U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JACK E. JONES, JR. and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Syracuse, N.Y.

Docket No. 97-2702; Submitted on the Record;
Issued July 8, 1999

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant has met his burden of proof in establishing any consequential injuries that are causally related to his accepted April 17, 1989 employment injuries of cervical strain and contusion of the right thigh; and (2) whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective January 26, 1995.

On April 17, 1989 appellant, then a 39-year-old tractor trailer vehicle operator, filed a notice of traumatic injury and claim, alleging that he sustained an injury when he slipped on a wet floor and fell and a partially unhinged sink fell on his legs when he grabbed it for support.[1] The Office accepted appellant's claim for cervical strain and contusion of the right thigh. On June 4, 1989 appellant returned to work, however, on June 14, 1989 he filed a claim for recurrence of disability. The Office accepted appellant's claim for recurrence of disability and appellant received appropriate compensation for temporary total disability.

In a letter dated August 23, 1994, the Office advised appellant that it proposed termination of his compensation benefits on the grounds that he had no continuing residuals of his April 17, 1989 employment injuries. By decision dated September 28, 1994, the Office terminated appellant's compensation effective September 18, 1994. However, on November 15, 1994, an Office hearing representative set aside this decision of the Office. By decision dated January 26, 1995, the Office again terminated appellant's compensation effective September 18, 1994 on the grounds that appellant had no continuing disability or medical condition that was causally related to his accepted employment injuries. In a decision dated September 30, 1996, an Office hearing representative modified the January 26, 1995 decision of the Office to terminate appellant's compensation effective January 26, 1995 and found that appellant did not have any consequential injuries related to his April 1989 employment injury.

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[1] Appellant was working in a limited-duty assignment as a clerk when this incident occurred. Appellant had returned to work after two car accidents in March 1986 and May 1988 and used two canes to ambulate.

The Board has duly reviewed the case record on appeal and finds that appellant did not meet his burden of proof in establishing that he sustained consequential injuries as a result of his April 17, 1989 employment injury.[2]

In the case of *John R. Knox*[3] regarding consequential injury, the Board stated:

> "It is an accepted principal of workers' compensation law, and the Board has so recognized, that when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause which is attributable to the employee's own intentional conduct. As is noted by Professor Larson in his treatise: '[O]nce the work-connected character of any injury, such as a back injury, has been established, the subsequent progression of that condition remains compensable so long as the worsening is not shown to have been produced by an independent nonindustrial cause.... [S]o long as it is clear that the real operative factor is the progression of the compensable injury, associated with an exertion that in itself would not be unreasonable [under] the circumstances. A different question is presented, of course, when the triggering activity is itself rash in the light of claimant's knowledge of his condition."[4] (citations omitted)

In the present case, appellant has not demonstrated that his claimed right leg condition and emotional condition were consequential injuries of his April 1989 employment injuries. Appellant sustained a breakdown of the skin graft on his right leg which covered a metal plate which was implanted after an off-the-job automobile accident. Appellant's treating physician and an orthopedic surgeon, Dr. Dwight A. Webster, first noted the breakdown in the skin on June 19, 1989, however, he did not provide a cause for the apparent periodic breakdown in the skin or the underlying pain in the right tibia. Dr. Webster did note some movement in the plate under the skin on May 23, 1989, but also indicated that the skin graft was in good condition. Appellant underwent surgery on September 7, 1989 to remove the hardware and fix the fracture of the tibia. In a discharge summary dated November 22, 1989, Dr. Stephen Bogosian, an orthopedic surgeon, provided a history of appellant undergoing surgery in September 1989 to remove the hardware in his right leg after a one-week complaint of soreness and swelling due to slipping in the shower. Thus, the medical evidence contemporaneous with appellant's surgery on his right leg provides an intervening cause for the surgery of slipping in the shower. As appellant has not provided any rationalized medical evidence to support his contention that his right leg condition was a consequential injury of his April 1989 employment injury and since the record provides an intervening cause for appellant's surgery to this leg, appellant has not

[2] The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal. As appellant filed his appeal with the Board on April 23, 1997 the only decision before the Board is the Office's September 30, 1996 decision. *See* 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

[3] 42 ECAB 193 (1990).

