

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KENNETH C. HOLSTON and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, San Antonio, Tex.

*Docket No. 96-1764; Submitted on the Record;
Issued July 1, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has established his claim for total disability due to his December 2, 1995 employment injury.

Appellant, a 33-year-old, a part-time housekeeping aid assigned to work on the weekends, fell down the stairs on December 2, 1995 when he became light-headed and tripped over his mop. He was found slumped over at the bottom of the stairs, and was treated at an emergency room of a hospital, where diagnostic tests revealed a lack of fractures or head injury.¹ Appellant indicated on his claim form that he related to the fall to either migraines or the medication he was using for his migraines, and noted a prior accepted claim for migraines.²

Appellant was evaluated on December 6, 1995 by Dr. Salvador P. Baylan, a Board-certified physiatrist, who reported appellant's complaints of pain in multiple regions. Dr. Baylan reported a history of a gun shot wound to the left shoulder and knee in the military, and a history of migraine headaches. He reported findings of negative Tinel's and Phalen's signs of the wrists, limited range of motion of the arm on abduction and flexion, a "fairly normal" range of motion of the lumbar spine, straight leg raising possible to 90 degrees, and negative McMurray's and Apley's test with respect to the left knee. Dr. Baylan diagnosed a cervical and lumbar strain with

¹ While the treatment notes indicate that he complained of left shoulder, hip, knee and hand pain, he was not diagnosed with any specific condition other than "status post fall." He was provided with a disability note recommending that he not work for one week.

² Under claim number A16-0240181, the Office accepted that appellant sustained an emotional condition due to his federal employment. Appellant was prescribed Pamelor and Midrine for his migraine headaches.

contusion of the left shoulder and knee, and noted the possibility of psychogenic overlay based on appellant's history of depression and migraine headaches.³ On a follow-up visit on December 11, 1995, Dr. Baylan reviewed the diagnostic studies performed on the date of injury, and he completed a form report by which he diagnosed an acute cervical thoracic strain based on findings of limited range of motion of the neck, shoulder and left knee. In his treatment notes Dr. Baylan recommended two more weeks of total disability, to enable appellant to undergo physical therapy treatment.⁴

Based on Dr. Baylan's reports, the Office accepted appellant's claim for lumbar contusion, left shoulder contusion and left knee contusion.⁵

Dr. Baylan recommended continued total disability from work due to appellant's need for physical therapy treatment. He reported that appellant had fallen at work during the first week of January 1996, without further injury, but noted upon subsequent evaluation on January 16, 1996 that appellant reported an exacerbation of neck and back pain. Dr. Baylan referred appellant to a psychiatrist for depression and released appellant to work, noting that the physical therapy treatment would not interfere with his work on the weekends. In a subsequent treatment note dated January 19, 1996, Dr. Baylan noted that appellant could not return to work due to the acute exacerbation of neck and back pain.

Appellant submitted a claim for compensation on account of traumatic injury or occupational disease (Form CA-17) for compensation for the period beginning December 2, 1995. The records from the employing establishment indicate that he used sick leave beginning January 18, 1995, and that he was requesting a repurchase of such leave as well as further wage-loss compensation. Further treatment notes from Dr. Baylan indicate that he reevaluated appellant on January 27, 1996, provided him with medication on February 8, 1996, and referred appellant for a magnetic resonance imaging (MRI) scan on February 16, 1996.

By decision dated March 5, 1996, the Office denied appellant's request for wage-loss compensation resulting from his injury, on the grounds that the medical evidence did not establish total disability from work.⁶

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

³ On December 9, 1995 appellant's supervisor telephoned appellant concerning his return to work. Appellant was advised that 45 days of leave was not automatic, and that it depended upon the diagnosis and assessment of his physician.

⁴ In his treatment notes, Dr. Baylan reported appellant's persistent complaints of lower back, left knee and left shoulder pain, with reports of left upper extremity numbness and tingling. He noted findings of a painful range of motion of the left shoulder and left knee without swelling or any significant amount of neurologic deficit. Dr. Baylan also reported mild spasms of the cervical-dorsal and lumbar paraspinal muscles.

