U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAUL G. BACK and U.S. POSTAL SERVICE,
POST OFFICE, Louisville, Ky.

Docket No. 96-1397; Submitted on the Record;
Issued October 27, 1998

DECISION and ORDER

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

The issue is whether appellant's disability on or after December 9, 1994 is causally related to his employment injury of November 8, 1994.

Appellant sustained an injury in the performance of duty on November 8, 1994 while lifting sacks to place in a wagon. He received medical attention that day for an acute back strain with nerve root impingement. An employing establishment physician placed him on minimal light duty with no lifting for 4 hours a day and no continuous sitting for more than 30 minutes. On November 10, 1994 Dr. Jeanetta Rodgers, a family practitioner, reported that appellant's injury was a strain versus disc herniation and took appellant off work for one week. A computerized tomography scan performed on November 15, 1994, showed a mild bulging annulus at the L4-5 level with no evidence of spinal stenosis or a herniated disc. On November 23, 1994 Dr. Rodgers released appellant to return to work if he did not lift over five pounds and was allowed a frequent change of position from standing and sitting. On November 25, 1994 appellant returned to a temporary limited-duty job ostensibly within these restrictions. He received continuation of pay from November 9 through 25, 1994. Dr. Rogers completed a functional capacities assessment on December 4, 1994, which indicated that appellant was never to perform bending. On December 7, 1994 Dr. Rodgers prescribed light duty for another two weeks.

On December 5, 1994 appellant was given the performance rating "does not fully meet expectations at this time." Appellant was noted to have three unscheduled absences,[1] needed to practice safe lifting habits and was unavailable for training for Saturday duties. Effective December 9, 1994 the employing establishment terminated appellant's employment for failure to meet the expectations of the position.

[1] The employing establishment later explained that two of these absences were prior to his employment injury, the other after he returned to work in a limited-duty status.

On December 14, 1994 the Office of Workers' Compensation Programs accepted appellant's claim for lumbosacral sprain/strain and later accepted the claim for lumbar subluxation.

On February 2, 1995 Dr. Rodgers saw appellant and reported as follows:

> "He says that he tried to go back to work and the work that he was given for light duty was requiring him to bend over and to pick things out of the hamper and he had a great difficulty. He had to get up and walk around as I had instructed. He was fired 2 days afterwards. I would not have sent him back to work so soon had I not been misled by personnel who assured me that they had a very lenient light-duty job and almost anybody could go back to work. He now is unemployed. *** I feel like I may not have all of the information in regards to the work situation."

In a report dated March 15, 1995, Dr. Gopal K. Rastogi, a specialist in internal medicine, related the history of appellant's employment injury, his current complaints and findings on examination. He diagnosed chronic back pain, osteoarthritis and disc degeneration with entrapment neuropathy causing left sciatica. Dr. Rastogi reported that appellant had severe back problems that interfered with his ability to do general labor-type work. "At the present time," Dr. Rastogi reported, "he is not able to engage in any work-related activity. He cannot sit for any length of time, he cannot stand, walk, pull, push, squat, climb or do any kind of sustained driving."

On July 9, 1995 appellant filed a claim for compensation on account of traumatic injury from November 8, 1994 through July 18, 1995,

In a decision dated February 27, 1996, the Office denied appellant's claim for compensation beginning December 9, 1994 on the grounds that the evidence of record established that he was terminated for cause, not due to his physical condition and, therefore, had no disability. Citing the case of *John W. Normand*, the Office stated that if an injured employee is provided with ongoing light-duty work and is terminated for causes other than his work injury, the employee is not entitled to compensation for lost wages.[2]

The Board finds that the evidence in this case is insufficient to establish that appellant's disability on or after December 9, 1994 is causally related to his employment injury of November 8, 1994.

[2] 39 ECAB 1378 (1988). In *Norman*, the Board stated the following: "The record reveals that the employing establishment provided work for appellant within the work restrictions outlined by his physician, Dr. Brunet. Appellant was terminated from his position by the employing establishment in August 1986 because of 'menacing behavior toward a supervisor' and 'unofficial use of government property.' The employing establishment specifically stated that employment within appellant's work restrictions would still be available to him if his attitude toward his fellow employees had been acceptable. There is no evidence in the record that appellant was terminated due to his physical inability to perform his assigned duties, nor is there evidence that appellant stopped work due to his physical condition. As there is no evidence in the record that appellant was not capable of performing his assigned duties after March 15, 1988, he had no disability within the meaning of the Federal Employees' Compensation Act." *Id*. at 1381.

A claimant seeking benefits under the Act[3] has the burden of proof to establish the essential elements of his claim by the weight of the evidence,[4] including that he sustained an injury in the performance of duty and that any specific condition or disability for work, for which he claims compensation is causally related to that employment injury.[5]

Because the Office accepts that appellant sustained an injury in the performance of duty on November 8, 1994, it remains for appellant to establish that his disability on or after December 9, 1994 is causally related to that employment injury.

The evidence generally required to establish causal relationship is rationalized medical opinion evidence. The claimant must submit a rationalized medical opinion that supports a causal connection between his current condition and the employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of the claimant's employment injury and must explain from a medical perspective how the current condition is related to the injury.[6]

In his March 14, 1995 report, Dr. Rastogi failed to address whether appellant was currently disabled from performing the duties of the limited-duty job, to which he returned on November 23, 1994, nor did he offer a sufficient rationale on how full medical explanation of whether appellant's current condition and disability were related to the employment injury he sustained on November 8, 1994. For these reasons, the Board finds that his report is insufficient to establish the critical element of causal relationship.

Further, as the Office found, appellant appeared to be terminated from his employment for cause, not because of his physical condition and, therefore, his disability for work from that time forward was not a result of his accepted employment injury.[7] The record does raise a question whether appellant's employment injury may have played some role in his December 5, 1994 performance rating and termination on December 9, 1994: (1) One of the three areas in which appellant failed to meet performance expectations was to always practice safe lifting so as to prevent injury. The evaluation specified that appellant needed to practice safe lifting habits. Whether appellant's employment injury while lifting approximately one month prior to this performance evaluation served as one of the grounds for his termination, however, is unclear from the record; (2) It was noted on appellant's evaluation that he had three unscheduled absences, one of which, the employing establishment later explained, occurred after his employment injury. Whether this unscheduled absence was a result of the employment injury is also unclear from record; and (3) finally, it was noted that appellant was unavailable for training for Saturday duties. Whether appellant's absence and unavailability for training were a result of his employment injury is, once again, unclear from the record.

[3] 5 U.S.C. §§ 8101-8193.

[4] *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

[5] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[6] *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

[7] *See supra* note 2.

Additionally, Dr. Rodgers reported that she would not have returned appellant to work so soon had she not been misled by the employing establishment concerning the physical requirements of the limited-duty job offer. In her functional capacities evaluation, Dr. Rodgers restricted appellant from any bending whatsoever, yet appellant related that his job required him to bend over and pick things out of the hamper. The record is unclear, however, whether the limited-duty job involved bending or was otherwise beyond appellant's functional capacities.

Because the medical and factual evidence in this case is inconclusive of whether appellant's disability on or after December 9, 1995 is causally related to his employment injury of November 8, 1994, the Board finds that the evidence is insufficient to discharge appellant's burden of proof.

The February 27, 1996 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
October 27, 1998

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member