U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JEFFREY M. STARK and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Kansas City, MO

Docket No. 97-2312; Submitted on the Record;
Issued January 5, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof to establish that he sustained any disability as a result of his March 13, 1997 employment-related lumbar strain.

The Board has duly reviewed the case record in this appeal and finds that this case is not in posture for decision.

On March 18, 1997 appellant, then a 33-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that on March 13, 1997 he experienced muscle spasms on the entire right side of his back down to his right hip, a burning sensation down his right leg to his right ankle and a sharp shooting pain in his left testicle as a result of throwing trays of mail on line which was above shoulder level. Appellant's claim was accompanied by factual and medical evidence.

By letter dated April 8, 1997, the Office of Workers' Compensation Programs advised appellant to submit additional factual and medical evidence supportive of his claim.

By decision dated May 13, 1997, the Office found the evidence of record sufficient to establish that appellant actually experienced the claimed event, but insufficient to establish a diagnosed condition that was caused by the claimed event. Accordingly, the Office denied appellant's claim. In a June 27, 1997 letter, appellant requested reconsideration of the Office's decision.

By decision dated July 25, 1997, the Office accepted appellant's claim for a lumbar strain, but found the evidence of record insufficient to establish that appellant sustained any disability causally related to the employment-related condition. Accordingly, the Office vacated in part and affirmed in part the May 13, 1997 decision.

An employee seeking benefits under the Federal Employees Compensation Act[1] 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 limitations period 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 an occupational disease.[3]

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.[4] In the present case, the Office accepted that appellant actually experienced the incident as alleged. The Board finds that the evidence of record supports this incident.

The second component is whether the employment incident caused a personal injury and 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 the instant case, the medical evidence of record was insufficiently developed to establish the second component of fact of injury that appellant sustained any disability casually related to his March 13, 1997 employment-related lumbar strain.

In support of his claim, appellant submitted a March 19, 1997 treatment note from Dr. Frank C. Ferguson, a chiropractor, revealing that he could return to work on March 19, 1997 and that he had been under a doctor's care for conditions related to his back with pain into his testicular area. Dr. Ferguson noted appellant's medical treatment and physical restrictions, which included no lifting over 20 pounds with no repetitive lifting until further notice. In further support of his claim, appellant submitted Dr. Ferguson's treatment notes covering the period April 22 through May 9, 1997 revealed that appellant received epidural blocks in his lumbar spine and that he was not working at that time. Under section 8101(2) of the Act,[6] "[t]he term 'physician' includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation of the spine

[1] 5 U.S.C. §§ 8101-8193.

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

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

[4] *Elaine Pendleton, supra* note 2.

[5] 20 C.F.R. § 10.110(a); *see John M. Tornello*, 35 ECAB 234 (1983).

[6] 5 U.S.C. §§ 8101-8193.

as demonstrated by x-ray to exist and subject to regulation by the Secretary."[7] If a chiropractor's reports are not based on a diagnosis of subluxation as demonstrated by x-ray to exist, they do not constitute competent medical evidence to support a claim for compensation.[8] Inasmuch as Dr. Ferguson did not diagnose subluxation by x-ray, his treatment notes do constitute competent medical evidence.

Appellant also submitted a March 28, 1997 work restriction evaluation of Dr. Ronald Zipper, a Board-certified orthopedic surgeon, revealing his physical restrictions, his inability to work eight hours per day and a diagnosis of mid-thoracic strain with right radiculitis.

Additionally, appellant submitted Dr. Zipper's March 28, 1997 medical treatment notes indicating that appellant had acute lumbar strain with referred pattern of disc injury and semi acute exacerbation. Dr. Zipper recommended that appellant undergo a series of lumbar epidurals.

Dr. Zipper's April 7, 1997 attending physician's report providing a history of his employment-related back injury and a diagnosis of acute lumbar strain. Dr. Zipper indicated that appellant's condition was caused or aggravated by an employment activity by placing a checkmark in the box marked "yes." He explained that his opinion was based on appellant's history of his employment-related back injury. Dr. Zipper further indicated that appellant was totally disabled beginning March 21, 1997.

Dr. Zipper's April 15, 1997 medical treatment notes revealed that appellant had made arrangements to have epidural blocks. Dr. Zipper's notes also revealed his findings on physical examination and his comment that he would continue appellant's return to work if appellant was having improvement with the blocks.

Dr. Zipper's April 29, 1997 disability certificate indicated that appellant had a resolving lumbar strain and that he could return to work four hours per day for one week.

Hospital records dated April 30 and May 13, 1997 and Dr. Zipper's May 9, 1997 prescription reveal that appellant's back condition was treated with epidural steroid injections.

A May 1, 1997 medical treatment note of Dr. J. Piontek, a Board-certified radiologist, revealed that appellant may return to part-time work as instructed by Dr. Zipper with physical restrictions including, no lifting more than 15 pounds and refraining from bending at the waist until released to do so by Dr. Zipper. Dr. Piontek's May 13, 1997 disability certificate revealed that appellant was advised to remain off work until May 15, 1997. The disability certificate also revealed that appellant could resume work at that time with his preexisting prescribed limitations.[9]

[7] 5 U.S.C. § 8101(2); *see also* 20 C.F.R. § 10.400(a); *Robert J. McLennan*, 41 ECAB 599 (1990); *Robert F. Hamilton*, 41 ECAB 431 (1990).

[8] *Loras C. Dignann*, 34 ECAB 1049 (1983).

[9] A telephone conversation between the Office and the employing establishment on July 25, 1997 revealed that

The Board finds that the medical evidence of record fails to provide sufficient medical rationale explaining whether appellant required medical treatment for his March 13, 1997 employment-related lumbar strain and whether appellant sustained any disability causally related to his March 13, 1997 employment-related back condition. Although the medical evidence of record is insufficiently rationalized to discharge appellant's burden of proving by the weight of the reliable, substantial and probative evidence that he required medical treatment and that he sustained any disability causally related to his March 13, 1997 employment-related lumbar strain, it raises an uncontroverted inference that appellant required medical treatment and that he was either partially or totally disabled due to his employment-related injury to require further development of the case record by the Office.[10]

On remand, the Office should advise appellant to submit all of his hospital medical records, medical reports and progress notes from Drs. Zipper and Piontek and the results of any diagnostic tests. Further, the Office should prepare a new statement of accepted facts. The Office should then determine whether appellant required any medical treatment for his March 13, 1997 employment-related lumbar strain. The Office should also determine whether appellant sustained any disability causally related to his employment-related lumbar strain and if so, identify the periods of partial or total disability. If the Office is unable to determine whether appellant required medical treatment and whether appellant sustained any employment-related disability, appellant should be referred, together with the statement of accepted facts, the complete case record and questions, to a Board-certified specialist for a rationalized medical opinion on whether appellant required medical treatment and whether he sustained any disability causally related to his March 13, 1997 employment-related lumbar strain and if so, identify the periods of partial or total disability. After such further development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

appellant was apparently still on work restrictions and that he continued to work four hours per day.

[10] *See Gary L. Fowler*, 45 ECAB 365 (1994); *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 821 (1978).

The July 25 and May 13, 1997 decisions of the Office of Workers' Compensation Programs are hereby set aside and the case is remanded for further development in accordance with this decision.

Dated, Washington, D.C.
January 5, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member