[4] *Id.*

established that his right leg condition and surgery was a consequential injury of his accepted employment injury.

Similarly, appellant has not provided any rationalized medical evidence that his diagnosed aggravation of his preexisting post-traumatic stress disorder was a consequential injury of his accepted employment injury. The only report relevant to this issue of record is a September 16, 1994 report by Dr. Gene Tinelli, a psychiatrist. While Dr. Tinelli provides a review of appellant's medical history, his history is incomplete inasmuch as he does not note appellant's hospitalization in June and July 1993 due to suicidal ideation and rages related to his post-traumatic stress disorder. In addition, Dr. Tinelli provides no rationale for his conclusion that appellant's exacerbation of his post-traumatic stress disorder was related to his accepted employment injuries. Therefore, Dr. Tinelli's opinion which is based on an inaccurate medical history and is devoid of medical reasoning for his conclusion is not sufficient to discharge appellant's burden of proof in establishing that appellant had a psychological condition as a consequential injury of his accepted employment injuries.

The Board also finds that the Office properly terminated appellant's compensation effective January 26, 1995.

Under the Federal Employees' Compensation Act,[5] once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of compensation.[6] After the Office determines than an employee has a disability causally related to his or her employment, the Office may not terminate compensation without establishing that its original determination was erroneous or that the disability has ceased or is no longer related to the employment injury.[7]

The fact that the Office accepts appellant's claim for a specified period of disability does not shift the burden of proof to appellant to show that he or she is still disabled. The burden is on the Office to demonstrate an absence of employment-related disability in the period subsequent to the date when compensation is terminated or modified.[8] Therefore, the Office must establish that appellant's condition was no longer aggravated by employment factors after January 26, 1995 and the Office's burden includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[9]

In the present case, the Office found that the report by Dr. Daniel Elstein, a Board-certified orthopedic surgeon and Office referral physician, constituted the weight of the medical evidence and terminated compensation. In a report dated July 11, 1994, Dr. Elstein noted appellant's history of injury and preexisting medical conditions and concluded that appellant had

[5] 5 U.S.C. §§ 8101-8193.

[6] *William Kandel*, 43 ECAB 1011 (1992).

[7] *Carl D. Johnson*, 46 ECAB 804 (1995).

[8] *Dawn Sweazey*, 44 ECAB 824 (1993).

[9] *Mary Lou Barragy*, 46 ECAB 781 (1995).

returned to his date-of-injury physical capacity. He concluded that any aggravation of appellant's back and neck had ceased and that appellant was strong enough to ambulate with use of his crutches and wheel chair as he had in the past. Dr. Elstein indicated that appellant could perform his date-of-injury employment without further restrictions and that any residual conditions were related to appellant's motor vehicle accident, not his employment injuries. Although appellant submitted a report by Dr. David T. Page, an orthopedic surgeon, who noted disagreement with Dr. Elstein's conclusion that none of appellant's disabilities were due to the April 17, 1989 incident, Dr. Page does not provide the basis for his disagreement except to say that appellant had increased medication needs after the incident. Significantly, the November 1, 1994 report by Dr. Webster is corroborative of Dr. Elstein's report. Dr. Webster noted that appellant was "get[ting] along quite well on his two canes." Although he indicated that appellant had persistent problems in his lower extremities, Dr. Webster did not relate these problems to appellant's April 1989 employment injury. Moreover, Dr. Webster reported that appellant could consider work if it was sedentary in nature. As the report by Dr. Elstein is the only report of record based on a complete medical history with sufficient rationale to explain his conclusions, the Office met its burden of proof in terminating appellant's compensation effective January 26, 1995.

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

Dated, Washington, D.C.
July 8, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member