U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSEPH LoCASCIO and DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Laguna Niguel, Calif.

Docket No. 97-89; Submitted on the Record;
Issued December 9, 1998

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issues are: (1) whether appellant sustained an injury to his back, neck and head while in the performance of his duty and; (2) whether he sustained an emotional condition while in the performance of his duty.

On September 22, 1994 appellant, an appeals officer, filed a claim asserting that in April 1993 he was involved in a traffic accident and suffered pain to his back, neck and head. He explained that his job required him to sit at a desk all day working with a computer, which aggravated his injuries. He also asserted that on September 15, 1994 his supervisor gave him a settlement for a performance-based action, which caused him extreme stress: "By the realization of termination I began getting severe headaches and insomnia." Appellant submitted additional information to support his claim, including statements dated December 5, 1994 and January 19, 1995. In the former statement, appellant indicated that he had sought administrative remedies through grievances, a report of unethical violations of misconduct, a complaint with the Federal Labor Relations Authority and complaints of unfair labor practices. In the latter statement, appellant explained: "Overall, my disability claim is based on stress caused directly by management's actions towards me." Appellant stopped work on September 22, 1994.

In a September 15, 1994 report, Dr. Clayton Thomas Noel, a chiropractor, indicated that x-rays of appellant's cervical spine revealed no evidence of recent fracture, dislocation or gross osteopathology. There was, he noted, a mild loss of the normal cervical lordotic curve. Dr. Noel diagnosed musculoligamentous strain/sprain of the cervical spine aggravated by appellant's work-related activities, specifically, prolonged used of the upper extremities in a forward, extended position and prolonged sitting. He also diagnosed musculoligamentous sprain/strain of the lumbar spine aggravated by appellant's work-related duties, specifically, prolonged sitting. Dr. Noel offered the following discussion:

> "The patient relates a history of a prior, nonwork-related injury to his neck and lower back which resulted from an accident in which he was involved on

April 4, 1993. He subsequently received treatment for these injuries and reached a permanent and stationary level of intermittent mild to slight neck pain and lower back pain. His work with the IRS [Internal Revenue Service] as an accountant requires him to sit for long periods of time and to use his upper extremities in a forward extended position for prolonged periods of time."

In a December 9, 1994 report, Dr. Eugene B. Levin, an internist and appellant's attending physician, stated that appellant's problems started in 1989 "with some differences at work," that these problems multiplied and progressed and became extremely difficult until appellant was unable to continue to work "due to the emotion of the stress in September 1994." He stated that appellant was, at his suggestion, going to a psychologist and was being treated for severe anxiety and depression. "In essence," Dr. Levin stated, "this gentleman is unable to work, primarily due to the fact of severe anxiety and depression related to work problems and aggravated by physical trauma due to an auto accident in 1993."

In a report dated December 12, 1994, Dr. Renee Alpert, a licensed clinical psychologist, offered a principal diagnosis of adjustment disorder with mixed emotional features, adjustment disorder with physical complaints, and psychological factors affecting physical condition. Dr. Alpert indicated that appellant attributed his difficulties to industrial stress:

"[Appellant] complains that continued harassment, targeting, and differential treatment in the work environment has caused him to lose his concentration and ability to function at work. This resulted in psychiatric disability. His psychiatric disability in turn has significantly impaired his work functions. The analysis of the clinical data, the mental status examination and the test results can be used to measure his disabling emotional response to his job stress. Disabling symptoms include high levels of anxiety, ruminative thought process, fatigue, tension headaches, impaired concentration and focus.

"The above data indicates that it is reasonably and medically probable that [appellant's] current psychiatric distress and the resulting psychiatric disability are the consequence of the events alleged to have occurred during the course of his employment. Absent industrial stress, it is not medically probable that [appellant] would be presenting with the psychiatric disability he is experiencing now. [Appellant's] present psychiatric disability and functional impairment are above the 51 [percent] of causation which constitutes the minimal quantifying level for compensability.

"[Appellant's] work environment did not serve as a stage on which a prior symptomatic condition acted itself out leading to his current disability."

In a decision dated April 14, 1995, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the evidence of record established that appellant's psychiatric condition did not arise in the performance of duty.

