U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FRANK H. HILL and U.S. POSTAL SERVICE,
POST OFFICE, Fort Worth, TX

Docket No. 99-852; Submitted on the Record;
Issued September 8, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has established that he sustained a recurrence of disability beginning August 3, 1996 causally related to his accepted June 10, 1996 employment injury.

On June 10, 1996 appellant, then a 42-year-old tractor trailer operator, filed a traumatic injury claim alleging that he injured his head and neck when he was rear ended by another car, while driving a postal vehicle. The Office of Workers' Compensation Programs accepted the claim for head contusion and blunt trauma. Appellant returned to limited-duty working four to five hours per day on June 18, 1996 and stopped work on July 30, 1996.

Appellant filed a claim for recurrence of total disability commencing August 3, 1996 due to his accepted June 10, 1996 employment injury.[1]

A police report dated July 26, 1996 indicated that appellant had wrecked his car while involved in an automobile accident. William P. King, the investigating officer, noted that appellant stated that he had "received a concussion in a work-related accident" and that he had blacked out. The report also noted that appellant had been drinking.

In an August 7, 1996 report, Dr. Keith E. Argenbright, a Board-certified family practitioner and appellant's initial attending physician, noted that appellant had a June 10, 1996 employment injury and that since then appellant had suffered from "post-concussion syndrome. As a result, he has experienced black out spells and headaches." Dr. Argenbright indicated that appellant was totally disabled from working until this problem resolved.

[1] The Office developed this as a claim for a recurrence of disability. Appellant returned to work on January 15, 1997 working eight hours.

By letter dated August 21, 1996, the Office advised appellant that the medical evidence was insufficient to support his request for compensation and advised him as to the information necessary to support his claim.

By decision dated September 26, 1996, the Office denied appellant's claim for a recurrence of disability commencing August 3, 1996. In the attached memorandum, the Office noted that the evidence submitted was insufficient to establish that the claimed recurrence of total disability was caused, precipitated, accelerated or aggravated by his accepted June 10, 1996 employment injury.

In a letter dated December 16, 1996, appellant requested reconsideration and submitted a November 12, 1996 report from Dr. Rebecca S. Shank, an attending Board-certified neurologist, and a letter dated December 10, 1996 from Dr. Argenbright referring appellant to Dr. Shank as appellant's new treating physician in support of his request.

By decision dated March 5, 1997, the Office denied appellant's request for reconsideration on the basis that the record failed to contain a rationalized medical opinion linking appellant's syncope to his June 10, 1996 employment injury.

By letter dated August 27, 1997, appellant requested reconsideration and submitted an August 25, 1997 report by Dr. Charles D. Marable, a Board-certified neurologist, in support of his request.

In his August 25, 1997 report, Dr. Marable, based upon a history of the employment injury, medical history, review of medical records and physical examination, diagnosed post-concussive syndrome and "most likely post-concussive seizure disorder." Dr. Marable concluded that appellant's June 10, 1996 employment injury was the cause of his disability as well as the cause of his syncopal episode on July 26, 1996, in which appellant was involved in a motor vehicle accident. In conclusion, Dr. Marable opined that appellant was unable to work at this time and that appellant should be placed on medication for his seizures.

In a February 4, 1998 letter, Mr. King stated that appellant was not intoxicated at the time of his July 26, 1996 accident, but that he was required to note the results of the mandatory sobriety test, which was 0.013.

On March 9, 1998 the Office referred appellant, together with a statement of accepted facts, a list of questions and medical records, to Dr. Roger Blair, a physician Board-certified in neurology and clinical neurophysiology, for a second opinion.

In a report dated March 23, 1998, Dr. Blair, based upon a physical examination, review of the medical record, employment injury history, medical history and a statement of accepted facts, opined that appellant's syncope was unrelated to his June 10, 1996 employment injury and that appellant did not have a seizure problem. Regarding the cause of appellant's syncopal episodes, Dr. Blair stated that they were "more likely related to cardiac origin or hypertension or the use of medications for his orthostatic hypotension or other arrythmias." As to the cause of appellant's headaches, Dr. Blair concluded that appellant "most likely does have a myofascial pain syndrome, which cause his headaches and that problem" was due to the employment injury.

Lastly, Dr. Blair stated that as appellant was still having his syncopal episodes, whose etiology was unknown, that appellant "should not be driving a motor vehicle" for either himself or the employing establishment.

By letter dated April 16, 1996, the Office referred appellant to Dr. Michael R. Seals, a neurologist, to resolve the conflict in the medical opinion evidence between Drs. Blair and Marable. Dr. Seals concluded that appellant's syncopal episode was unrelated to his June 10, 1996 injury.

By decision dated May 28, 1998, the Office found the opinion of Dr. Seals, the impartial medical examiner, established that appellant's disability was unrelated to his accepted June 10, 1996 employment injury.

In a letter dated August 29, 1998, appellant requested reconsideration and submitted an August 20, 1998 report by Dr. Marable in support of his request.