⁵ The Office authorized continuation of pay to be paid up to 45 days of absence from work, and advised him of his responsibility to return to work as soon as he recovered or upon obtaining a position within his work restrictions.

⁶ In finding a lack of employment-related disability, the Office noted both the intervening event of a fall at home the first week of January 1996 and the prior opinion of Dr. Baylan that appellant could return to weekend work since his physical therapy treatments were during the week.

An employee seeking benefits under the Federal Employees' Compensation Act⁷ has the burden of establishing the essential elements of his or her claim including the fact that the injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁸ These are the essential elements of each and every claim regardless of whether the claim is predicated upon a traumatic injury due to one single incident or an occupational disease due to events occurring over a period of time.⁹

As part of this burden, the claimant must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.¹⁰ The Board notes that the term "disability" under the Act means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.¹¹ Disability is thus not synonymous with physical impairment which may or may not result in an incapacity to earn wages.¹² Whether a particular injury caused an employee disability from employment is a medical issue which must be resolved by competent medical evidence.

In the instant case, the Office accepted appellant's claim for contusions of the lumbar spine, left shoulder and knee, based on the reports Dr. Baylan, a Board-certified physiatrist, who evaluated appellant four days after appellant's fall at work. Appellant had been provided with a disability note from the emergency room facility where he received treatment on the date of injury. Dr. Baylan continued the recommended total disability, in order to allow appellant the ability to undergo physical therapy treatment. On January 16, 1996 he noted that appellant could return to work because continued physical therapy treatment would not interfere with his part-time weekend work. However, three days later on January 19, 1996 he noted that appellant's continued symptoms precluded a return to work.

The Board notes that while Dr. Baylan did not explain the change in his opinion from January 16 to 19, 1996, the reports of Dr. Baylan constitute sufficient evidence to warrant further development by the Office.¹³ On remand, the Office should further develop the medical

⁷ 5 U.S.C. §§ 8101-8193.

⁸ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁹ The Office's regulations clarify that a traumatic injury refers to an injury caused by a specific event or incident or series of events or incidents occurring within a single workday or work shift whereas occupational disease refers to an injury produced by employment factors which occur or are present over a period longer than a single workday or shift. See 20 C.F.R. §§ 10.5(a)(15),(16).

¹⁰ See *Kathryn Haggerty*, 45 ECAB 383 (1994); *Lucrecia M. Nielson*, 42 ECAB 583 (1991).

¹¹ *Patricia A. Keller*, 45 ECAB 278 (1993); *Richard T. DeVito*, 39 ECAB 668 (1988); *Frazier V. Nichol*, 37 ECAB 528 (1986); *Elden H. Tietze*, 2 ECAB 38 (1948); 20 C.F.R. § 10.5(17).

¹² See *Fred Foster*, 1 ECAB 21 (1947).

¹³ See *John J. Carlone*, 41 ECAB 354 (1989) (where the Board found that the record contained no adverse opinion and the Office did not seek advice from an Office medical adviser or refer the case to an Office referral physician for a second opinion).

evidence as appropriate to determine the period of disability causally related to appellant's accepted injury.

The Board notes that following the March 5, 1996 decision of the Office, the Office received further reports from Dr. Baylan relating to a condition other than contusions, which he diagnosed following an MRI scan. Since this evidence was received by the Office after the issuance of the March 5, 1996 decision, the Board has no jurisdiction to consider the reports.¹⁴

The decision of the Office of Workers' Compensation Programs dated March 5, 1996 is hereby set aside and remanded for further development in accordance with this decision of the Board.

Dated, Washington, D.C.

July 1, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

¹⁴ The Board has jurisdiction to review only the evidence in the case record that was before the Office at the time of its final decision. 20 C.F.R. §§ 501.2(c).