Appellant requested a review of the written record and submitted statements from employees who supported that appellant was "targeted for removal from the [employing establishment] by Laguna Niguel Appeals Management because of his union activities."

In a decision dated September 8, 1995, the Office affirmed its April 14, 1995 decision. The Office found that the evidence of record either did not identify compensable factors of employment or did not identify incidents that were established as having occurred. Noting that the prior decision did not address appellant's claim for an employment-related aggravation of back, neck and head injuries, the Office remanded the case for any further development deemed necessary and for a decision on whether appellant sustained an employment-related aggravation of his neck, back and head injuries due to the implicated activities or sitting at his desk for long hours and using a computer.[1]

In a report dated December 27, 1995, Dr. Meg Curtis, a chiropractor, diagnosed cervical sprain/strain and sacroiliac sprain/strain. An attached roentgenological report, dated December 22, 1995, stated that subluxations were revealed at L4-5, right ilium, C4-5 and C6-7. A radiological report dated October 26, 1995, stated that there was a slight anterior subluxation at C6-7, with an impression of discogenic degenerative changes with secondary osteoarthritis maximal at C3-4 and C6-7 and mild osteoarthritis at L5-S1.

In a decision dated July 2, 1996, the Office denied modification of its September 8, 1995 decision.

In a second decision dated July 2, 1996, the Office denied appellant's claim of an employment-related aggravation of his neck, back and head injuries.

The Board finds that appellant has not met his burden of proof to establish that he sustained an injury to his back, neck and head while in the performance of his duty.

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of proof to establish the essential elements of his claim. When an employee claims that he sustained an injury in the performance of duty, he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He must also establish that such an event, incident or exposure caused an injury.[3]

In this case, the Office accepts that appellant sat at his desk in front of a computer for long periods of time in the course of his employment. It therefore remains for appellant to establish that this event, incident or exposure caused an injury.

[1] In its April 14, 1995 decision, the Office accepted that appellant "did indeed sit at his desk in front of a computer for long periods of time, but he was provided an ergonomic chair and instructions on its use."

[2] 5 U.S.C. §§ 8101-8193.

[3] *See generally John J. Carlone*, 41 ECAB 354 (1989); *Abe E. Scott*, 45 ECAB 164 (1993); *see also* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. §§ 10.5(a)(15)-.5(a)(16) ("traumatic injury" and "occupational disease or illness" defined).

Causal relationship is a medical issue,[4] and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,[5] must be one of reasonable medical certainty,[6] and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.[7]

To support this aspect of his claim, appellant submitted the September 15, 1994 report of Dr. Noel, a chiropractor. Dr. Noel, however, cannot be considered a "physician" under the Act. Section 8101(2) of the Act provides that the term "physician," as used therein, "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, and subject to regulation by the Secretary."[8]

Dr. Noel reported that x-rays of appellant's cervical spine revealed no evidence of recent fracture, dislocation or gross osteopathology. He noted that there was a mild loss of the normal cervical lordotic curve. Dr. Noel diagnosed musculoligamentous strain/sprain of the cervical spine. He did not diagnose subluxation, and his report gives no indication that he was treating appellant with manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist. For this reason, he is not considered a "physician" under the Act and his opinion on causal relationship does not constitute competent medical evidence.[9]

Appellant also submitted the December 9, 1994 report of Dr. Levin, an internist. Dr. Levin, however, did not attribute appellant's orthopedic complaints or his disability for work to appellant's sitting at his desk in front of a computer for long periods of time. Instead, Dr. Levin referred to "some differences at work" and related appellant's severe anxiety and depression to "work problems and aggravated by physical trauma due to an auto accident in 1993." Because Dr. Levin failed to address whether sitting at a desk for long periods of time aggravated appellant's neck, back and head injuries, his December 9, 1994 report is of no probative value in establishing this aspect of appellant's claim.

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

[5] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[6] *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

[7] *See William E. Enright*, 31 ECAB 426, 430 (1980).

[8] *See* 20 C.F.R. § 10.400(e) (defining reimbursable chiropractic services).

