U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HAROLD GRIBBIN and U.S. POSTAL SERVICE,
POST OFFICE, New York, NY

Docket No. 97-2317; Submitted on the Record;
Issued November 10, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issues are: (1) whether appellant has established that he sustained a recurrence of disability on March 13, 1995 causally related to his August 5, 1994 employment injury; and (2) whether appellant has established that he sustained an aggravation of his preexisting post-traumatic stress disorder causally related to his August 5, 1994 employment injury.

On August 5, 1994 appellant, then a 45-year-old mailhandler, filed a claim for a traumatic injury occurring on that date in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim for cervical strain and lumbar strain.

On October 25, 1994 the Office referred appellant to Dr. Martin S. Weseley, a Board-certified orthopedic surgeon. In a report dated November 23, 1994, he diagnosed cervical spine derangement with a herniated disc at C5-6 and low back derangement, noted that the objective findings on examination were minimal and determined that appellant could perform light-duty employment beginning at four hours per day and increasing to full time. In a work restriction evaluation dated December 8, 1994, Dr. Dwiref Mehta, a Board-certified surgeon and appellant's attending physician, concurred that he could return to work with restrictions for four hours per day.

On January 17, 1995 appellant returned to limited-duty employment for four hours per day.

On March 14, 1995 appellant filed a notice of recurrence of disability alleging that on March 13, 1995 he sustained a recurrence of disability causally related to his August 5, 1994 employment injury.[1] Appellant stopped work on March 13, 1995 and did not return.

[1] By decision dated March 14, 1995, the Office denied appellant's request to change his treating physician. The Office did, however, authorize appellant to make one visit to a specialist of his choice.

By decision dated August 18, 1995, the Office denied appellant's claim on the grounds that the evidence failed to establish that he sustained a recurrence of disability due to his employment injury. Appellant requested a hearing before an Office hearing representative, which was held on June 18, 1996. In a decision dated September 27, 1996, the hearing representative affirmed the Office's August 18, 1995 decision.

By letter dated March 10, 1997, appellant, through his representative, requested reconsideration of his claim. In a decision dated June 9, 1997, the Office denied modification of its prior decision. The Office found that the evidence submitted was insufficient to establish that appellant sustained a recurrence of disability due to his accepted employment injury or that he sustained an emotional condition due to his employment injury.

The Board has duly reviewed the case record in the present appeal and finds that appellant has not met his burden of proof to establish that he sustained a recurrence of disability on March 13, 1995 causally related to his August 5, 1994 employment injury.

Where an employee, who is disabled from the job he or she held when injured on the account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee 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 to show that he or she 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.[2]

In the present case, appellant sustained cervical strain and lumbar strain as a result of a traumatic injury on August 5, 1994. He subsequently returned to work in a limited-duty capacity. There is no evidence in the record establishing any change in the nature and extent of appellant's light-duty position as a cause of his claimed disability beginning March 1995.

Appellant further has not submitted medical evidence which would establish that he sustained a recurrence of disability causally related to his accepted employment injury. In support of his claim, appellant submitted a report dated July 20, 1996 from Dr. Robert B. Goldberg, an osteopath. He discussed the history of injury, reviewed the results of objective tests and noted that appellant was status post work accident. Dr. Goldberg stated, "[Appellant] has a job to return to, is well motivated and a functional capacity evaluation has been performed with Dr. Paul Jendrick." Dr. Goldberg included a copy of the functional capacity evaluation, in which Dr. Jendrick opined that appellant could perform a moderate level of work activity. Dr. Goldberg did not find appellant disabled from his limited-duty position and thus his report does not support appellant's claim for a recurrence of disability.

In a report dated January 2, 1997, Dr. Goldberg opined that appellant was not able to perform his regular employment. He diagnosed status post work accident and stated that "[t]he accident is a competent producing cause of the injuries sustained. At the time of the evaluations, [appellant] was found to have a partial work[-]related disability from the duties of a

[2] *Terry R. Hedman*, 38 ECAB 222 (1986).

mailhandler." Dr. Goldberg, however, did not discuss whether appellant was disabled from his limited-duty employment beginning March 1995 or provide any rationale in support of his findings. The opinion of a physician supporting causal relationship must be supported by affirmative evidence, address the specific factual and medical evidence of record and be explained by medical rationale.[3]

In a report dated February 14, 1997, Dr. Goldberg listed findings on examination and stated:

> "[Appellant] is status post work accident. He was recommended to begin a work hardening program, but this was not authorized. With inactivity, pain and restriction he deconditioned, gained weight, became increasingly depressed and hopeless. He has limited endurance with shortness of breath on exertion. Muscle tone is poor. Strength though normal is with limited endurance."
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> "As a result of a work[-]related accident, the onset of a chronic pain syndrome, inactivity with [m]usculoskeletal deconditioning, [appellant] has a causally [m]oderate to severe disability of 50 [percent]. As public transportation has been reported to exacerbate his condition, this percentage may increase if this were to occur."

