U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALAN D. MURRAY and DEPARTMENT OF THE INTERIOR, BUREAU OF RECLAMATION, Grand Coulee, WA

Docket No. 98-2640; Submitted on the Record;
Issued March 24, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
A. PETER KANJORSKI

The issue is whether appellant sustained an injury in the performance of duty.

On May 20, 1997 appellant, then a 49-year-old boilermaker, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that he sustained a back injury as a result of his employment. He attributed his condition to welding and grinding overhead in confined spaces for extended periods of time. Appellant indicated that he first became aware of his illness on April 15, 1997 and that he realized his back condition was caused or aggravated by his employment on April 25, 1997.

In a decision dated February 4, 1998, the Office of Workers' Compensation Programs denied appellant's claim on the basis that he failed to establish that he sustained an injury due to the claimed employment factors. The Office explained that while the evidence established that appellant actually experienced the claimed employment factors, the evidence did not establish that a condition had been diagnosed in connection with the identified employment factors. Specifically, the Office noted that the record did not include a physician's opinion that identified specific work activities that caused or contributed to appellant's claimed back condition.[1]

Appellant subsequently filed a request for reconsideration that was received by the Office on July 6, 1998. The Office also received additional medical records from the Department of Veterans Affairs medical center in Spokane, WA. Included among those records were computerized tomography scans dated November 28, 1997 and progress notes dated December 23, 1997 and signed by Dr. Arthur T. Scherer, a Board-certified internist specializing in rheumatology. He diagnosed degenerative disc disease of the lumbar spine at L2-5 with mild

[1] While the record included treatment notes dated July 3, 1997 indicating a diagnosis of lumbar spondylosis and "[degenerative joint disease] C6-7 cervical spine -- probably related to repetitive injury -- job related," this information was provided by a nurse practitioner. The Office, by letter dated November 13, 1997, advised appellant that all medical reports must be signed or cosigned by a physician.

canal stenosis at L4-5. Dr. Scherer also reported "exacerbation of back pain secondary to work -- especially overhead work [and] heavy lifting at [United States Bureau of Reclamation -- Coulee Dam]."

By decision dated July 9, 1998, the Office modified its prior decision dated February 4, 1998, but nonetheless denied compensation. The Office explained that while the newly submitted evidence was sufficient to establish that an incident occurred in the performance of duty the medical evidence did not adequately explain how appellant's work activities caused or aggravated his back condition. Consequently, the Office accepted that incidents occurred but denied the claim on the basis that the medical evidence was insufficient. Appellant subsequently filed an appeal with the Board on September 3, 1998.[2]

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

When an employee claims that he sustained an injury in the performance of duty he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He must also establish that such an event, incident or exposure caused an injury.[3] Once an employee establishes that he sustained an injury in the performance of duty, he has the burden of proof to establish that any subsequent medical condition or disability for work for which he claims compensation is causally related to the accepted injury.[4]

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 his condition was caused, precipitated or aggravated by his employment is sufficient to establish a causal relationship.[5] Causal relationship must be established by rationalized medical opinion evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The physician's opinion must be based on a complete factual and medical background of the claimant, the opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and the claimant's specific employment factors.[6]

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[2] Appellant submitted evidence on appeal that was not submitted to the Office prior to the issuance of its July 9, 1998 decision denying compensation. Inasmuch as the Board's review is limited to the evidence of record that was before the Office at the time of its final decision, the Board cannot consider appellant's newly submitted evidence. 20 C.F.R. § 501.2(c).

[3] *See generally John J. Carlone*, 41 ECAB 354 (1989); *see also* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. § 10.5(a)(15) and (16) ("traumatic injury" and "occupational disease or illness" defined).

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

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

[6] *Id.*

Proceedings under the Federal Employees' Compensation Act are not adversarial in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.[7] Although Dr. Scherer's progress notes do not contain sufficient rationale to discharge appellant's burden of proving by the weight of the reliable, substantial and probative evidence that his back condition is causally related to his accepted employment exposure, they raise an uncontroverted inference of causal relationship sufficient to require further development of the case record by the Office.[8]

On remand, the Office should refer appellant, the case record and a statement of accepted facts to an appropriate medical specialist for an evaluation and a rationalized medical opinion on whether appellant's back condition is causally related to the accepted employment injury of April 15, 1997. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

The decision of the Office of Workers' Compensation Programs dated July 9, 1998 is hereby set aside and the case is remanded for further proceedings consistent with this opinion.

Dated, Washington, D.C.
March 24, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

A. Peter Kanjorski
Alternate Member

[7] *William J. Cantrell*, 34 ECAB 1223 (1983).

[8] *See John J. Carlone*, *supra* note 3; *Horace Langhorne*, 29 ECAB 820 (1978).