U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of JAMES HADDICAN and DEPARTMENT OF AGRICULTURE, FOREST SERVICE, Wenatchee, Wash.

*Docket No. 96-1988; Submitted on the Record;*
*Issued June 23, 1998*

---

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he sustained an injury in the performance of duty on February 2, 1995 as alleged.

On February 7, 1995 appellant, then a 69-year-old general office worker, filed a claim for compensation alleging that on February 2, 1995 he injured his back while attempting to lift boxes of paper.

In an attending physician's report dated August 30 1995 Dr. Lesley Jane McGalliard, appellant's treating physician and Board-certified in family practice, stated that she had treated appellant as a result of his February 2, 1995 injury on February 7 and 13, March 6, April 14, May 9 and August 8, 1995. She diagnosed appellant as having spinal stenosis and acute spondylolisthesis at L5 and indicated that appellant was totally disabled as a result of his condition, noting further that he "could not resume his former job at all."

On January 10, 1996 the Office, in a decision, denied appellant's claim on the grounds that the evidence on file failed to establish fact of injury.

On January 31, 1996 appellant requested reconsideration of the Office's January 10, 1996 decision and submitted a December 26, 1995 medical report from Dr. McGalliard. In that report, the doctor stated that she had treated appellant since January 1989 and that, prior to his February 2, 1995 injury, he had had a single instance of back pain in January 1991 which had healed spontaneously. Regarding the February 2, 1995 incident, she noted that a radiologist interpreted x-rays taken on February 7, 1995 as revealing "spondylolisthesis of L4 on L5 and findings consistent with acquired spinal stenosis." The doctor noted that appellant's subjective complaints of pain "have remained fairly static to mildly worsening since April of 1995," adding that appellant could not stand or sit for long periods of time, could not lift anything "but small objects without pain," and that since August 1995 appellant had complaints of left leg pain. Dr. McGalliard opined that appellant sustained a work-related acute spondylolisthesis of L4 on

L5 in February 1995, noting that "it is clear from the records that there is no preexisting back disability or other complaints that can be quantified prior to [February 1995]." She also noted that appellant described his job as often requiring lifting stacks of paper which the doctor considered to have contributed to appellant's condition.

On April 17, 1996 the Office requested the Office medical adviser (OMA) to review the medical record and offer an opinion as to whether it was "medically reasonable that acute spondylolisthesis of L4 on L5 could be caused by the attempt to lift one box of paper one time."

In a medical report dated April 19, 1996 the OMA stated that he had reviewed the medical record and concluded that appellant's activities as described in the record could not have caused acute spondylolisthesis. However, the doctor also noted that the "exact diagnosis of [appellant's] back condition and its relationship to his work, if any, has not been established." The doctor recommended that the Office refer the claim to either an orthopedic surgeon second opinion physician or an impartial medical examiner.[1]

In a decision dated May 6, 1996 the Office denied appellant's request for review on the grounds that the evidence filed in support of his claim was insufficient to warrant modification. However, in an attached memorandum, the Office stated that the January 10, 1996 decision was modified to accept "the occurrence of the February 2, 1995 work incident," but "that the medical evidence submitted is … not sufficient to establish that a medical condition resulted from [it]."

Establishing whether an injury, traumatic or occupational, was sustained in the performance of duty as alleged, *i.e.*, "fact of injury," and establishing whether there is a causal relationship between the injury and any disability and/or specific condition for which compensation is claimed, *i.e.*, "causal relationship," are distinct elements of a compensation claim. While the issue of "causal relationship" cannot be established until "fact of injury" is established, acceptance of fact of injury is not contingent upon an employee proving a causal relationship between the injury and any disability and/or specific condition for which compensation is claimed. An employee may establish that an injury occurred in the performance of duty as alleged but fail to establish that his or her disability and/or a specific condition for which compensation is claimed are causally related to the injury.[2]

To accept fact of injury in a traumatic injury case, the Office, in addition to finding that the employment incident occurred in the performance of duty as alleged, must also find that the employment incident resulted in an "injury." The term "injury" as defined by the Federal Employees' Compensation Act, as commonly used, refers to some physical or mental condition caused either by trauma or by continued or repeated exposure to, or contact with, certain factors,

[1] The OMA stated that he had discussed the claim with the district medical director, an orthopedic surgeon, who agreed with his recommendation.

[2] As used in the Act, the term "disability" means incapacity because of an injury in employment to earn wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity; *see Frazier V. Nichol*, 37 ECAB 528 (1986).

elements or conditions.[3] The question of whether an employment incident caused a personal injury generally can be established only by medical evidence.[4]

In the present case, the Office has accepted the claimed traumatic incident of February 2, 1995, when appellant experienced back pain while lifting a box of paper.

Dr. McGalliard examined appellant on February 7, 1995 and on seven subsequent occasions through August 8, 1995. Based on a radiologist's report and on her regular examinations, the doctor stated that appellant had sustained acute spondylolisthesis of L4 on L5 "during the alleged injury in early February [1995] at work." Although the OMA advised the Office that acute spondylolisthesis would not have resulted from the kind of incident described in the case file, he also noted that the "exact diagnosis of this claimant's back condition and its relationship to his work, if any, has not yet been established," and recommended referral to either a second opinion specialist or an impartial medical examiner. To the extent therefore that the OMA ruled out but one specific diagnosis as not having been caused by the February 2, 1995 incident, coupled with the doctor's recommendation to provide an additional medical evaluation in order to resolve the issue of causal relationship, the Board finds the Office failed to develop properly the medical evidence in order to resolve the issues of whether the February 2, 1995 incident caused a medical condition,[5] and, if so, whether such a condition was compensable under the Act.[6]

The Office should refer the case record and a statement of accepted facts describing appellant's employment activities on February 2, 1995 to an appropriate medical specialist for a reasoned medical opinion on whether appellant had any condition or period of disability attributable to such activities. After such further development as it deems necessary, the Office should issue an appropriate decision.

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

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

[5] Federal (FECA) Procedure Manual, Part 2-Claims, *Fact of Injury*, Chapter 2-805.5(d)(June 1995) states that in cases which cannot be adjudicated on the basis of opinions provided by the attending physician, an opinion will be requested from a physician who specializes in the pertinent field of medicine.

[6] 5 U.S.C. §§ 8101-8193.

The decisions of the Office of Workers' Compensation Programs dated May 6 and January 10, 1996 are set aside and the case remanded to the Office for further action consistent with this decision of the Board.

Dated, Washington, D.C.
June 23, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member