U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROY C. GILES and U.S. POSTAL SERVICE,
POST OFFICE, Flint, MI

Docket No. 98-924; Submitted on the Record;
Issued November 19, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
WILLIE T.C. THOMAS

The issue is whether appellant has established a recurrence of disability commencing July 6, 1994 causally related to his December 15, 1992 employment injury.

In the present case, the Office of Workers' Compensation Programs accepted that appellant sustained a forehead contusion in the performance of duty on December 15, 1992. Appellant, a mailhandler, returned to work in a light-duty position.

On July 7, 1994 appellant filed a notice of recurrence of disability (Form CA-2a) commencing July 5, 1994.[1] By decision dated August 31, 1994, the Office denied the claim on the grounds that the medical evidence was not sufficient to establish a recurrence of disability causally related to the employment injury. In a decision dated April 18, 1995, the Office denied modification of the denial of the claim.

In a decision dated May 9, 1996, the Office determined that appellant's request for reconsideration was untimely and failed to show clear evidence of error. On appeal, the Board issued an order granting the Director's motion to remand the case for an appropriate decision under 10 C.F.R. § 10.138(b)(1).[2]

In a decision dated October 21, 1997, the Office reviewed the case on its merits and denied modification.

The Board has reviewed the record and finds that appellant has not established a recurrence of disability commencing July 6, 1994.

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[1] According to the supervisor's statement on the claim form, appellant did work on July 5, 1994; therefore, his claim for a recurrence of disability apparently begins on July 6, 1994.

[2] Docket No. 96-2531.

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 establishes that light duty can be performed, the employee has the burden to establish by the weight of reliable, probative and substantial evidence a recurrence of total disability. As part of this burden of proof, the employee must show either a change in the nature and extent of the injury-related condition, or a change in the nature and extent of the light-duty requirements.[3]

In the present case, appellant stopped working in July 1994 and filed a claim for a recurrence of disability. In a report dated November 16, 1994, the history provided to Dr. Joel R. Saper, a neurologist, indicated that appellant was found unconscious in a restroom at work and the employing establishment had not allowed him to return to work. There is little factual evidence regarding this alleged incident; in any case, it remains appellant's burden to establish that he had a condition in July 1994 causally related to the December 15, 1992 employment injury and that such condition rendered him disabled for the light-duty job. Dr. Saper's report is of limited probative value because he stated only that appellant was experiencing post-traumatic headaches with migrainous features and associated occipital cervical tenderness, which according to appellant, were secondary to the December 15, 1992 injury. The physician does not provide his own opinion on causal relationship. Dr. Saper also noted that appellant's history included a nonemployment-related motor vehicle accident in June 1992, when appellant was apparently unconscious for a period of time and was hospitalized for approximately a week.

In a report dated January 17, 1995, Dr. Nael M. Tarakji, a neurologist, stated that appellant was disabled due to symptoms of postconcussion syndrome. Dr. Tarakji further stated that "the disability is permanent and partially work related as he had previous motor vehicle accident exacerbated by the work injury causing head trauma." The opinion on causal relationship is not accompanied by any medical rationale or explanation.[4] Appellant submitted testimony from Dr. Tarakji in a statement under oath dated April 5, 1996, but he failed to further explain his opinion on causal relationship with the employment injury. In response to a question as to whether the work injury "at least aggravated the symptomology that occurred as a result of the auto[mobile] accident," Dr. Tarakji stated "yes," but when asked whether the work injury contributed to appellant's condition as of his initial treatment by Dr. Tarakji in August 1993, the physician replied "probably" without further explanation. Dr. Tarakji also testified that appellant was a poor historian, and indicated that he did not have any record as to what appellant's symptoms were before the employment injury in December 1992 and, therefore, any answer would be speculative. Accordingly, the testimony from Dr. Tarakji establishes only a speculative opinion that appellant's condition in August 1993 was probably related to the employment injury. With respect to July 1994, Dr. Tarakji did not provide an opinion as to a recurrence of disability. He noted that appellant was treated in August 1994 and a brain wave test was performed, which did not show any seizure activity or abnormal brain wave activity.

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

[4] Medical reports not containing rationale are entitled to little probative value. *Carolyn F. Allen*, 47 ECAB 240 (1995).

Dr. Tarakji concluded that appellant was currently disabled, without providing an opinion relating any specific period of disability to the employment injury.

The April 5, 1996 statement of Dr. Tarakji is, therefore, of little probative value to appellant's claim. Given the history of a motor vehicle accident in June 1992 with head injuries, he is clearly unable to offer an opinion with reasonable medical certainty as to causal relationship between appellant's continuing symptoms and the December 15, 1992 employment injury. Dr. Tarakji does not provide a reasoned medical opinion that, commencing on or after July 1994, appellant sustained a recurrence of disability causally related to his employment injury.

The record also contains an April 8, 1996 statement under oath from Dr. Eduardo L. Reyes, an internist, who indicated that he last saw appellant on May 26, 1994 and he does not provide an opinion as to appellant's condition commencing in July 1994. With respect to appellant's condition in May 1994, Dr. Reyes indicated that he could not provide an opinion as to causation, noting that a magnetic resonance imaging scan had not been performed between the date of the motor vehicle accident and the employment injury.

The Board, therefore, finds that the record does not contain a reasoned medical opinion as to causal relationship between disability for work commencing on or after July 1994 and the December 15, 1992 employment injury. Since it is appellant's burden to establish his claim, the Board finds that appellant has not met his burden in this case.

The decision of the Office of Workers' Compensation Programs dated October 21, 1997 is affirmed.

Dated, Washington, D.C.
November 19, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member