U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GEORGE SCOCCA, JR. and U.S. POSTAL SERVICE, FLUSHING POST OFFICE, Flushing, N.Y.

Docket No. 96-656; Submitted on the Record;
Issued April 1, 1998

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON, BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof to establish that he sustained a recurrence of disability on or after June 25, 1975 causally related to his accepted April 3, 1967 employment injury.

The Board has duly reviewed the case record in the present appeal and finds that appellant has failed to establish that he sustained a recurrence of disability on or after June 25, 1975 causally related to his accepted April 3, 1967 employment injury.

On April 3, 1967 appellant, then a mailman, filed a claim alleging that he injured his back when he bent down to pick up a letter.[1] Appellant retired on disability from the employing establishment on June 19, 1967.

The Office of Workers' Compensation Programs accepted appellant's claim for lumbosacral strain and possible nerve root irritation.

By decision dated September 10, 1971, the Office found that appellant's earnings in the position of "general clerk" reflected his wage-earning capacity.

In a September 20, 1971 letter, appellant requested an oral hearing before an Office hearing representative. By decision dated January 22, 1973, the hearing representative affirmed the Office's September 10, 1971 decision.

[1] Previously, appellant filed a claim on June 13, 1953 for a right shoulder and right knee injury sustained on that date, a claim on June 29, 1965 for a left wrist and back injury sustained on that date and a claim on April 1, 1966 for an injury to both legs sustained on that date.

By decision dated May 20, 1975, the Office found that appellant was no longer totally disabled and that appellant's earnings in the position of "general clerk" reflected his wage-earning capacity effective May 29, 1975.[2]

In a June 25, 1975 letter, appellant requested reconsideration of the Office's decision. By decision dated September 29, 1975, the Office vacated the May 20, 1975 decision.

On July 6, 1995 appellant filed a claim (Form CA-2a) dated November 14, 1994 alleging that he sustained a recurrence of disability on June 25, 1975.

By letter dated April 11, 1995, the Office advised appellant to submit updated medical evidence supportive of his recurrence claim.

By letter dated September 15, 1995, the Office advised appellant to submit factual and medical evidence supportive of his recurrence claim.

By decision dated October 24, 1995, the Office found the evidence of record insufficient to establish that appellant's current condition was causally related to the April 3, 1967 employment injury.

An individual 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 disability for which compensation is claimed is causally related to the accepted injury. This burden includes the necessity of furnishing medical evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.[3]

In this case, appellant has not submitted rationalized medical evidence sufficient to establish that he sustained a recurrence of disability on or after June 25, 1975 causally related to the April 3, 1967 employment injury. In response to the Office's April 11, 1995 letter requesting that he submit updated medical evidence supportive of his claim for a recurrence of disability, appellant submitted the March 30, 1995 medical report of Dr. Arnold M. Schwartz, a Board-certified orthopedic surgeon. In his report, Dr. Schwartz noted that he examined appellant on March 27, 1995, that he had not seen appellant in close to one year, and that appellant complained of right leg pain, weakness and right-sided low back pain. Dr. Schwartz further noted his findings on physical examination and opined that there was evidence of sciatica. Dr. Schwartz recommended that appellant consider magnetic resonance imaging and subsequent intervention. Dr. Schwartz concluded that appellant was to be reevaluated as necessary and that he did not see any significant evidence that appellant would have any improvement in the near future. In an accompanying work restriction evaluation, Dr. Schwartz indicated appellant's

[2] Previously, the Office had found that appellant was totally disabled effective December 12, 1974 and appellant's compensation was accordingly increased.

[3] *Louise G. Malloy*, 45 ECAB 613 (1994); *Lourdes Davila*, 45 ECAB 139 (1993); *Robert H. St. Onge*, 43 ECAB 1169 (1992).

physical restrictions, that appellant could not work eight hours per day and that appellant had reached maximum medical improvement. Dr. Schwartz's medical reports are insufficient to establish appellant's burden because he failed to address whether appellant's current conditions were causally related to the April 3, 1967 employment injury.

Although the Office advised appellant of the type of medical evidence needed to establish his claim for a recurrence of disability, appellant failed to submit medical evidence responsive to the request. Accordingly, the Board finds that appellant has not established that he sustained a recurrence of disability on or after June 25, 1975 causally related to the April 3, 1967 employment injury.[4]

The October 24, 1995 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
April 1, 1998

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member

[4] On appeal, appellant submitted evidence, a September 22, 1995 letter, in response to the Office's September 15, 1995 letter. The Board, however, is precluded from reviewing evidence submitted for the first time on appeal. *See* 20 C.F.R. § 501.2(c). Appellant may resubmit this evidence to the Office with a formal request for reconsideration. *See* 20 C.F.R. § 501.7(a).