U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DANNY H. CLARK and U.S. POSTAL SERVICE,
POST OFFICE, San Antonio, Tex.

Docket No. 96-402; Submitted on the Record;
Issued May 26, 1998

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether appellant has a permanent impairment to his feet causally related to factors of his federal employment entitling him to a schedule award; and (2) whether appellant is entitled to compensation for wage loss after August 1, 1993.

On November 6, 1992 appellant, then a 47-year-old postal carrier, filed a claim for compensation alleging that he injured his feet, while in the performance of duty. The record reflects that appellant performed light work from March 1992 until September 1992 and sedentary work from September 8 until November 1, 1992, when sedentary work was no longer available.

In a medical report dated December 28, 1992, Dr. William D. Lovelady, appellant's treating podiatrist, stated that he examined appellant and reported his findings. He noted that appellant had mild pes planus over the metatarsal heads, left foot, minor calluses along the left foot and callus formation under the metatarsal heads of the right foot. He also noted that appellant would be unable to function in a walking-type position because of ankle equinus and foot imbalance.

On July 21, 1993 the Office of Workers' Compensation Programs notified appellant that it had accepted his claim for temporary bilateral aggravation to a preexisting foot condition.

Appellant returned to a light-duty position on August 2, 1993.

On August 16, 1993 appellant filed a claim for wage loss from November 6, 1992 through August 12, 1993 and on August 19, 1993, filed a claim for a schedule award.

In a duty status report dated August 31, 1993, Dr. Lovelady stated that appellant could return to an eight-hour workday on September 1, 1993 with a restriction against walking more than two hours a day.

In a medical report dated March 1, 1994, Dr. Lovelady stated that appellant had mild ankle equinus, left foot which contributed to his heel spur and metatarsalgia pain, left foot. Although the doctor rated appellant as having seven percent permanent impairment of the lower extremity, he stated the heel spur and metatarsalgia were the major disabling features "and do not reflect appropriate disability as per the [American Medical Association, *Guide to the Evaluation of Permanent Impairment.*]"

In a medical report dated March 18, 1994, Dr. Daniel C. Valdez, a second opinion specialist who is a Board-certified orthopedic surgeon, stated that he had examined appellant and that he had positive heel pain bilaterally, positive metatarsalgia with permanent calluses and pes planus deformity. He stated that appellant had decreased function in both feet due to degeneration, pes planus and metatarsalagia with a component of plantar fascitis. Dr. Valdez stated that appellant had reached maximum medical improvement on March 18, 1994. He stated that appellant was disabled from his previous work, but that he could perform a sedentary job where he could sit the majority of the time and walk intermittently.

In a supplemental medical report dated May 2, 1994, Dr. Valdez stated that there was no medical basis to conclude that appellant's employment-related walking requirement continued to aggravate his preexisting foot condition.

On June 8, 1994 the Office referred the case record and the statement of accepted facts to Dr. Henry Mobley, an Office medical adviser and Board-certified in internal medicine. In an opinion that day, the doctor stated that appellant was not entitled to a schedule award based on the medical reports of Dr. Lovelady, who found no ratable schedule award based on his heel spur and metatarsalagia and Dr. Valdez who stated that appellant's walking on the job until February 1992 did not permanently aggravate his preexisting condition.

On June 28, 1994 the Office, in a decision, denied appellant's claim for a schedule award on the grounds that the medical evidence failed to support his claim that he had a permanent impairment entitling him to a schedule award, found that appellant was entitled to wage loss until August 2, 1993, the day he returned to light duty and found that his work-related aggravation ceased as of August 2, 1993.[1]

On July 15, 1994 appellant requested an oral hearing on the Office's June 28, 1994 decision denying benefits. On February 14, 1995 a hearing was held in San Antonio, Texas. Appellant testified that he was fired on November 2, 1994, because he violated his limited-duty restrictions by umpiring baseball games.

In a decision dated on October 3, 1995 and finalized on October 5, 1995, the hearing representative affirmed the Office's June 28, 1994 decision, denying benefits on the grounds that the medical evidence failed to support that appellant had a permanent impairment based on his employment-related injury entitling him to a schedule award and that the accepted condition

[1] The decision provided that appellant be paid for the periods he was disabled from his light-duty work from November 2, 1992 until August 2, 1993, the date appellant returned to light-duty work. The record reflects an administrative entry that appellant was paid compensation for temporary total disability from November 2, 1992 through August 1, 1993.

ceased as of August 2, 1993, such that appellant was not entitled to further compensation after August 3, 1993.

The Board finds that appellant has not met his burden of proof to establish that he had a permanent impairment of his feet entitling him to a schedule award under section 8107 of the Federal Employees' Compensation Act.[2]

Section 8107 of the Act provides that if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.[3] Neither the Act nor the regulations specify the manner, in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants the Office has adopted the A.M.A., *Guides* as a standard for evaluating schedule losses and the Board has concurred in such adoption.[4]

In this case, none of the medical reports support appellant's claim that his employment-related injuries to his feet resulted in a permanent impairment and thus would entitle him to a schedule award. Dr. Lovelady, appellant's treating podiatrist, stated that appellant had a permanent impairment, but he did not explain whether the permanent impairment was a work-related aggravation of the underlying condition nor does he explain how the impairment was ratable under the A.M.A., *Guides*. Further, Dr. Valdez, a Board-certified orthopedic surgeon and second opinion physician, stated that appellant's accepted condition ended, when he changed jobs and was not related to his current medical condition. He stated, therefore, there was no medical basis to conclude that work-related walking, which ceased in February 1992, continued to aggravate appellant's preexisting foot condition. He also noted that appellant could return to work which required walking and standing.

On the basis of these reports, the Office medical adviser determined, since Dr. Lovelady stated that appellant did not have a ratable condition pursuant to the A.M.A., *Guides* and that Dr. Valdez stated that appellant's accepted aggravation had ceased, that, in accordance with Office procedures, appellant had not met his burden of proof to establish that he had a permanent impairment of the feet entitling him to a schedule award under section 5 U.S.C. § 8107 of the Act.

Further, the Board finds the Office properly determined that the accepted condition ceased as of August 2, 1993.

Under the Act,[5] when employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for the periods of disability related to the

[2] 5 U.S.C. §§ 8101-8193.

[3] 5 U.S.C. § 8107(a).

[4] *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989); *Charles Dionne*, 38 ECAB 306, 308 (1986).

[5] 5 U.S.C. §§ 8101-8193.

aggravation.[6] However, when the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation has ceased.[7]

Dr. Lovelady indicated that appellant's status had returned to its preexisting November 6, 1992 state and that appellant could return to his sedentary work. Dr. Valdez stated on May 2, 1994, that there was no medical basis to conclude that there was a continued aggravation of his preexisting foot condition. There is no evidence of record that the accepted temporary aggravation continued after August 2, 1993, the date appellant returned to work.

Since the medical evidence failed to support appellant's claim for wage loss beyond August 3, 1993, the Office properly denied his claim.

The October 3, 1995 decision of the Office of Workers' Compensation Programs' hearing representative, finalized on October 5, 1995, is hereby affirmed.

Dated, Washington, D.C.
May 26, 1998

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

[6] *Gary L. Ward*, 44 ECAB 1014 (1993); *Richard T. DeVito*, 39 ECAB 668, 673 (1988); *Leroy R. Rupp*, 34 ECAB 427, 430 (1982).

[7] *Larry Warner*, 43 ECAB 1027(1992); *Ann E. Kernander*, 37 ECAB 305, 310 (1986); *James L. Hearn*, 29 ECAB 278, 287 (1978).