U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN P. STEIN and U.S. POSTAL SERVICE,
POST OFFICE, Clearwater, FL

Docket No. 03-1126; Submitted on the Record;
Issued July 29, 2003

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant sustained an injury in the performance of duty, as alleged.

On March 26, 2002 appellant, then a 45-year-old bulk mail/distribution clerk, filed a traumatic injury claim, alleging that on March 26, 2002 he injured his right shoulder and wrist at work. He asserted that he hit the bulk mail door while walking through it carrying a tray of mail and the door stopped short, causing twisting in his right hand and pain and numbness in his right shoulder.

In a statement dated March 26, 2002, appellant's supervisor, Lucille E. Hammer, stated that on March 26, 2002 appellant told her that he had walked into an automatic door leading to the dock area and was experiencing pain and numbness in his right hand, arm and shoulder.

In a report dated March 27, 2002, Dr. Douglas M. Baird, an osteopath, considered appellant's history of injury, noting that appellant stated that on March 26, 2002 he bumped into a door jam and twisted his right upper extremity. He stated that appellant was seen in the emergency room at Sun Coast Hospital and given medication. Dr. Baird performed a physical examination, diagnosed "shoulder pain" and stated that appellant was unable to use his right upper extremity at the time. He stated that appellant's "affect" was appropriate but the description of the accident causing the injury was not consistent with reasonable causation.

In another report dated March 27, 2002, in response to the Office's request for clarification, Dr. Baird stated that appellant reinjured his right shoulder the prior day at work and stated that appellant admitted that this would not have hurt a "normal" person. Although appellant wanted to be taken off from work until he saw a third orthopedic surgeon, Dr. Baird instructed him that he could perform light-duty work with restrictions.

In a report dated April 3, 2002, James C. Coniglio, an attending clinical psychologist, considered appellant's history of injury, and noted that on March 26, 2002 appellant carried some bulk mail through a doorway and hit his right shoulder on the door as he was going through

it. He performed a mental examination and diagnosed depressive disorder, chronic pain and rotator cuff injury.

In a report dated April 24, 2002, Dr. Walter E. Afield, a Board-certified psychiatrist and neurologist, stated that appellant was unable to work for a minimum of 60 days due to medical reasons that were work related.

In a report dated May 2, 2002, Dr. Chet J. Janecki, a Board-certified orthopedic surgeon, considered appellant's history of injury, noting that, on March 26, 2002, while carrying some objects through a sliding doorway, appellant struck the door with his right shoulder and then "torqued" around as a result of that impact which caused increased pain in his right shoulder and aggravation of an already existing problem with his right shoulder. He performed a physical examination and reviewed a magnetic resonance imaging (MRI) scan dated April 15, 2002 which appeared normal. Dr. Janecki also reviewed an MRI scan dated January 15, 2002 and x-rays dated January 7, 2002. He diagnosed atrophy of the proximal musculature of the shoulder girdle to include the supraspinatus and infraspinatus, of unknown etiology, possibly secondary to misuse of the shoulder or primary neurologic disease. He also diagnosed post-traumatic subacromial bursitis and tendinitis of the right shoulder, possible intra-articular pathology, tendinitis of the right elbow, carpometacarpal boss of the right wrist, and possible wrist dysfunction. Dr. Janecki stated that the symptoms and diagnoses established in his report were the direct result of injuries that appellant sustained on March 26, 2002 "with primary injury and aggravation of the preexisting condition which was also work related." He opined that appellant was significantly debilitated in terms of his shoulder and was a candidate for arthroscopy.

By decision dated May 21, 2002, the Office denied the claim, stating that appellant failed to meet the requirements for establishing that he sustained an injury as alleged. The Office determined that appellant did not establish the fact of injury because there was conflicting evidence regarding whether he sustained an injury at the time, place and in the manner alleged.

By letter dated June 9, 2002, appellant requested an oral hearing before an Office hearing representative which was held on December 5, 2002. At the hearing, appellant described how his March 26, 2002 injury occurred, stating that he was carrying mail through the sliding bulk mail door when the door stopped and he hit the door. He stated that the pain worsened and he went to the emergency room that night. Appellant's representative also described the nature of the sliding doors.

