U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WALDEMAR ROSARIO-INGO and DEPARTMENT OF JUSTICE, FEDERAL BUREAU OF PRISONS, Jessup, GA

Docket No. 98-871; Submitted on the Record;
Issued October 18, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS, A. PETER KANJORSKI

The issue is whether appellant has established that he sustained an injury in the performance of duty, as alleged.

On July 26, 1996 appellant, then a 39-year-old electronics technician, filed a claim for a traumatic injury, Form CA-1, alleging that on July 15, 1996 he felt pain in his back while lifting a 50-pound television off the floor. He stated that the pain started at the upper right part of the spine on the back and ran along to the right arm. Appellant did not miss any work. The record shows that appellant first sought medical treatment on August 2, 1996. Appellant subsequently underwent neuromuscular therapy and biofeedback at least through January 28, 1997.

In a report dated August 27, 1996, Dr. William H. Noran, a Board-certified psychiatrist and neurologist and appellant's treating physician, considered appellant's history of injury, performed a physical examination and diagnosed thoracic myofascial pain syndrome.

In an attending physician's report dated October 18, 1996, Dr. Noran diagnosed myofascial pain, noted that appellant had a trigger point at the right latissimus dorsa and checked the "yes" box that the condition is work related. He stated that appellant was partially disabled since July 15, 1996, indicated that appellant could perform light and regular work and stated that appellant was able to limit himself.

By letter dated January 13, 1997, the Office of Workers' Compensation Programs requested additional information from appellant including a rationalized medical opinion from his doctor explaining the relationship between his medical condition and his July 15, 1996 employment injury.

A magnetic resonance imaging (MRI) scan dated November 13, 1996 was normal.

By decision dated February 21, 1997, the Office denied the claim, stating that the evidence of record failed to establish that a fact of injury had been established, as alleged.

By letter dated April 28, 1997, appellant requested reconsideration of the Office's decision and submitted a report from Dr. Noran dated February 27, 1997. In his report, Dr. Noran explained that appellant had myofascial syndrome or myofascial pain syndrome. He stated that the condition produces pain as part of the disorder and otherwise, is manifest by tender areas and trigger point. Dr. Noran stated that appellant's problems came on with lifting which would fit from a history point of view. He stated that appellant had consistent and persistent symptomatology in that the muscle scans were abnormal consistent with appellant's complaints. Dr. Noran stated that pain is a subjective complaint but that does not make it unreal or unable to be substantiated.

In a report dated July 11, 1997, the district medical adviser reviewed Dr. Noran's reports and the biofeedback results and stated that myofascial pain syndrome was a controversial entity presumably due to chronic injury to muscle and surrounding connective tissue. He stated that many cases are psychophysiologic and related to tension. The district medical adviser stated that the "*sine qua non* is the identification of trigger points in muscle" and it "is sometimes a diagnosis of exclusion after all possible organic causes have been excluded." Dr. Noran opined that, "with all the negative findings and other possible organic possibilities," he did not have a secure diagnosis. The district medical adviser recommended that the case be referred to a second opinion physician.

In a report dated October 16, 1997, Dr. Merritt B. Shobe, a second opinion physician and a Board-certified orthopedic surgeon, considered that appellant had an injury at work in July 1996 and had discomfort after mowing with a large mower in July 1997. He performed a physical examination and reviewed an MRI scan and x-rays which were normal. Dr. Shobe stated that appellant might have had a sprain or myalgia as described by the neurological group, but orthopedically, appellant had no positive findings. He opined that appellant could return to his regular job without restriction and did not have any permanent or partial disability. Dr. Shobe stated that appellant's mild symptomatic symptoms without findings were not a basis for additional treatment, evaluation, or disability.

By decision dated November 18, 1997, the Office denied appellant's request for modification.

By letter dated December 19, 1997, appellant requested reconsideration of the Office's decision and submitted an excerpt from a book describing myofascial pain syndrome and fibromyalgia.

By decision dated January 12, 1998, the Office denied appellant's reconsideration request.

The Board finds that the case is not in posture for decision due to a conflict in the medical evidence.

Section 8123(a) of the Federal Employees' Compensation Act[1] provides that "[i]f there is disagreement between the physician making the examination for the United States and the

[1] 5 U.S.C. § 8123(a).

physician of the employee, the Secretary shall appoint a third physician who shall make an examination."

An employee seeking benefits under the Act has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition, for which compensation is claimed are causally related to the employment injury.[2] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.[3]

The medical evidence required to establish a causal relationship, generally, is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[4]

In the present case, in his August 27 and October 18, 1996 and February 27, 1997 reports, Dr. Noran, appellant's treating physician, consistently diagnosed myofascial pain syndrome or myofascial pain. In his October 18, 1996 report, Dr. Noran found that appellant had a trigger point at the right latissimus dorsa and checked the "yes" box that appellant's condition was work related. He also indicated that appellant could perform light and regular work and was able to limit himself. In his February 27, 1997 report, Dr. Noran stated that appellant's problems "came on with" the lifting incident at work on July 15, 1996. He stated that appellant's condition was consistent with his history, persistent symptomatology and abnormal muscle scan summaries. Dr. Noran's opinion, however, conflicts with the October 16, 1997 opinion of Dr. Shobe that appellant had no positive findings, could return to work without restriction and had no permanent impairment. In his report, although he referenced a mowing incident in July 1997 that caused appellant some discomfort, Dr. Shobe did not specifically consider the nature of appellant's July 15, 1996 employment injury, *i.e.*, that appellant lifted a 50-pound television.

The Board finds that Dr. Noran's opinion that appellant sustained myofascial pain syndrome or myofascial pain as a result of lifting the television at work on July 15, 1996 conflicts with Dr. Shobe's report that appellant had no medical problem and could return to work without restriction. The case, therefore, requires remand for an impartial medical specialist to resolve the conflict in the medical opinions. On remand, the Office should refer the case record

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

[3] *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

[4] *Gary L. Fowler*, 45 ECAB 365, 371; *Ern Reynolds*, 45 ECAB 690, 695 (1994).

with a statement of accepted facts to an appropriate medical specialist pursuant to section 8123(a) of the Act. Following this and such further development as the Office deems necessary, it shall issue a *de novo* decision.

The decisions of the Office of Workers' Compensation Programs dated January 12, 1998 and November 18 and February 21, 1997 are hereby set aside and the case is remanded for further consideration consistent with this opinion.

Dated, Washington, D.C.
October 18, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member