In his August 20, 1998 report, Dr. Marable diagnosed post-concussive headaches, post-concussive syndrome and "most likely partial complex seizures" due to his June 10, 1996 employment injury. Dr. Marable indicated that he had reviewed Dr. Seals' report and disagreed with Dr. Seals' conclusions and that he believed those conclusions were unsupported by the medical literature. He also noted that Dr. Seals was not Board-certified.

By memorandum dated September 17, 1998, the Office confirmed that Dr. Seals was not Board-certified in neurology. It determined that referral of appellant for a new impartial examination was appropriate.

On September 23, 1998 the Office referred appellant, together with a statement of accepted facts, questions to be answered and medical records, to Dr. Rajendra P. Gandhi, a Board-certified neurologist, to resolve the conflict in the medical opinion evidence as to whether appellant's June 10, 1998 injury contributed to his July 26, 1998 nonwork injury.

In a report dated October 16, 1998, Dr. Gandhi, based upon a physical examination, review of the medical record, statement of accepted facts, employment injury history and list of questions, opined that appellant did not have a seizure disorder. In support of his conclusion, Dr. Gandhi noted that appellant's black-out episodes experienced were not consistent with any seizure disorder, the electroencephalogram (EEG) was normal and that the magnetic resonance imaging (MRI) scan indicated an "increased signal in the white matter," which is consistent with microangiopathy. Dr. Gandhi noted that as appellant was hypertensive he was susceptible to microantiopathies and that dizziness and syncopal as well as presyncopal episodes can also be seen with hypertension." Dr. Gandhi further opined that there was "no direct link between the event of June 10, 1996 and the syncopal episode of June 26, 1996," that at this time it did not seem that appellant's "work injury is active since his post-concussion anxiety episodes have stopped" and that appellant had no residual disability due to his June 10, 1996 employment injury.

By decision dated November 3, 1998, the Office denied appellant's reconsideration request. In reaching this determination, the Office found Dr. Gandhi's opinion, as the impartial medical examiner, to constitute the weight of the evidence.

In a letter dated November 30, 1998, appellant requested an oral hearing.

By decision dated January 19, 1999, the Office denied appellant's request for an oral hearing.

The Board finds that appellant has not established that he sustained a recurrence of disability beginning August 3, 1996 causally related to his accepted June 10, 1996 employment injury.

Under the Federal Employees' Compensation Act,[2] 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.[3] 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[4] and supports that conclusion with sound medical reasoning.[5]

Section 8123(a) of the Act provides that where there is disagreement between the physician making the examination for the United States and the physician of the employee, the Office shall appoint a third physician who shall make an examination.[6] In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such a specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.[7]

In this case, the Office properly found a conflict in the medical evidence between Dr. Blair, who opined that appellant did not have a seizure problem and Dr. Marable, who diagnosed post-concussive seizure disorder. Initially, the Office referred appellant, along with the case record, a statement of accepted facts and specific causation questions, to Dr. Seals for an impartial medical examination pursuant to section 8123(a). As Dr. Seals was not Board-certified

[2] 5 U.S.C. §§ 8101-8193

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

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

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

[6] 5 U.S.C. § 8123(a).

[7] *Nancy Lackner Elkins*, 44 ECAB 840, 847 (1993).

in neurology, the Office properly referred appellant to Dr. Gandhi, who was Board-certified, for a second impartial medical report to resolve the conflict in the medical opinion evidence.[8]

Dr. Gandhi concluded, based upon a normal EEG, physical examination, medical history and an MRI, which showed an "increased signal in the white matter," that appellant did not have a seizure disorder. Furthermore, Dr. Gandhi opined that the MRI results were consistent with microangiopathy and that as appellant was hypertensive he was susceptible to microantiopathies and that dizziness and syncopal as well as presyncopal episodes can also be seen with hypertension." In conclusion, Dr. Gandhi opined that appellant had no residual disability due to his June 10, 1996 employment injury and that there was no link between his syncopal episodes and accepted employment injury. Dr. Gandhi provided a comprehensive evaluation of appellant, complete with examination and testing and drafted a report explaining his reasons for finding that appellant's current disability was unrelated to his June 10, 1996 employment injury. Therefore, the Board finds that Dr. Gandhi's opinion constitutes the weight of the medical evidence.

The decision of the Office of Workers' Compensation Programs dated November 3, 1998 is hereby affirmed.[9]

Dated, Washington, D.C.
September 8, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

[8] Federal (FECA) Procedure Manual, Part 3 -- *Medical Examinations*, Chapter 3.500.4(b)(1) (August 1994); *see Charles M. David*, 48 ECAB 543 (1997) (finding that where the selected physician was not Board-certified, he could not be an impartial medical examiner and his opinion was insufficient to justify terminating appellant's compensation).

[9] Following the date of the appeal on December 8, 1998, the Office issued a subsequent decision on January 19, 1999 pursuant to a request for a hearing. The Board has held that the Office does not have jurisdiction to issue a decision on a request for a hearing while the case is pending before the Board on the same issue. 20 C.F.R. § 501.2(c); *Arlonia B. Taylor*, 44 ECAB 591, 597 (1993). Accordingly, the January 19, 1999 decision is null and void; *see Russell E. Lerman*, 43 ECAB 770 (1992); *Douglas E. Billings*, 41 ECAB 880 (1990).