U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JEROME A. PITTMAN, SR. and U.S. POSTAL SERVICE, MAIN POST OFFICE, Atlanta, GA

Docket No. 99-2375; Submitted on the Record;
Issued January 10, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS, VALERIE D. EVANS-HARRELL

The issue is whether appellant met his burden of proof to establish that he sustained an injury in the performance of duty on October 8, 1997, causally related to his federal employment.

On October 14, 1997 appellant, then a 41-year-old tram operator, filed a notice of traumatic injury (Form CA-1) alleging that on October 8, 1997 he sustained a lower back injury when another tram operator caused him to make an awkward movement "to get out of his path." On the claim form, appellant alleged that he felt a severe sting followed by a pop in his lower back. He also noted his preexisting chronic back condition. On the reverse side of the claim form, appellant's supervisor noted that appellant first received medical care on October 9, 1997 from Dr. Gregory Valentine, a Board-certified family practitioner. Appellant stopped work on October 8, 1997 and returned to limited duty on December 10, 1997.

To support his claim, appellant submitted reports dated October 9, 1997 from Dr. Valentine who diagnosed a lumbar strain reinjury and lumbar disc disease and stated that appellant could resume work on October 9, 1997. In a report dated October 11, 1997, Dr. Valentine stated that appellant could resume work on October 12, 1997.

By letter dated November 6, 1997, the Office of Workers' Compensation Programs requested additional factual and medical evidence and allowed 30 days within which to respond to its request.

In response, appellant submitted reports from Dr. Valentine dated January 16 and November 12, 1997. In his January 16, 1997 report, he noted that appellant had a history of an employment-related back injury and he continued to experience back pain "that could be flared up with the demands of his job." In his November 12, 1997 report, Dr. Valentine noted that appellant injured his back at work in 1988 when he was crushed by a machine and reinjured his back in March 1997 in a nonwork-related motor vehicle accident. He diagnosed a permanent

chronic lower back condition "secondary to three different back injuries" in 1988, March and October 8, 1997. Dr. Valentine noted that appellant had experienced increased lower back pain with weakness and muscle spasms and decreased motor strength and numbness in his legs. He stated that appellant "has a physical job and with the chronic exacerbation of his lower back pain and the three injuries, [he] is 50 percent disabled from his [employing establishment] job secondary to his lower back pain."

Appellant also submitted an attending physician's report (Form CA-20) and supplemental physician's report (Form CA-20a) from Dr. Valentine dated December 10, 1997. Dr. Valentine diagnosed chronic lumbar-sacral ligament strain and indicated by check mark that he believed that appellant's condition was caused or aggravated by an employment activity as his job "requires a lot of back bending." Dr. Valentine also noted that he first examined appellant on October 9, 1997; that appellant had two prior back injuries at work, one of which was a "prior crush back injury at work [on] November 16, 1998; and that he was totally disabled from that date to December 10, 1997. He further noted that appellant could resume regular light-duty work on December 10, 1997 but he was indefinitely partially disabled. Dr. Valentine stated that appellant had a concurrent permanent chronic back condition unrelated to his alleged October 8, 1997 employment injury which occurred in November 1988 when he was crushed by a tram.

Additionally, appellant submitted notes dated October 9, 1997 from Dr. Janet Jones, an internist, noting his symptoms and medical history, including that he reinjured his lower back on Tuesday. Appellant also submitted an undated narrative statement in which he discussed his alleged employment injury and medical treatment.

By decision dated March 5, 1998, the Office denied appellant's claim on the grounds that the evidence of record failed to establish fact of injury. The Office found that the October 8, 1997 occurred at the time, place and in the manner alleged, but that the evidence did not establish that a condition was diagnosed in connection with that incident. The Office noted that Dr. Valentine indicated that appellant sustained a nonwork-related back injury in March 1997 and that he was kept off of work for back pain only a few days prior to the October 8, 1997 incident, suggesting that he had ongoing back problems relating to his March 1997 injury.

By letter dated March 21, 1998, appellant requested a review of the written record. Appellant submitted a report dated February 10, 1998, in which Dr. Frazier B. Todd, a podiatrist, noted that during his February 7, 1997 examination, appellant stated that he sustained a work-related injury. Dr. Todd diagnosed peripheral nerve entrapment aggravated by a work-related injury that occurred in September 1993.

Appellant also submitted discharge instructions dated April 21, 1998, in which a physician whose signature is illegible diagnosed adjustment disorder, depressed mood and chronic back pain. The doctor restricted appellant's physical activity "as tolerated per rehab[ilitation]."

