U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GARY TAYLOR and DEPARTMENT OF LABOR, MINE SAFETY & HEALTH ADMINISTRATION, Mount Hope, WV

Docket No. 98-2398; Submitted on the Record;
Issued April 3, 2000

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he sustained a back, neck and shoulder injury in the performance of duty on October 24, 1997, as alleged.

On November 5, 1997 appellant, then a 50-year-old mine inspector, filed a notice of recurrence of disability claim, Form CA-2a, alleging that his back condition had worsened since lifting a table about two weeks earlier.[1] He stopped work on November 3, 1997 and has not returned.

In a November 5, 1997 certificate to return to work, Dr. Thomas Roatsey, an osteopath, indicated that appellant had been under his care since November 3, 1997 and was unable to return to work due to neck and back pain and injury.

By letter dated January 15, 1998, the Office informed appellant that he should have filed a traumatic injury claim and requested that appellant submit a statement describing the alleged incident and also provide detailed medical evidence explaining the causal relationship between the incident and his alleged injury.

In response, appellant provided a statement explaining how on October 24, 1997 between 1:30 p.m. and 3:00 p.m., he was moving tables from the conference room to the break room. During the lifting and pushing of the tables, he felt pain in his neck and back. He completed work that day but did not return. Appellant also submitted a January 19, 1998 report from Dr. Roatsey, who indicated that he presented to him on October 28, 1997 with neck, back and shoulder pain. Dr. Roatsey reported appellant's motor vehicle accident in January 1981 and an

[1] The Office of Workers' Compensation Programs developed the claim as a traumatic injury claim. The record indicates that appellant apparently sustained a work-related back and neck injury in 1981 after a work-related automobile accident and a work-related back injury in 1995.

injury in 1995 when he fell on the job. He further reported that, following the 1995 injury, appellant had back surgery for a ruptured disc and continued to experience pain in his back, shoulder and neck as a result of the injury. Physical examination revealed normal shoulders but the neck had a 50 percent decrease in rotation to the left and right. Dr. Roatsey diagnosed significant degenerative changes with spondylosis and spurring of the cervical spine and posterior bony bar defects. Severe degenerative changes throughout the dorsal spine were also noted. Regarding disability, Dr. Roatsey concluded:

> "With his physical limitations, the chronic pain and the chronic injuries that he has suffered, all beginning with the rollover MVA [motor vehicle accident] while at work and continuing through the fall it is felt that he should be given his total disability retirement due to these injuries."

In a decision dated February 18, 1998, the Office denied appellant's claim for failure to establish fact of injury. The Office found that there was no evidence of a work-related injury.

On July 8, 1998 appellant submitted a June 18, 1998 letter from Dr. Roatsey and requested reconsideration of the February 18, 1998 decision. In this letter, Dr. Roatsey explained why he did not report appellant's injury. He stated:

> "It is true that I had first seen [appellant] on October 28, 1997; but this was a new-patient visit and was therefore a complete physical at that time. This was not due to an injury. He had some chronic pain in the past; but it had not been exacerbated because of an injury. I saw him again on November 5, 1997, and the pain had become worse. He was unable to do any lifting at that time. Upon questioning, it was found that he had been lifting a table at work in the employee's lunchroom, and the pain had been exacerbated secondary to this. This was brought to my attention at a later date, and an addendum was made into the chart, handwritten and dated. It is my understanding that there are witnesses at the workplace that can confirm the incident."

By decision dated July 16, 1998, the Office conducted a merit review and found that the newly submitted evidence was insufficient to warrant modification of the February 18, 1998 decision. The Office found that the incident occurred on about October 24, 1997 but that appellant failed to present sufficient medical evidence to establish that he sustained an injury. The Office therefore found that fact of injury was not established.

The Board finds that appellant has failed to establish that he sustained an injury in the performance of duty, as alleged.

An employee seeking benefits under the Federal Employees' Compensation Act[2] 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 filed within the applicable time limitations of the Act, that an injury was sustained in the

[2] 5 U.S.C. § 8101 *et seq.*

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."[3] 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.[4]

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered, in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident, which is alleged to have occurred. In this case, the Office does not dispute that the incident involving appellant's lifting the table occurred on October 24, 1997, as alleged.

The second component is whether the employment incident caused a personal injury and it generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability claimed, and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.[5] In assessing medical evidence, the weight of such evidence is determined by its reliability, its probative value and its convincing quality, and the factors which enter in such an evaluation include the opportunity for, and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of the analysis manifested, and the medical rationale expressed in support of the physician's opinion.[6]

In the instant case, the record contains only medical reports from Dr. Roatsey. None of these reports, however, were sufficiently rationalized to establish that appellant sustained an injury while lifting a desk on October 24, 1997.[7] Additionally, none of these reports provided a contemporaneous account of the alleged injury.[8] Dr. Roatsey's November 5, 1997 certificate to return to work stated only that appellant was unable to work due to neck and back pain and injury. Dr. Roatsey presented neither objective findings nor any history of appellant's 1997 injury or other medical problems. While Dr. Roatsey's January 19, 1998 opinion discussed appellant's complaints of neck, back and shoulder pain and referred to accidents in 1981 and 1995, he failed to mention the most recent October 24, 1997 incident. Consequently, Dr. Roatsey did not link the 1997 injury with his diagnosis of significant degenerative changes

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

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

[5] *Gary R. Sieber*, 46 ECAB 215, 224 (1994); *Melvina Jackson* 38 ECAB 443, 449-50 (1987); *Naomi A. Lilly*, 10 ECAB 560, 573 (1959).

[6] *Thomas A. Faber*, 50 ECAB ____ (Docket No. 97-2212, issued September 28, 1999).

[7] *Id.*

[8] *Henry W.B. Stanford*, 36 ECAB 160 (1984); *Katherine A. Williamson*, 33 ECAB 1696 (1982) (holding that the Board may accord less weight to medical reports that fail to contain a contemporaneous account of the injury).

with spondylosis. Even though Dr. Roatsey noted in his June 18, 1998 report that appellant told him at a later date that appellant had sustained an injury on October 24, 1997 and that an addendum was made in the chart, there was no evidence of this in the record. The fact that appellant failed to mention his injury when first treated by Dr. Roatsey, just one week after the incident, casts doubt upon the seriousness of appellant's injuries.[9] Furthermore, Dr. Roatsey did not explain why lifting the table would cause or aggravate a specific condition. As there is insufficient rationalized medical evidence of record, appellant failed to establish fact of injury.

The July 16 and February 18, 1998 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
April 3, 2000

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

[9] *Id.*