U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILSON K. GRANT and U.S. POSTAL SERVICE,
POST OFFICE, Hillside, NJ

Docket No. 98-463; Submitted on the Record;
Issued June 27, 2000

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof to establish that he sustained an injury while in the performance of duty on September 20, 1996.

On September 20, 1996 appellant, a 30-year-old mail carrier, filed a Form CA-1 claim based on traumatic injury, alleging that he injured his lower back and neck while ascending a flight of steps on that date.

In a letter to appellant dated January 27, 1997, the Office of Workers' Compensation Programs requested that appellant submit additional information in support of his claim, including a medical report, opinion and diagnosis from a physician, supported by medical reasons, as to how the reported work incident caused the claimed injury. The Office further requested that appellant describe in detail how the injury occurred and when he initially sought medical treatment for his alleged employment injury. The Office informed him that he had 30 days to submit the requested information. Appellant did not respond to this request within 30 days.

By decision dated February 28, 1997, the Office found that appellant failed to submit sufficient evidence to support his claim that he sustained an injury in the performance of duty on September 20, 1996.

In a letter dated March 11, 1997, appellant's attorney requested a review of the written record. Accompanying the request was a March 10, 1997 affidavit from him; reports dated January 3 and February 20, 1997 from Dr. Mark S. Kirk, a chiropractor; reports dated October 14 and November 22, 1996 from Dr. Mark Rodrigues, a chiropractor; and an August 27, 1996 police report indicating that appellant had been involved in an automobile accident on that date. In his affidavit, appellant stated that he had been involved in an automobile accident on August 27, 1996 while running an errand for his supervisor. He stated that he had injured his lower back and neck during this accident, and that, on September 20, 1996, he reinjured his

lower back while ascending some steps. The record also contains clinic notes from a treatment report dated September 20, 1996, which outlined appellant's work restrictions, indicated that appellant was treated on that date for a possible herniated disc and stated that he was disabled by two prior nonwork-related injuries.

The reports from Dr. Kirk noted that appellant related that he had been treated on December 2, 1996 for injuries sustained in a September 20, 1996 work accident. He stated that appellant had complained of neck pain, back pain and left shoulder pain and had difficulty lifting, sitting, standing, climbing stairs, walking long distances and sleeping comfortably. Dr. Kirk stated that x-rays were taken of appellant which exhibited "abnormal deviations." He diagnosed a lumbar strain/sprain, a cervical strain/sprain and brachial radiculitis.

Dr. Rodrigues stated in his October 14, 1996 report that appellant was involved in an automobile accident on August 27, 1996, in which he injured his neck and low back. He advised that, due to the lack of improvement appellant had shown, he was placing him on temporary disability from October 14, 1996 until "further notice." In his November 22, 1996 report, Dr. Rodrigues reiterated that appellant had been involved in an automobile accident in which he injured his neck and low back and stated that appellant currently was still experiencing some discomfort and would continue temporary disability until further notice.

By decision dated May 31, 1997, the Office denied modification of its February 28, 1997 decision. The Office found that the chiropractic reports were of no probative value pursuant to section 8101(2)[1] because they did not indicate that appellant had been treated with manual manipulation of the spine to correct a subluxation causally related to the claimed work-related injury, as demonstrated by x-ray results.

By letters dated July 19 and 22, 1997, appellant requested reconsideration. In support of his request, appellant submitted reports dated May 30 and July 14, 1997 from Dr. Nazar H. Haidri, Board-certified in psychiatry and neurology. In his May 30, 1997 report, he stated that appellant developed severe neck and low back pain on September 20, 1996 after having carried a heavy satchel of mail for two and one-half hours. Dr. Haidri noted that appellant had been involved in a motor vehicle accident on August 27, 1996, in which he injured his neck and back, although he was able to return to light duty. He stated that appellant had residual mild low back pain which was markedly aggravated by the September 20, 1996 employment incident. Dr. Haidri noted that appellant stopped working on October 16, 1996; he diagnosed chronic cervical sprain, symptoms consistent with bilateral cervical radiculopathy and chronic lumbar sprain preexisting but aggravated.

In his July 14, 1997 report, Dr. Haidri stated that appellant had not been able to return to work due to his symptoms, that sitting for more than 25 minutes, walking for more than about a half an hour or carrying more than 15 pounds aggravated his neck and back pain. He stated that a magnetic resonance imaging (MRI) scan of the cervical spine had shown a possible wedge compression fracture of C4, with mild bulging intervertebral disc at C3-4, C4-5 and C5-C6 also

[1] 5 U.S.C. § 8101(2).

noted. Dr. Haidri advised appellant not to return to work for four weeks, at which time he was to be reevaluated.

By decision dated August 19, 1997, the Office denied modification of its prior decisions.

