U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RAYMOND R. TINDLE and U.S. POSTAL SERVICE,
POST OFFICE, Memphis, TN

Docket No. 97-1916; Submitted on the Record;
Issued December 22, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
DAVID S. GERSON

The issues are: (1) whether appellant met his burden of proof to establish that he is entitled to a schedule award for permanent impairment of his eyes; and (2) whether he met his burden of proof to establish that he sustained disability after November 20, 1995 due to his employment-related eye injury.

The Board finds that appellant did not meet his burden of proof to establish that he is entitled to a schedule award for permanent impairment of his eyes.

In March 1989, appellant, then a 44-year-old postal clerk, filed an occupational claim form alleging that he sustained aggravation of his eye, ear and sinus conditions due to exposure to dust in the workplace. The Office of Workers' Compensation Programs accepted that appellant sustained aggravation of allergic keratoconjunctivitis and sinusitis and later expanded the acceptance to include aggravation of glaucoma not to exceed March 13, 1992. In 1992 appellant began working, per his doctor's instructions, in limited-duty positions in environments with low dust levels.[1] Appellant retired on disability retirement effective November 20, 1995.

Appellant alleged that he was entitled to a schedule award for permanent impairment of his eyes and claimed that he sustained disability after he stopped working for the employing establishment, *i.e.*, November 20, 1995, due to his employment-related eye injuries.[2] By decision dated April 23, 1997, the Office denied appellant's claim on the grounds that he did not submit sufficient medical evidence to establish that he was entitled to a schedule award for

[1] An environmental test of appellant's workplace in March 1993 revealed that dust levels were within acceptable levels.

[2] Appellant also alleged that he was entitled to additional night differential pay. He received compensation from the Office in connection with this request and the matter is not currently before the Board. After beginning work in limited-duty positions, appellant continued to receive Office compensation for treatment of his eye problems.

permanent impairment of his eyes or that he sustained additional disability due to his employment-related eye injury.

An employee seeking compensation under the Federal Employees' Compensation Act[3] has the burden of establishing the essential elements of his claim by the weight of the reliable, probative, and substantial evidence,[4] including that he sustained an injury in the performance of duty as alleged and that his disability, if any, was causally related to the employment injury.[5]

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.[6] 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993) as a standard for evaluating schedule losses and the Board has concurred in such adoption.[7] The Office evaluates permanent visual impairment based on three functions: (1) visual acuity for objects at distance and near; (2) visual fields; and (3) ocular motility with diplopia.[8]

Appellant did not submit sufficient medical evidence to establish that he is entitled to a schedule award for permanent impairment of his eyes.

In a report dated April 24, 1996, Dr. J. Marshall Jung, a Board-certified ophthalmologist, to whom the Office referred appellant, reported the findings of his examination on April 11, 1996. Dr. Jung indicated that appellant had some conjunctivitis sicca without corneal staining and some allergic conjunctivitis with prominent pinguecula. He noted that appellant had vision of 20/30 in the right eye and 20/25 in the left eye with correction. Dr. Jung indicated that visual field examination revealed a tunnel type of vision and stated, "In regards to his glaucoma, I feel that the field changes are exaggerated in comparing them with his disc cupping, although I do not doubt that he does have some chronic open angle glaucoma." He indicated that appellant's glaucoma probably was initially induced by steroid use and noted that his eye pressures were reasonably well controlled at the moment although, at his age, better control would be preferred. Dr. Jung noted that he suspected appellant had some disability which could be partially controlled with medications, but indicated that he certainly was not totally disabled.

[3] 5 U.S.C. §§ 8101-8193.

[4] *Donna L. Miller*, 40 ECAB 492, 494 (1989); *Nathanial Milton*, 37 ECAB 712, 722 (1986).

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

[6] 5 U.S.C. § 8107(a).

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

[8] *See* A.M.A., *Guides* 209-22 (4th ed. 1993).

