U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LEO T. MORALES and DEPARTMENT OF THE TREASURY, UNITED STATES CUSTOMS SERVICE, San Juan, PR

Docket No. 98-96; Submitted on the Record;
Issued August 13, 1999

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS, BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof to establish that he sustained cervical and lumbar injuries, in addition to the accepted cervical sprain, in the performance of duty on April 25, 1995.

The Board has duly reviewed the case on appeal and finds that it is not in posture for decision.

Appellant filed a claim on April 26, 1995 alleging that on April 25, 1995 he was involved in an automobile accident while in the performance of duty. In support of his claim, appellant submitted emergency room notes as well as the results of a computerized tomography (CT) scan taken on the date of the accident which revealed "antero-lateral bony bridging (old changes) involving the C4-5 and C5-6 interspace levels (anterior vertebral levels changes)" with good preservation of the intervertebral spaces and "straightening of the cervical lordosis, probably related to the recent cervical trauma (muscular sprain)." Finally, the physician interpreting the study stated that "axial evaluation shows no evidence to suggest the presence of intervertebral disc herniation or detectable vertebral body fracture" and that there was "very good visualization of the hyperstosis related to the anterior aspect of the C4, C5 and C6 vertebrae."

On October 9, 1996 the Office of Workers' Compensation Programs accepted appellant's claim for a cervical sprain.[1] On November 16, 1996 appellant requested that the Office reconsider its October 9, 1996 determination, asserting that recent medical evidence established that as a result of the accident he had sustained several more serious cervical and lumbar injuries. In support of his request, appellant submitted an October 25, 1996 medical report from his

[1] The Office initially denied appellant's claim by decision dated October 3, 1995, as appellant had not submitted the necessary medical evidence to establish that he sustained an injury as a result of the April 25, 1995 accident. Subsequently, appellant submitted the requested medical evidence and in a decision dated October 9, 1996, the Office vacated the October 3, 1996 decision and accepted appellant's claim.

treating physician, Dr. Enid M. Berrios Menendez, a physiatrist, who stated that as a result of appellant's April 25, 1995 automobile accident he had sustained bulging discs at C3-4 with a secondary right C6 radiculopathy and herniated nucleus pulposus at L4-5 with secondary bilateral L5 radiculopathy and herniated nucleus pulposus at L5-S1 of a smaller nature.

By letter dated March 27, 1997, the Office advised appellant that the report from Dr. Menendez was insufficient to establish his claim that he sustained additional cervical and lumbar conditions as a result of the April 25, 1995 accident. The Office specifically noted that Dr. Menendez, who first saw appellant on May 21, 1996, more than a year after the accident, did not provide any medical rational to support her conclusions, and further explained that such rationale is especially important in light of the delay between the April 25, 1995 employment accident and the diagnostic testing performed on July 30 and October 1, 1996, upon which Dr. Menendez relied. The Office allowed appellant 30 days to submit additional medical evidence.

By decision dated June 2, 1997, the Office denied appellant's request for modification on the grounds that while appellant had submitted the results of additional medical testing, previously missing from the record, he had not submitted the requested rationalized medical report.

In a letter dated July 21, 1997, appellant again requested reconsideration of the Office's prior decision and submitted a July 11, 1997 medical report from Dr. Menendez in support of his request.

In a decision dated August 29, 1997, after consulting an Office medical adviser, the Office denied appellant's request for reconsideration on the grounds that the evidence of record was insufficient to warrant modification of its prior decision.

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[2] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.[3] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be

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

[3] *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[4]

In this case, the Office accepted that the automobile accident occurred on April 25, 1995 in the performance of duty and that as a result appellant sustained a cervical sprain. However, the Office found the subsequent medical evidence submitted was not sufficient to establish that appellant sustained additional cervical and lumbar injuries as a result of this accident.