[9] *Richard A. Reece* , 42 ECAB 829 (1991) (finding that a physician who did not diagnose subluxation and who also did not indicate whether the x-rays he took of the claimant's spine showed that a subluxation existed, could not be considered a qualified physician as defined by section 8101(2)); *see generally Theresa K. McKenna*, 30 ECAB 702 (1979).

The December 12, 1994 report of Dr. Alpert, a licensed clinical psychologist, is also of no probative value with respect to this aspect of appellant's claim. Dr. Alpert's area of expertise is not one of orthopedic disease, and she ventured no opinion on the orthopedic aspect of appellant's claim.

With her December 27, 1995 report, Dr. Curtis, a chiropractor, attached a roentgenological report, dated December 22, 1995, stating that subluxations were revealed at L4-5, right ilium, C4-5 and C6-7. Like Dr. Noel, however, Dr. Curtis did not diagnose subluxation. She diagnosed a cervical sprain/strain and sacroiliac sprain/strain. For this reason, she cannot be considered a "physician" under the Act.[10]

A radiological report dated October 26, 1995 stated that there was a slight anterior subluxation at C6-7, with an impression of discogenic degenerative changes with secondary osteoarthritis maximal at C3-4 and C6-7 and mild osteoarthritis at L5-S1. Although this evidence also supports a subluxation of the spine demonstrated by x-ray to exist, the evidence has no intrinsic probative value without a well-reasoned medical opinion supporting a causal relationship between sitting at a desk for long periods of time and appellant's neck, back and head injuries.[11]

Because the medical evidence in this case is insufficient to establish the critical element of causal relationship, the Board will affirm the Office's July 2, 1996 decision on the orthopedic aspect of appellant's claim.

The Board also finds that appellant has not met his burden of proof to establish that he sustained an emotional condition while in the performance of his duty.

Workers' compensation law does not cover each and every injury or illness that is somehow related to employment.[12] An employee's emotional reaction to an administrative or personnel matter, for instance, is generally not covered. The Board has held, however, that error or abuse by the employing establishment in an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in an administrative or personnel matter, may afford coverage.[13] Perceptions alone are not sufficient to establish entitlement to compensation. To discharge his burden of proof, a claimant must establish a factual basis for his claim by supporting his allegations with probative and reliable evidence.[14]

[10] Further, Dr. Curtis offered no opinion on the issue of causal relationship.

[11] Any opinion on causal relationship based in part on an x-ray remotely taken after a claimant's exposure to the implicated factor of employment must well explain how the physician can determine that the x-ray demonstrates a condition caused by the implicated factor of employment; *see Linda L. Mendenhall*, 41 ECAB 532 (1990).

[12] *Lillian Cutler*, 28 ECAB 125 (1976).

[13] *Margreate Lublin*, 44 ECAB 945 (1993).

[14] *Ruthie M. Evans*, 41 ECAB 416 (1990).

In the psychiatric aspect of his claim, appellant explained that his disability claim was "based on stress caused directly by management's actions towards me," the details of which are well set out in the record. Such actions, taken by management in administrative or personnel matters, generally fall outside the scope of the Act. Although appellant implicates error or abuse by management -- he filed grievances and issued complaints in regard to a number of matters -- the record before the Board discloses no favorable decision or finding resulting from any of the appropriate administrative avenues appellant has pursued. Without such evidence to establish a factual basis for his claim, appellant's perception of error or abuse is not sufficient to establish an entitlement to compensation. Further, the Board notes that settlement of any of the disputed matters, typically agreed to without prejudice to either party, in no way establishes error or abuse on the part of the employing establishment.[15] Appellant has submitted identical, vaguely worded statements from coworkers to support that he was targeted for removal because of his union activities. These statements, while relevant, have no established reliability and bring very little to appellant's case. They are no substitute for the kind of probative, convincing evidence necessary to substantiate the error or abuse alleged.

Because the factual evidence of record is insufficient to establish the element of error or abuse, the Board will affirm the July 2, 1996 decision on the psychiatric aspect of appellant's claim.

The July 2, 1996 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
December 9, 1998

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

[15] *Barbara E. Hamm*, 45 ECAB 843 (1994).