While Dr. Goldberg found appellant partially disabled, he did not address the pertinent issue in the instant case, which is whether appellant's condition worsened in March 1995 such that he could not perform his limited-duty employment. Thus, his report is insufficient to meet appellant's burden of proof.

Moreover, the record contains evidence supporting a finding that appellant is not totally disabled due to his employment-related back condition. In a report dated May 8, 1997, Dr. Lawrence E. Miller, an osteopath and Office referral physician, diagnosed "[r]esolved right shoulder, cervical and lumbosacral strain and sprain." Dr. Miller stated:

> "When asked why he stopped work on March 13, 1995, [appellant] merely stated that he was not able to work at that time. [He] also stated that he is not able to work at this time yet, during today's evaluation, nothing objective was noted. Therefore, it is difficult to determine the actual amount of pain, if any, [appellant] is experiencing."
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> "There were absolutely no objective findings to substantiate a worsening in [appellant's] employment-related condition since the accident of August 5, 1994; there is no medical evidence to validate any residuals [he] may claim to have experienced. It is this examiner's opinion that [appellant] does not wish to return to any type of activities."

[3] *Lucrecia M. Nielsen,* 42 ECAB 583 (1991).

> "[Appellant] is capable to (sic) working on a full-time basis and resuming full activities; he has reached his maximum medical improvement. There is absolutely no reason why [he] cannot work; there is no evidence of a herniated disk (sic) and objectively, nothing was noted."

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.[4] Appellant failed to submit rationalized medical evidence establishing that his claimed recurrence of disability was causally related to the accepted employment injury and, therefore, the Office properly denied his claim for a recurrence of disability.

The Board further finds that the case is not in posture for a decision regarding whether appellant sustained an aggravation of his preexisting post-traumatic stress disorder causally related to his August 5, 1994 employment injury.

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.[5] On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.[6]

In a report dated September 8, 1995, Dr. S. Troy, a psychiatrist, noted that appellant had been treated since May 1994 for combat-related post-traumatic stress disorder and indicated that appellant "appears to be very angry and frustrated as he is dealing with agencies handling his compensation case for the injuries he sustained while working for the [employing establishment] September 1994." However, matters involving the processing of a compensation claim by the employing establishment or Office are, generally, not employment factors under the Act as they bear no relation to appellant's day-to-day or specially assigned duties.[7]

In a report dated November 24, 1995, Dr. Troy diagnosed combat-related post-traumatic stress disorder and found appellant unable to work but did not address the cause of his condition.

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[4] *See Walter D. Morehead*, 31 ECAB 188, 194-95 (1986).

[5] 5 U.S.C. §§ 8101-8193.

[6] *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

[7] *Thomas J. Costello*, 43 ECAB 951 (1992).

In a report dated February 12, 1996, Dr. Troy diagnosed chronic and severe combat-related post-traumatic stress disorder, related to his injury to combat in Vietnam and stated:

> "A mailhandler since 1983, he suffered a back injury while working in September 1994. He was reassigned to a light[-]duty position, which he perceived as demoralizing in its design and format, provoked undue mental strain and exacerbated his [combat-related post-traumatic stress disorder] problems to the point of [being] unable to carry on with the task."

In a report dated February 12, 1997, Dr. Troy found appellant totally disabled and noted:

> "…After [appellant's] back injury in 1995, his mental condition worsened. The undue stress and pressure, severe back pain, [inability] to carry on with his [employing establishment] duties and other related difficulties -- exacerbated his [combat-related post-traumatic stress disorder].…"

In the instant case, the record contains medical evidence attributing appellant's aggravation of his preexisting combat-related post-traumatic stress disorder to pain and limitations on physical activities resulting from his back injury. An emotional condition related to chronic pain and limitations resulting from an employment injury is covered under the Act.[8] While Dr. Troy's reports contain inconsistent dates of injury and lack sufficient medical rationale to establish by the weight of reliable, substantial and probative medical evidence that appellant's diagnosed combat-related post-traumatic stress disorder was aggravated by his accepted employment injury, they constitute sufficient evidence to require further development by the Office.[9]

[8] *Arnold A. Alley*, 44 ECAB 912 (1993); *Charles J. Jenkins*, 40 ECAB 362 (1988).

[9] *See John J. Carlone*, 41 ECAB 354 (1989). The Board notes that in this case the record contains no medical opinion evidence contrary to appellant's claim and further notes that the Office did not seek advice from an Office medical adviser or refer the case to an Office referral physician for a second opinion.

The decision of the Office of Workers' Compensation Programs dated June 9, 1997 is hereby affirmed in part and set aside in part and the case is remanded for further proceedings consistent with this opinion of the Board.

Dated, Washington, D.C.
November 10, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member