U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BRUCE W. BLANC and U.S. POSTAL SERVICE,
POST OFFICE, San Diego, CA

Docket No. 00-2352; Submitted on the Record;
Issued June 7, 2001

DECISION and ORDER

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

The issue is whether appellant sustained a recurrence of disability on or about August 25, 1999, causally related to his June 6, 1997 employment injury.

On June 6, 1997 appellant, then a 49-year-old clerk, sustained multiple injuries as a result of a fall while in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim for contusions to the right shoulder, right hip, right knee and left rib cage. Appellant also sustained a fracture to the third finger on his right hand. He received appropriate wage-loss compensation for his injuries in addition to a schedule award for a five percent permanent impairment of his right hand.

Appellant filed a notice of recurrence of disability (Form CA-2a) on August 25, 1999 alleging that he continued to experience weakness and ongoing discomfort in his low back and right hip as a consequence of his June 6, 1997 employment injury.

After further development of the record, the Office denied the claim on December 15, 1999 based on appellant's failure to establish a causal relationship between his claimed low back condition and his June 6, 1997 employment injury.

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

Where appellant claims a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury.[1] This burden includes the necessity of furnishing evidence from a qualified physician who concludes, on the basis of a complete and accurate factual and medical history, that the condition is causally related

[1] 20 C.F.R. § 10.104(b) (1999); *see Robert H. St. Onge*, 43 ECAB 1169 (1992).

to the employment injury. The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.[2] While a physician's opinion supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.[3] Moreover, the physician's conclusion must be supported by sound medical reasoning.[4]

Furthermore, where appellant, as in the instant case, claims that a condition not accepted or approved by the Office was due to his employment injury, he bears the burden of proof to establish that the condition is causally related to the employment injury.[5]

In response to the Office's September 20, 1999 request for additional information regarding his claimed recurrence, appellant submitted an October 6, 1999 report from Dr. Leonard A. Jurkowski, who noted that he was appellant's initial treating physician at the time of his June 6, 1997 employment injury. He further noted that appellant resumed treatment with him in May 1999. Dr. Jurkowski indicated that appellant was currently suffering from symptoms compatible with a lumbosacral spine sprain accompanied by right sciatica symptoms. He explained that appellant's current symptoms were the result of his June 6, 1997 employment injury. He further stated that at no time was it felt that this was a new injury.

In denying appellant's claim for recurrence of disability, the Office noted that Dr. Jurkowski failed "to give any rationale to explain … how or why [appellant's] current condition is related to [his June 6, 1997] injury, which did not include the diagnosis currently being given." Accordingly, the Office concluded that appellant failed to establish that his current condition was causally related to his excepted work injury.

Proceedings under the 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.[6] Although Dr. Jurkowski's report does not contain sufficient rationale to discharge appellant's burden of proving by the weight of the reliable, substantial and probative evidence that his current back condition is causally related to his accepted June 6, 1997 employment injury, this report raises an uncontroverted inference of causal relationship sufficient to require further development of the case record by the Office.[7]

While the Office correctly noted that appellant's claim had not been accepted for lumbosacral sprain with sciatica, the Board notes that the record is replete with evidence that

[2] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

[3] *Norman E. Underwood*, 43 ECAB 719 (1992).

[4] *See Robert H. St. Onge, supra* note 1.

[5] *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

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

[7] *See John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

appellant sustained a lumbosacral sprain or strain on or about the time of his June 6, 1997 employment injury. Dr. Jurkowski's initial report dated June 9, 1997 noted complaints of back pain. Approximately two weeks later, Dr. Jurkowski referred appellant to physical therapy with a diagnosis of lumbosacral spine sprain. He later referred appellant for examination by Dr. Steven A. Renzoni, a Board-certified orthopedic surgeon, who confirmed the diagnosis of lumbar strain in a report dated August 15, 1997. In a November 10, 1997 report (Form CA-20), Dr. Renzoni again noted that appellant sustained a lumbar strain as a result of his June 6, 1997 employment injury. Thus, while the Office may not have included lumbosacral sprain or strain as an accepted condition, the record clearly indicates that appellant was diagnosed with this condition on or about the time of his June 6, 1997 employment injury.

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 current back condition is causally related to his June 6, 1997 employment injury. After such further development of the case record as the Office deems necessary, a *de novo* decision shall by issued.

The December 15, 1999 decision of the Office of Workers' Compensation Programs is hereby set aside and the case is remanded for further proceedings consistent with this opinion.

Dated, Washington, DC
June 7, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member