By letter dated October 9, 1997, appellant requested reconsideration. In support of his request, appellant submitted a September 10, 1997 report from Dr. Haidri, a September 16, 1996 report of x-ray findings from Dr. Rodrigues, an October 3, 1997 report of x-ray findings from Dr. Kirk and an October 14, 1997 report from Dr. Kirk. In his September 10, 1997 report, Dr. Haidri stated that appellant had been injured on September 20, 1996 while ascending some steps and had not been working since October 16, 1996. He essentially reiterated his previous findings and conclusions.

Dr. Rodrigues' September 16, 1996 x-ray findings demonstrated a subluxation of segment C5 and a subluxation of segment L5. In his October 3, 1997 x-ray report and October 14, 1997 progress report, Dr. Kirk found subluxations at C1-7 and L2-L4. Dr. Kirk advised that a comparison of x-rays taken on September 16, 1996 with his own x-rays taken on December 2, 1996 showed that the second x-ray study revealed alignments which were much worse.

By decision dated November 3, 1997, the Office denied modification of its prior decisions.

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing that 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 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.[3] 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.[4]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.[5] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[6]

[2] 5 U.S.C. §§ 8101-8193.

[3] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[4] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[5] *John J. Carlone*, 41 ECAB 354 (1989).

[6] *Id.* For a definition of the term "injury," see 20 C.F.R. § 10.5(a)(14).

The Board finds that the Office erred, in its May 31, 1997 decision, in finding that appellant did not establish an incident in the performance of duty on September 20, 1996. He submitted evidence sufficient to establish that he sustained the incident on the date alleged in the time, place and in the manner alleged. Appellant stated in his September 20, 1996 Form CA-1 that he injured his lower back on September 20, 1996 while ascending some steps at 240 Conklin Avenue and also stated in his March 10, 1997 affidavit that he injured his lower back while going up steps to deliver mail at 240 Conklin Avenue. The record indicates that he went to an employing establishment physician on September 20, 1996 to receive treatment for his back and that the physician kept him out of work on this date. Appellant's description of the incident is corroborated by an accident report, dated September 20, 1996, from the Elizabeth Medical Center which includes a handwritten statement from appellant in which he noted that he experienced the incident while on the stairs at 240 Conklin Ave.[7] "A treatment note from the Elizabeth Medical Center dated September 20, 1996 indicates that appellant was treated for a lower back strain on that date and underwent an x-ray test. Taken together, the factual and medical evidence appellant submitted, which is unrefuted, is sufficient to establish that the September 20, 1996 incident occurred at the time, place and in the manner alleged.

The Board, however, finds that appellant has failed to establish that he sustained an injury in the performance of duty on September 20, 1996. The question of whether an employment incident caused a personal injury generally can be established only by medical evidence[8] and appellant has not submitted a rationalized, probative medical opinion from a physician pursuant to section 8101(2)[9] in support of his claim that he sustained a lower back injury on September 20, 1996 causally related to his employment.

In the present case, Dr. Haidri's reports indicate that appellant injured his neck and lower back on September 20, 1996, aggravating an injury he sustained on August 27, 1996. He diagnosed chronic cervical sprain, symptoms consistent with bilateral cervical radiculopathy and chronic lumbar sprain preexisting but aggravated by the September 20, 1996 work incident. Dr. Haidri's reports, however, do not contain a probative, rationalized medical opinion sufficient to demonstrate that appellant's September 20, 1996 employment incident caused a personal injury or resultant disability, as they do not sufficiently describe or explain the medical process through which the September 20, 1996 work accident would have been competent to cause the claimed injury. The January 3 and February 20, 1997 reports from Dr. Kirk, a chiropractor, are of no probative value because they did not indicate appellant had been treated with manual manipulation of the spine to correct a subluxation causally related to the claimed work-related injury, as demonstrated by x-ray results.[10] With regard to the reports from Dr. Rodrigues, also a

[7] This history of injury given by appellant differs somewhat from the others in the record in that he indicated that he sustained his back injury while descending the stairs. Notwithstanding this slight discrepancy, however, the factual evidence submitted by appellant describing how the incident occurred, when viewed in its entirety, is sufficient to establish that it occurred as alleged.

[8] *See John J. Carlone*, 41 ECAB 353 (1989).

[9] 5 U.S.C. § 8101(2).

[10] *Id.*

chiropractor, his September 16, 1996 x-ray is immaterial because it was taken prior to the September 20, 1996 employment incident. Moreover, his October 14, 1997 x-ray and the October 3, 1997 x-ray report and October 14, 1997 progress reports of Dr. Kirk, which described subluxations at C1-7 and L2-4, are of limited probative value because they were taken more than year one subsequent to the September 20, 1996 employment incident.[11]

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship. Causal relationship must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence and the Office therefore properly denied appellant's claim for compensation.

The November 3, August 19, May 30 and February 28, 1997 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
June 27, 2000

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

[11] *See Linda L. Mendenhall*, 41 ECAB 532 (1990).