In response to the Office's request for rationalized medical opinion evidence, appellant submitted the July 11, 1997 report of Dr. Menendez. She noted that the CT scan taken on the day of the automobile accident revealed some cervical straightening and bony bridging, but no further pathology. Dr. Menendez stated that when appellant's pain and symptoms persisted he sought additional treatment in May 1995 and February 1996[5] and that when his pain did not improve with neurological care, he was referred to her. Dr. Menendez noted that when she first evaluated appellant on May 21, 1996, he denied any other history of trauma to his neck or back and reported enjoying good health until the day of the automobile accident, after which he had consistent and progressive low back pain radiating to the left lower extremity and persistent "CD" spasms, heaviness sensation and limitation of motion radiating to the left interscapular area and left upper extremity with numbness, weakness and paresthesia. Physical examination revealed severe "CDLS" paravertebral muscle spasms, pain and tenderness mainly in the left sternocleidomastoid, scalenus, left interscapular trigger point, gluteus medius trigger point bilaterally, sacroiliac tenderness, limitation of trunk motion and decreased muscle strength and sensation. In addition, appellant demonstrated positive Patrick's and Tinel's tests. Dr. Menendez stated that her diagnostic impression was status postflexion-extension neck injury with a secondary severe CDLS strain and the possibility of a radicular problem related to the acceleration-deceleration forces generated in the accident. Therefore, magnetic resonance imaging (MRI), nerve conduction testing and a lumbar CT scan were ordered. The MRI scan performed on July 30, 1996 revealed evidence of bulging annulus C4-5 which minimally indent the subarachnoid space, no protrusion of the nucleus pulposus was noted. A CT scan of the lumbosacral area performed on October 1, 1996 revealed evidence of L4-5 broad base posterior disc herniation mildly impinging the thecal sac and at L5-S1 a small posterior disc herniation not impinging the thecal sac. Finally, nerve conduction studies performed on October 17, 1997 revealed left C6 radiculopathy and bilateral L5 radiculopathy. Dr. Menendez stated that it was her opinion that these diagnosed conditions had been present since the time of the original injury and that appellant had not been properly diagnosed at that time. She explained that appellant's symptomology began after the accident and that the mechanics of the accident were well documented to be the type which can cause cervical and lumbar radiculopathy, herniation or bulging. Dr. Menendez concluded, therefore, that she had no doubt that there was a direct

[4] *James Mack*, 43 ECAB 321 (1991).

[5] Following the accident, appellant was referred for a neurological evaluation with Dr. Jose R. Hernandez, a physiatrist. Treatment notes dated May 9, 1995, indicate that he recommended medication and physical therapy for the treatment of appellant's neck and back pain. On February 27, 1996 Dr. Hernandez performed nerve conduction studies which revealed bilateral carpal tunnel syndrome and thoracic outlet syndrome.

relationship between appellant's April 25, 1995 automobile accident and the diagnosed conditions revealed by examination and diagnostic testing.

Dr. Menendez's reports, taken together, contain a history of injury, diagnosis and an opinion that appellant's diagnosed conditions are the direct result of his April 25, 1995 employment-related automobile accident. In addition, she explained that there is a relationship between the type of accident appellant was involved in, which generated acceleration and deceleration forces and the type of cervical and lumbosacral radicular injuries diagnosed in appellant.

Prior to issuing its August 29, 1997 decision, the Office forwarded appellant's file to an Office medical adviser for review. In response to the Office's inquiry as to whether appellant's cervical disc bulges were shown to be related to the April 25, 1995 accident, the Office medical adviser responded: "No. Bulges are present normally in a significant number of people and do not indicate pathology." The Office further asked whether the lumbar disc herniations are shown to have resulted from the April 25, 1995 work incident. The Office medical adviser stated in response that "the disc herniations from the description of the radiologist are minor and not clinically significant." Finally, the Office asked the medical adviser to comment on the July 11, 1997 narrative report of Dr. Menendez and give an opinion as to whether Dr. Menendez had established a clear direct relationship between the findings and the work incident. In response, the Office medical adviser stated that "the relationship between [the] above findings and [the] accident is moot since the findings are not clinically significant." While Dr. Menendez's reports are not sufficient to meet appellant's burden of proof, particularly in light of the one-year gap between the time of the accident and the time she first saw appellant, as the Office medical adviser declined, for the most part, to comment of the causal relationship between the diagnosed conditions and appellant's accident, Dr. Menendez's findings do raise an uncontroverted inference of causal relationship between appellant's accepted employment incident on April 25, 1995 and the subsequently diagnosed conditions and are sufficient to require the Office to undertake further development of appellant's claim.[6]

On remand the Office should refer appellant, a statement of accepted facts, including appellant's prior accepted employment injury and a list of accepted questions to an appropriate Board-certified specialist to determine if the employment incident of April 25, 1995 resulted in any cervical or lumbar injuries in addition to the cervical sprain previously accepted by the Office.

[6] *John J. Carlone*, 41 ECAB 354, 358-60 (1989).

The decisions of the Office of Workers' Compensation Programs dated August 29 and June 2, 1997 are hereby set aside and remanded for further development consistent with this opinion.

Dated, Washington, D.C.
August 13, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member