U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSEPH D. VIALPANDO and DEPARTMENT OF COMMERCE, NATIONAL BUREAU OF STANDARDS, Boulder, CO

Docket No. 98-1741; Submitted on the Record; Issued December 6, 1999

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON, A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's claim for continuation of pay based on its determination that appellant's lumbar strain was due to an occupational disease and not a traumatic injury on January 9 and 10, 1996, as alleged.

On January 11, 1996 appellant, then a 50-year-old maintenance worker, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that he injured his back while moving equipment and furniture on January 9 and 10, 1996. In a witness statement, David Errickson noted that appellant "complained of increasing pain in his back because of the heavy lifting and moving of items" and that by January 10, 1996 he went to the health unit. Appellant stopped work on January 11, 1996 and returned to light-duty work on January 15, 1996. In a letter dated April 30, 1996, the Office accepted appellant's claim for a low back strain and advised appellant that his injury was classified as an "occupational disease" rather than a traumatic injury as it occurred over a period longer than one day.[1]

In an accident progress sheet dated January 11, 1996, Dr. Eric Christiansen[2] noted appellant's date of injury as January 9, 1996.

In a note dated January 23, 1996, the employing establishment noted that appellant's injury occurred on January 11, 1996 and that he was on light duty.

[1] The Office noted the date of injury as January 9, 1996.

[2] A Board-certified family practitioner.

In accident progress sheets dated February 21 and January 31, 1996, Dr. Edward P. McAuliffe[3] noted the date of injury as January 10, 1996.

In a treatment note dated February 5, 1996, Dr. Van Ordea noted that appellant injured himself at work on January 10, 1996 while lifting at work and noted appellant was on light duty.

In a report dated April 2, 1996, Dr. C. Mindy Wiener noted that appellant had a history of low back pain radiating into his right leg for the past four months. She diagnosed a right L5 root impingement and recommended surgical intervention.

In a report dated April 12, 1996, Dr. Stephen H. Shogan noted that appellant sustained an employment injury on January 10, 1996 while "lifting and twisting with a heavy load."

By decision dated April 30, 1996, the Office found that appellant was not entitled to intermittent continuation of pay for the period January 9 to April 30, 1996 on the grounds that he suffered an occupational disease rather than a traumatic injury.

The Board finds that the Office properly denied continuation of pay for appellant's claim based on its determination that appellant's lumbar strain was due to an occupational disease and not a traumatic injury on January 9 and 10, 1996, as alleged.

Section 8118[4] of the Federal Employees' Compensation Act provides for payment of continuation of pay, not to exceed 45 days, to an employee "who has filed a claim for a period of wage loss due to traumatic injury with his immediate supervisor on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of this title."[5] The regulations implementing the Act provide that an employee is not entitled to continuation of pay unless the employee has sustained a traumatic injury.[6] The terms "traumatic injury" and "occupational disease" are defined in the regulations. "Traumatic injury" is defined as follows:

> "*Traumatic injury* means a wound or other condition of the body caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. The injury must be caused by a specific work event or incident or series of incidents within a single workday or shift."[7]

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[3] A Board-certified family practitioner.

[4] 5 U.S.C. § 8118.

[5] Section 8122(a)(2) provides that written notice of injury must be given as specified in section 8119, which provides for a 30-day time limitation for filing a claim of a traumatic injury. 5 U.S.C. §§ 8119(a), (c), 8122(a)(2).

[6] 20 C.F.R. § 10.201(a).

[7] 20 C.F.R. § 10.5(15).

The term “occupational disease” is defined as follows:

> “*Occupational disease or illness* means a condition produced in the work environment over a period longer than a single workday or shift by such factors as systemic infection; continued or repeated stress or strain; or exposure to hazardous elements such as, but not limited to, toxins, poisons, fumes, noise, particulates, or radiation, or other continued or repeated conditions or factors of the work environment.”[8]

In the instant case, appellant alleged that he sustained a traumatic injury on January 9 and 10, 1996 while moving equipment and furniture. Appellant has not established by the weight of the factual and medical evidence that his injury, lumbar strain, resulted from a single incident or series of incidents occurring within a single workday or work shift. In support of his claim, appellant submitted a CA-1 form which listed the date of injury as January 9 and 10, 1996. In a witness statement, Mr. Errickson indicated that, during the moving of furniture on January 9 and 10, 1996, appellant complained of increasing pain in his lower back due to the lifting and went to the health unit on January 10, 1996 due to the severe pain he was experiencing. These statements submitted by appellant failed to establish that a specific injury occurred on January 9 and 10, 1996, but rather showed that appellant experienced a significant worsening of a condition over two days. The Office noted the date of injury as January 9, 1996. Drs. Ordea and Shogan noted the date of injury as January 10, 1996 while Dr. McAuliffe noted the date of injury as either January 10, 1996 and Dr. Christiansen noted the date of injury as January 9, 1996. The various medical records submitted by appellant are inconsistent as to the date of injury since it has been noted as January 9, 10 or 11, 1996. Therefore, the weight of the medical and factual evidence establishes that appellant’s injury did not occur on a single date or work shift and thus appellant is not entitled to continuation of pay.

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[8] 20 C.F.R. § 10.5(20).

The decision of the Office of Workers' Compensation Programs dated April 30, 1996 is hereby affirmed.

Dated, Washington, D.C.
December 6, 1999

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member