U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROGER L. TAYLOR and DEPARTMENT OF VETERANS AFFAIRS, BECKLEY MEDICAL CENTER, Beckley, WV

Docket No. 99-2356; Submitted on the Record;
Issued October 4, 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 to establish that he sustained an injury in the performance of duty on February 1, 1999 as alleged.

On February 1, 1999 appellant, then a 37-year-old patient relations representative, filed a traumatic injury claim (Form CA-1) alleging that on February 1, 1999 he "reached to answer the telephone and felt a pop in [his] neck." He stated that he was "feeling pain in the left shoulder and neck area, also burning in both." Appellant indicated that he received medical attention on the same date at the employee health unit. Ms. Janet F. Lilly, appellant's supervisor, noted on the CA-1 form that the employing establishment controverted appellant's claim and stated, "No actual injury, only pain. Employee has Lupus and this could be causing his pain."

In support of appellant's claim, he submitted a report from an attending physician at the employing establishment, whose name is illegible, noting that on February 1, 1999 he prescribed Motrin 800 as needed and Robaxin 750 for three days. He also noted that on February 5, 1999 appellant had x-rays of his spine and was complaining of increasing pain since the alleged incident on February 1, 1999. Appellant was requested to refer to his private physician on follow up and for results of his x-rays. Attached to the doctor's order report was a copy of appellant's employee health record.

By letter dated February 22, 1999, the Office of Workers' Compensation Programs requested appellant to provide additional factual and medical information, including a narrative medical report. The Office requested that this information be submitted within 30 days. However, no response was received within this time.

By letter dated March 31, 1999, the Office issued a decision denying appellant's claim for failure to submit sufficient medical evidence necessary to support his claim. The Office stated:

> "The initial evidence of file supported that you actually experienced the claimed event. However, the evidence did not establish that a condition has been diagnosed in connection with this. Therefore, any injury within the meaning of the Federal Employees' Compensation Act (FECA) was not demonstrated."

The Board finds that this case is not in posture for decision. The Board finds that the Office did not consider all evidence submitted in support of appellant's claim.

On February 22, 1999 the Office requested from appellant that additional information be submitted regarding the injury he alleged occurred on February 1, 1999 and was advised to arrange for the submission of the medical report from his private physician who examined him as a result of the injury. By letter dated February 2, 1999, date stamped as received by the Office on March 31, 1999, Dr. Mario C. Ramas, an orthopedic surgeon, Board-certified in internal medicine, opined that appellant had cervical strain and further stated that appellant had related a history of cradling the telephone between his head and shoulder to the left side as a result of which his neck had popped and resulted in pain from the back of the neck to the skull. He also noted:

> "He has some paracervical spasms, mostly on the right side. He has tenderness in the posterior aspect of the neck from about C3 to T1 spinous process. He has pain on motion. Right turn is 75; left turn is 55 to 60. Extensions is 40.
>
> "X-rays of the cervical spine taken at [the employing establishment] on February 5, 1999 and show some straightening of the cervical curve. There is no wedging of the vertebral bodies and no narrowing of the intervertebral disc space. There is no encroachment of the neuroforamina. Odontoid fails to show any evidence of any fracture."[1]

Dr. Ramas noted that appellant should continue to work and take his prescribed medication, avoiding any strenuous activities and should be reviewed in three to five weeks or sooner if difficulties arise.

The Board notes that it is evident from the memorandum which accompanied the March 31, 1999 decision that this piece of evidence was not reviewed by the Office when issuing its final decision. In the memorandum, the Office claims examiner stated:

> "The initial evidence of file supported that you actually experienced the claimed event. However, the evidence did not establish that a condition had been diagnosed in connection with this…. You were advised of this by letter dated February 22, 1999.

[1] While this report was dated February 2, 1999, the date appears to have a typographical error as the report also references a February 5, 1999 x-ray.

"Additional evidence was not received. Evidence of record was not sufficient because there was no diagnosis indicated in the medical notes submitted."

The Act[2] provides that the Office shall determine and make findings of fact in making an award for or against payment of compensation after considering the claim presented by the employee and after completing such investigation as the Office considers necessary with respect to the claim. Since the Board's jurisdiction of a case is limited to reviewing that evidence which was before the Office at the time of its final decision,[3] it is necessary that the Office review all evidence submitted by a claimant and received by the Office prior to issuance of its final decision. As Board decisions are final as to the subject matter appealed,[4] it is crucial that all evidence relevant to that subject matter which was properly submitted to the Office prior to the time of issuance of its final decision be addressed by the Office.[5]

In the instant case, the Office did not review evidence received simultaneously to the issuance of its March 31, 1999 final decision, *i.e.*, Dr. Ramas' February 2, 1999 letter. The Board, therefore, must set aside the Office's March 31, 1999 decision and remand the case to the Office to fully consider the evidence which was submitted simultaneous to the March 31, 1999 decision.

The decision of the Office of Workers' Compensation Programs dated March 31, 1999 is hereby set aside and the case remanded for further action as set forth in this decision.

Dated, Washington, DC
October 4, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

[2] 5 U.S.C. §§ 8101-8193.

[3] *See* 20 C.F.R. § 501.2(c).

[4] 20 C.F.R. § 501.6(c).

[5] *William A. Couch*, 41 ECAB 548 (1990).