The Office requested additional clarification of Dr. Jung's opinion and, in a supplemental report dated May 8, 1996, Dr. Jung stated:

> "I feel that this current condition is only very distantly related to the claimant's employment. He is no longer exposed to dust at work, however, sometimes following allergic manifestations and sensitizations by the allergens, even very small amounts of allergen can cause allergic reaction. At the time I saw him, he had very little manifestation of allergic conjunctivitis, although from his history I am sure he has had this in the past.
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> "Regarding the glaucoma being caused by dust exposure in the workplace, I feel that there is only a very distant relationship. The allergy was treated with steroid medication, which in turn caused an elevation of his pressure, which in turn caused the glaucoma and damage. When steroid medication causes pressure problems in the eye, it is due to the fact that the gene which causes glaucoma is present in the body.
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> "As there is only a very indirect and distant causation by the dust and glaucoma, it is difficult to say whether the aggravation is temporary or permanent. With steroid medication, one has to make certain that the pressure is not elevated in the eyes. If the pressure came up and went down at an early length of time, the damage would not be permanent. However, from looking at his visual field examination, one could state that in all likelihood the damage is permanent. This brings up another point that the visual field change does not particularly correspond to the cup-to-disc ratio that he has in his eyes."

In his reports, Dr. Jung did not provide a clear opinion that appellant's accepted employment injuries -- aggravation of allergic keratoconjunctivitis and sinusitis and aggravation of glaucoma not to exceed March 13, 1992 -- were permanent in nature. Therefore, the Office was correct in stating, in its April 23, 1997 decision, that there was no basis to find that appellant had any permanent visual impairment that would entitle him to a schedule award. Dr. Jung indicated that appellant's current minimal conjunctivitis was not related to any accepted employment-related condition. With respect to appellant's glaucoma, Dr. Jung suggested that the findings of the visual fields examination showed that the employment-related damage was permanent. However, Dr. Jung rendered this statement equivocal by noting that appellant's cup-to-disc ratios were inconsistent with the findings of the visual fields examination. The Board has noted that an opinion which is equivocal in nature is of limited probative value regarding the issue of causal relationship.[9] The equivocal nature of Dr. Jung's opinion is further highlighted by a report of an Office medical adviser. In a report dated January 6, 1997, the Office medical adviser noted that Dr. Jung was indicating that appellant's cup-to-disc ratios were still excellent. He further stated, "With a normal cup[-to-]disc ratio or a near normal cup[-to-]disc ratio, there would be no reason to believe that glaucoma would have caused the loss of peripheral fields.

[9] *See Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962); *James P. Reed*, 9 ECAB 193, 195 (1956) (finding that an opinion which is equivocal or speculative is of limited probative value regarding the issue of causal relationship).

Hence, Dr. Jung is actually stating that this individual's reliability in testing must be questioned."

The record also contains a May 2, 1995 report in which Dr. Bruce W. Herndon, an attending Board-certified ophthalmologist, diagnosed glaucoma, chronic allergy and dry eye syndrome in both eyes. Dr. Herndon noted, "These are caused or insinuated and aggravated by chronic dust at work." As noted above, appellant's eye conditions were accepted as being aggravated by employment factors and Dr. Herndon did not clarify which condition he felt was caused, rather than aggravated, by dust exposure at work or otherwise provide medical rationale for his opinion.[10] He indicated that appellant's glaucoma was well controlled and stated, "He continues to suffer from allergy and chronic dry eyes syndrome which is permanent, as well as the glaucoma." Dr. Herndon did not, however, provide a clear opinion that the permanent nature of any of appellant's eye conditions was attributable to employment factors.

For these reasons, appellant did not meet his burden of proof to establish that he is entitled to a schedule award for permanent impairment of his eyes.

The Board further finds that appellant did not meet his burden of proof to establish that he sustained disability after November 20, 1995 due to his employment-related eye injury.

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative, and substantial evidence a recurrence of total disability and show that he cannot perform such light duty. As part of this burden the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.[11]

As noted above, appellant worked in light-duty positions before stopping work effective November 20, 1995. The record does not contain any evidence showing that appellant's accepted employment injuries caused him to sustain total disability on or after November 20, 1995. In his April 24, 1996 report, Dr. Jung indicated that appellant had some disability due to eye conditions. He did not, however, indicate that the level of disability would prevent appellant from performing his light-duty position or that the disability was due to employment factors. Therefore, appellant has not submitted medical evidence showing that he had disability after November 20, 1995 due to employment factors. He also did not show a change in the nature and extent of the light-duty job requirements.

For these reasons, appellant did not meet his burden of proof to establish that he sustained disability after November 20, 1995 due to his employment-related eye injury.

[10] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (finding that a medical opinion not fortified by medical rationale is of little probative value).

[11] *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

The decision of the Office of Workers' Compensation Programs dated April 23, 1997 is affirmed.

Dated, Washington, D.C.
December 22, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

David S. Gerson
Member