U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LAWRENCE HANDY and U.S. POSTAL SERVICE,
POST OFFICE, Salt Lake City, UT

Docket No. 98-866; Submitted on the Record;
Issued September 11, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
VALERIE D. EVANS-HARRELL

The issue is whether appellant has established a recurrence of disability, commencing November 3, 1992, causally related to his October 3, 1991 employment injuries.

In the present case, appellant filed a claim alleging that he sustained injuries on October 3, 1991 when he slipped and fell in a bathtub while in travel status. The record indicates that the Office of Workers' Compensation Programs accepted left knee and back contusions, torn meniscus in the left knee, left elbow injury, closed head injury and adjustment reaction. Appellant returned to his regular duty as a labor relations manager and then retired from federal employment on November 3, 1992. Appellant later claimed compensation for wage loss commencing November 3, 1992.

By decision dated November 8, 1996, the Office determined that appellant had not established any additional compensable employment factors or injuries causally related to the October 3, 1991 employment injuries. In a decision dated October 16, 1997, an Office hearing representative determined that appellant had not established entitlement to compensation as of November 3, 1992.

The Board has reviewed the record and finds that appellant has not established a recurrence of disability commencing November 3, 1992.

A person who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which he claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the

disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.[1]

As noted above, the original claim in this case was for injuries resulting from a slip and fall on October 3, 1991. Appellant returned to work and then stopped working on November 3, 1992. It is appellant's burden to submit sufficient medical evidence to establish a recurrence of disability on that date. In this case, however, appellant has also apparently expanded his claim to allege both additional injuries and employment factors. Since the Office addresses these claims in its prior decisions, the Board will consider the additional claims for injury.

Before appellant can establish additional employment-related injuries, he must allege and substantiate a compensable factor of employment as contributing to the injuries.[2] In this case, appellant has alleged a stress-induced emotional condition, as well as a left eye injury, causally related to actions by the employing establishment after filing his claim. The Office's November 8, 1996 and October 16, 1997 decisions provide a detailed discussion of appellant's allegations and the Board will not repeat them here. In general, appellant's allegations related to administrative actions by the employing establishment with respect to the filing and processing of his compensation claim. It is well established that workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within the coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or secure a promotion. On the other hand, where disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.[3]

Administrative or personnel matters, although generally related to employment, are primarily administrative functions of the employer rather than duties of the employee.[4] The Board has also found, however, that an administrative or personnel matter may be a factor of employment where the evidence discloses error or abuse by the employing establishment.[5]

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[1] *Robert H. St. Onge*, 43 ECAB 1169 (1992); *Dennis J. Lasanen*, 43 ECAB 549 (1992).

[2] *See Margaret S. Krzycki*, 43 ECAB 496 (1992).

[3] *Lillian Cutler*, 28 ECAB 125 (1976).

[4] *Anne L. Livermore*, 46 ECAB 425 (1995); *Richard J. Dube*, 42 ECAB 916 (1991).

[5] *See Michael Thomas Plante*, 44 ECAB 510 (1993); *Kathleen D. Walker*, 42 ECAB 603 (1991).

In this case, appellant did not submit probative evidence of error or abuse by the employing establishment. There are no findings of error by an administrative agency,[6] detailed witness statements, or other evidence sufficient to establish error or abuse. Since appellant has not established any additional compensable factors, he has not established any additional employment injuries in this case.

Returning to the original issue of whether the October 3, 1991 incident resulted in disability as of November 3, 1992, the Board finds that the evidence is insufficient to meet appellant's burden of proof. The Board notes that there is no contemporaneous medical evidence with respect to appellant's condition on November 3, 1992. In a report dated March 29, 1993, Dr. George Mooney, a psychologist, stated that after appellant's injury he reported cognitive difficulties and felt that his performance and productivity at work were poor. Dr. Mooney reported that appellant developed an episode of depression, noting that mild brain injury is a risk factor in the development of additional psychiatric morbidity. With respect to appellant's stoppage of work, he indicated that numerous stresses at work that were very disorganizing for appellant and he retired under stressful and somewhat adversarial circumstances with his supervisors. Dr. Mooney also stated, "[h]is brain injury related changes were the main reason why he decided he could not tolerate working any further…." He does not discuss appellant's specific work duties and clearly explain how the fall in October 1991 caused disability for work commencing in November 1992. As noted above, the alleged stressors at work have not been accepted as compensable work factors.

Additional medical evidence submitted also fails to provide a reasoned medical opinion as to causal relationship between disability for work in November 1992 and the October 3, 1991 employment injuries. In a report dated December 13, 1994, Dr. John Speed, a specialist in physical medicine and rehabilitation, stated that appellant was not a candidate for gainful employment, "due to the combined effects of his traumatic brain injury and chronic low back pain." Dr. Speed does not provide a reasoned medical opinion as to disability for work commencing in November 1992 and his employment injuries.

The Board has reviewed the remainder of the medical evidence and finds no report containing a reasoned medical opinion, based on a complete background, that is sufficient to establish a recurrence of disability commencing November 3, 1992. For example, Dr. Speed opines in an April 2, 1996 report that appellant is permanently and totally disabled, without providing a reasoned opinion on causal relationship with the employment injury. He also refers to disability beginning in October 1991, whereas the issue is a recurrence of disability in November 1992.

It is, as noted above, appellant's burden of proof to establish his claim. The Board finds that appellant has not met his burden in this case.

[6] To the extent that the hearing representative implies that error or abuse can be established only through decisions of the Equal Employment Opportunity Commission or Merit Systems Protection Board, this is incorrect; *see, e.g., Parley A. Clement*, 48 ECAB 302 (1997). While such decisions are of significant probative value, the Office makes its own determination based on the evidence of record.

The decision of the Office of Workers' Compensation Programs dated October 16, 1997 is affirmed.

Dated, Washington, DC
September 11, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Valerie D. Evans-Harrell
Alternate Member