U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JERRY L. WRIGHT and U.S. POSTAL SERVICE,
SPRING VALLEY POST OFFICE, Dallas, TX

Docket No. 00-1885; Submitted on the Record;
Issued April 26, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained a lumbar strain or herniated disc while in the performance of duty on January 14, 2000.

On February 14, 2000 appellant, then a 52-year-old letter carrier, filed a claim alleging that he sustained "strained muscles and disc bulge" in his lumbar region when he picked "mail up off the floor."[1]

In a January 18, 2000 note, Dr. Robert W. Wright, an attending chiropractor, held appellant off work through February 1, 2000 to "avoid aggravation of his condition."

In a January 27, 2000 note, Dr. Paul P. Schorr, an attending osteopath, held appellant off work through February 3, 2000 for an unspecified reason.

In a February 2, 2000 note, Dr. Wright held appellant off work through February 5, 2000.

A February 7, 2000 lumbar magnetic resonance imaging scan showed "partial sacralization of L5," "anterior wedging of T12," "disc dessication" at T11-L1 and L3-5, a one millimeter posterior disc bulge at L3-4, and a three to four millimeter posterior disc herniation at L4-5, with compression of the thecal sac.

In a February 15, 2000 report, Dr. Wright stated that appellant was "not available to work more than eight hours per day due to multiple spinal conditions."

[1] The employing establishment controverted the claim on the grounds that appellant filed it more than 30 days after the date of injury, that there were conflicting accounts of the incident and that appellant's physician was a chiropractor who was also his son. Gene E. Johnston, an employing establishment official, noted that appellant had prior back injuries on February 19, 1978, July 8, 1994 and November 13, 1995.

On March 3, 2000 the Office of Workers' Compensation Programs advised appellant of the type of additional medical and factual evidence needed to establish his claim, including a complete history of the January 14, 2000 incident, any history of similar injuries or a low back condition and a rationalized report from his attending physician explaining how and why the January 14, 2000 lifting incident would cause the claimed low back condition.

By decision dated April 3, 2000, the Office denied the claim on the grounds that causal relationship was not established. The Office accepted that the January 14, 2000 incident in which appellant picked up mail from the floor occurred as alleged. However, the Office further found that appellant submitted insufficient medical evidence to establish that his low back condition was in any way related to that incident.[2]

The Board finds that appellant has not established that he sustained a lumbar strain or herniated disc while in the performance of duty.

When an employee claims a traumatic injury sustained in the performance of duty, he or she has the burden of establishing by the weight of the reliable, probative and substantial medical evidence that the claimed injury is related to a specific work incident or factor. It is not sufficient merely to establish the presence of a condition. In order to establish his or her claim, appellant must also submit rationalized medical evidence, based on a complete and accurate factual and medical background, demonstrating a causal relationship between the claimed injury and the alleged employment incident or factor.[3]

As applied to this case, appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between his claimed low back strain or herniated disc and picking mail up off the floor on January 14, 2000.[4]

Causal relationship is a medical issue,[5] and medical opinion evidence is generally required to establish causal relationship.[6] This evidence must be of reasonable medical certainty,[7] supported by medical rationale explaining the pathophysiologic relationship between

[2] Following the issuance of the Office's April 3, 2000 decision, appellant submitted additional medical and factual evidence. In an April 12, 2000 letter, the Office acknowledged receipt of this evidence, but noted that no action had been taken because appellant had not yet requested a hearing or reconsideration. The Board cannot consider evidence that was not before the Office at the time it issued the final decision in the case, April 3, 2000.

[3] *See Armando Colon*, 41 ECAB 563 (1990).

[4] *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

[5] *Mary J. Briggs*, 37 ECAB 578 (1986).

[6] *Gary R. Sieber*, 46 ECAB 215, 224 (1994); *Melvina Jackson*, 38 ECAB 449-50 (1987).

[7] *See William S. Wright*, 45 ECAB 498 (1994) (a physician's statement that appellant's medication "could very well have been" the cause of his condition was found to be equivocal and speculative); *see Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions based upon an incomplete history or which are speculative or equivocal in character have little probative value).

the diagnosed condition and the specific employment factors implicated by the claimant.[8] In other words, appellant must submit a report from a qualified physician explaining how and why the January 14, 2000 incident caused specific physical pathology resulting in a low back injury or herniated lumbar disc. An award of compensation may not be made on the basis of surmise, conjecture, speculation or appellant's belief of causal relation unsupported by the medical record.[9]

Section 8101(2) of the Federal Employees' Compensation Act[10] provides that the term "'physician' ... includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist...."[11]

In this case, Dr. Wright, the attending chiropractor, did not meet the requirements under section 8101(2) of the Act to qualify as a physician because he did not diagnose a spinal subluxation by x-ray. Because Dr. Wright is not considered to be a physician under the Act, his reports are of no probative medical value in establishing the critical issue of causal relationship. The Board also notes that Dr. Wright made no specific diagnoses and did not mention work factors in any of his reports.

The only document from a physician is Dr. Schorr's January 27, 2000 note holding appellant off work through February 3, 2000 for an unspecified reason. This report does not mention the claimed back condition or any factors of appellant's federal employment. Therefore, it is of no value in establishing causal relationship in this case.

Consequently, appellant has failed to establish that he sustained a lumbar strain or herniated disc causally related to work factors.

[8] *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).

[9] *Minnie L. Bryson*, 44 ECAB 713 (1993); *Froilan Negron Marrero*, 33 ECAB 796 (1982); *Ausberto Guzman*, 25 ECAB 362 (1974).

[10] 5 U.S.C. §§ 8101-8193.

[11] 5 U.S.C. § 8101(2); *see also Linda Holbrook*, 38 ECAB 229 (1986).

The decision of the Office of Workers' Compensation Programs dated April 3, 2000 is hereby affirmed.

Dated, Washington, DC
April 26, 2001

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member