Appellant further submitted a lumbar spine magnetic resonance imaging report dated June 17, 1998, in which Dr. Stephen Wilks, a Board-certified diagnostic radiologist, diagnosed early degenerative changes with large left L4-5 paracentral herniation and early degenerative L5-S1 disc disease with central annulus bulge.

Additionally, appellant submitted narrative statements dated October 10 and November 26, 1997 and March 16 and November 29, 1998, in which he described his alleged October 8, 1997 employment injury and noted his contacts with the Office. In his October 10, 1997 statement, appellant noted that he was "suffering from a previous on-the-job injury" that occurred in November 1988. In his March 16, 1998 statement, appellant alleged that he submitted evidence indicating that he provided the Office with his new mailing address.

By decision dated August 13, 1998, finalized August 14, 1998, the hearing representative affirmed the Office's March 5, 1998 decision.

The Board finds that this case is not in posture for decision.[1]

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of his or her claim including the fact that the 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 is causally related to the employment injury.[3] Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.[4]

To determine whether an employee sustained a traumatic injury in the performance of duty, the Office must determine whether "fact of injury" is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence.[5] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed.[6] An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident. As the Office accepted that the October 8, 1997 employment incident occurred at the time, place and in the manner alleged by its decision dated March 5, 1998, the remaining issue is whether the alleged injury was caused by the accepted employment incident.

In order to satisfy his or her burden of proof, an employee must submit a physician's rationalized medical opinion on the issue of whether the alleged injury was caused by the

[1] The Board notes that the record contains additional evidence which was submitted to the Office subsequent to its August 14, 1998 decision; however, the Board's review is limited to the evidence before the Office at the time of its final decision. *Robert D. Clark*, 48 ECAB 422 (1997); 20 C.F.R. § 501.2(c).

[2] 5 U.S.C. §§ 8101-8193.

[3] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[4] *See Ronald K. White*, 37 ECAB 176, 178 (1985).

[5] *See John J. Carlone*, 41 ECAB 354 (1989).

[6] *Shirley A. Temple*, 48 ECAB 404, 407 (1997); *Elaine Pendleton*, *supra* note 3 at 1145.

employment incident.[7] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the employee's alleged injury and the employment incident. The physician's opinion must be based on a complete factual and medical history of the employee, must be of reasonable certainty and must rationally explain the relationship between the diagnosed injury and the employment incident as alleged by the employee.[8]

The medical evidence is insufficiently developed to establish whether appellant's lower back condition is causally related to the October 8, 1997 employment incident. The record contains reports from Dr. Valentine, in which he diagnosed lumbar strain and lumbar disc disease, a permanent chronic lower-back condition and chronic lumbar-sacral ligament strain and related these conditions to appellant's employment, including the October 8, 1997 employment incident. But they do not contain a sufficiently rationalized medical opinion relating those conditions to the October 8, 1997 employment incident. The fact that Dr. Valentine's reports contain deficiencies preventing appellant from discharging his burden of proof, however, does not mean that they completely lack probative value. Rather, the reports are sufficient to require further development of the record especially given the absence of opposing medical evidence.[9] It is well established that proceedings under the Act[10] are not adversarial in nature,[11] and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in developing the evidence.[12] In this case, there is an uncontroverted inference of causal relationship between appellant's condition and the October 8, 1997 employment injury.

On remand, the Office should refer appellant, together with a statement of accepted facts and the case record, to an appropriate Board-certified physician for an examination, diagnosis and rationalized opinion as to the relationship between appellant's condition and the October 8, 1997 employment incident.

After such development as is deemed necessary, the Office shall issue a *de novo* decision.

[7] *Gary L. Fowler*, 45 ECAB 365, 371 (1994).

[8] *See Shirley R. Haywood*, 48 ECAB 404, 407 (1997).

[9] *John J. Carlone*, *supra* note 5.

[10] 5 U.S.C. §§ 8181-8193.

[11] *Shirley A. Temple*, *supra* note 6.

[12] *Id.*, *see Dorothy L. Sidwell*, 36 ECAB 699 (1985).

The decision of the Office of Workers' Compensation Programs dated August 13, 1998, finalized August 14, 1998, is set aside and the case remanded for further proceedings consistent with this opinion.

Dated, Washington, DC
January 10, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Valerie D. Evans-Harrell
Alternate Member