In a report dated September 13, 2002, Dr. Thomas M. Newman, a Board-certified psychiatrist and neurologist, considered appellant's history of injury, noting that he began to develop pain in his right shoulder from doing repetitive work. He reviewed the April 15, 2002 MRI scan, performed a physical examination and diagnosed persistent pain in the hands and arms and the need to rule out carpal tunnel syndrome and cervical radiculopathy.

By decision dated and finalized March 3, 2003, the Office hearing representative affirmed the Office's May 21, 2002 decision.

The Board finds that the case is not in posture for decision.

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.[1] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[2]

The medical evidence required to establish a causal relationship, generally, is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[3]

The Office hearing representative found that appellant did not establish the fact of injury because there was conflicting evidence regarding whether appellant sustained an injury at the time, place and in the manner alleged. He then referred to the March 27, 2002 statement of Dr. Baird, an attending osteopath, that appellant's description of the accident was not "consistent with reasonable causation." Contrary to the Office hearing representative's finding, the evidence of record, particularly the evidence contemporaneous to the date of the March 26, 2003 employment injury, is consistent in noting that on March 26, 2003 appellant struck his right shoulder, arm and wrist, while walking through the bulk mail door carrying mail and hit the door. Appellant alleged that the accident happened in his claim and his supervisor corroborated that appellant gave that description of the accident on March 26, 2002. Appellant's testimony at the hearing is consistent with his initial description, and Dr. Baird, Dr. Coniglio, and Dr. Janecki all had notations of appellant's accident occurring on March 26, 2002 in the way appellant described.[4] The Office therefore erred in finding that appellant failed to establish that the injury did not occur at the time, place and in the manner alleged.[5]

It is well established that proceedings under the Federal Employees' Compensation Act are not adversarial in nature, and, while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.[6] The Office has an obligation to see that justice is done.[7] In his May 2, 2002 report, Dr. Janecki diagnosed

[1] *Robert J. Krstyen*, 44 ECAB 227, 229 (1992); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

[2] *Id*.

[3] *Ern Reynolds*, 45 ECAB 690, 695 (1994); *Gary L. Fowler*, 45 ECAB 365, 371 (1994).

[4] Dr. Coniglio was an attending clinical psychologist and Dr. Janecki was an attending Board-certified orthopedic surgeon.

[5] *See Caroline Thomas*, 51 ECAB 451, 455 (2000).

[6] *Mark A. Cacchione*, 46 ECAB 148, 152 (1994); *Udella Billups*, 40 ECAB 260, 269 (1989).

[7] *Mark A. Cacchione*, *supra* note 6.

post-traumatic subacromial bursitis and tendinitis of the right shoulder, tendinitis of the right elbow, and carpometacarpal boss of the right wrist. He opined that the symptoms and diagnoses in his report were the direct result of the injury appellant sustained on March 26, 2002 and were the result of an aggravation of a preexisting disability. Although Dr. Janecki's report is not completely rationalized and therefore is insufficient to meet appellant's burden of proof to establish his claim, it is sufficient to require the Office to further develop the medical evidence and the case record.[8] It should be noted that Dr. Baird's statement in his March 27, 2002 report that the description of the accident was "not consistent with reasonable causation" is vague and unclear, and therefore does not counter Dr. Janecki's opinion. The case will therefore be remanded for the Office to refer appellant, with the case record and a statement of accepted facts, to an appropriate medical specialist for an evaluation, and for the physician to assess the nature of appellant's condition and whether it was caused by the March 26, 2002 employment injury. After further development as it deems necessary, the Office shall issue a *de novo* decision.

The March 3, 2003 and May 21, 2002 decisions of the Office of Workers' Compensation Programs are set aside and remanded for further action consistent with this decision.

Dated, Washington, DC
July 29, 2003

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[8] *See Ezra D. Long*, 46 ECAB 791, 798 (1995).