Jones limiting appellant to lifting no more than 20 pounds and Dr. Kim limiting appellant to no more than 15 pounds. Based on the contemporaneous medical reports of record which support the time and manner of appellant's history of injury as he related it in both of his claim forms and in subsequent medical appointments as well as the relationship between appellant's duties and his injury, the Board finds that appellant has established that he sustained a work-related injury on May 5, 1998 and thus reverses that finding of the Office in its June 24, 1998 decision.

It is further noted that the employing establishment strongly based its controversion on its determination that appellant filed his claim in retaliation against the employing establishment for its attempt to suspend appellant for "irregular attendance." However, the record demonstrates that appellant sustained a work-related injury on May 5, 1998 and that the medical evidence establishes that appellant was disabled as a result of that injury.

Therefore, the decision of the Office dated June 24, 1998 finding that the employment incident on May 5, 1998 did not occur at the time, place and in the manner alleged is hereby reversed.

The decision of the Office of Workers' Compensation Programs dated June 24, 1998 is hereby reversed.[1]

Dated, Washington, DC
September 27, 2000

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

[1] The Board notes that, subsequent to the Office's June 24, 1998 decision, appellant submitted additional evidence. The Board has no jurisdiction to review this evidence for the first time on appeal. 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).