U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARILYN ATKINSON-COOK and U.S. POSTAL SERVICE, MAIN POST OFFICE, St. Louis, MO

Docket No. 00-2049; Submitted on the Record;
Issued May 9, 2001

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT, A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs properly denied appellant continuation of pay from June 28, 1999; and (2) whether the Office properly denied appellant's claim for continuing compensation from May 20 to June 2, 2000.[1]

On June 27, 1999 appellant, then a 41-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that on that day she slipped and fell, causing pain in her right hip, lower back and lower neck.

In a medical report dated June 28, 1999, Dr. Elbert H. Cason, a Board-certified surgeon, stated that appellant had sustained a lumbar strain at work on June 27, 1999 but that he released her to return to limited duty effective that day. In a medical report dated the same day, Dr. Paul Lee, appellant's treating chiropractor, stated that appellant was released to return to regular duty effective June 30, 1999. In a medical report dated August 2, 1999, Dr. Lee stated that appellant was released to return to regular duty effective August 3, 1999. In subsequent reports from August 1999 to January 2000, Dr. Lee noted essentially that appellant was off work on the day of her appointment but was released to return to restricted duty on the following day.

In a medical report dated July 21, 1999, Dr. Gary M. Guebert, a Diplomate, American Chiropractic Board of Roentgenology, read appellant's x-rays taken that day and stated that they revealed no evidence of acute fracture or dislocation, but that they did reveal postural changes consistent with muscle spasm and mild degenerative spondylosis at L3 and L4.

On February 16, 2000 the Office accepted appellant's claim for lumbar strain on June27, 1999 but stated that it could not approve continuation of pay commencing June 28, 1999 because

[1] The record contains an October 5, 2000 decision by the Office on appellant's claim for a schedule award. However, the record does not include an appeal from that decision and thus it is not before the Board.

there was no medical evidence to support that appellant was disabled from that date "or any dates thereafter."

In a medical report dated February 22, 2000, Dr. Allan H. McCown, a Board-certified radiologist, reported that appellant's magnetic resonance imaging (MRI) scan taken that day revealed minor spinal stenosis at L4-5 with neural foraminal narrowing and annular disc bulging and minor annular disc bulging at L5-S1 with neural foraminal narrowing.

By decision dated May 16, 2000, the Office denied appellant's claim for continuation of pay finding that the medical evidence failed to establish that she was disabled for the period beginning June 28, 1999.

On May 21, 2000 appellant filed a claim for wage loss from May 20 to June 2, 2000.

In a medical report dated June 12, 2000 and received by the Office on June 26, 2000, Dr. James Coyle, Board-certified in orthopedic surgery, stated that he had examined appellant that day, noted a familiarity with her history of injury and noted findings. Based on a physical examination, Dr. Coyle noted degenerative disc changes at the L4-5 and L5-S1 levels, and further noted that the L4-5 level revealed disc bulge with mild stenosis. However, he also noted that appellant "does have symptom magnification."

In a medical report dated June 14, 2000 and received by the Office on June 26, 2000, Dr. Sandra L. Tate, Board-certified in physical medicine and rehabilitation, stated that on that date she examined appellant, noted her "significant magnification of symptoms" and opined that she could return to work without restrictions.

By letter dated June 30, 2000, the Office advised appellant that it had received her claim for wage loss from May 20 to June 2, 2000 but that the medical evidence was insufficient to establish that she was disabled for the time period claimed. The Office noted that claims for disability should be supported by objective medical evidence discussing in detail findings relating appellant's disability to her federal employment.

In a medical report dated May 23, 2000 and received by the Office on June 30, 2000, Dr. Coyle stated appellant's degenerative lumbar disc disease was exacerbated "at work in January 1999 with acute flare-up of symptoms."

By decision dated August 1, 2000, the Office denied appellant's claim for wage loss on the grounds that none of the medical evidence established that she was disabled as a result of her work-related injury.

The Board finds that the Office properly determined that appellant was not entitled to continuation of pay from June 28, 1999 and continuing compensation from May 20 to June 2, 2000.

A claimant seeking benefits under the Federal Employees' Compensation Act[2] has the burden of proof to establish the essential elements of her claim by the weight of the evidence,[3] including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.[4]

The Office accepted that appellant sustained a lumbar strain injury in the performance of duty on June 27, 1999. Appellant must, therefore, establish that the accepted employment injury caused disability for the periods claimed. "Disability" means the incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury.[5] When the medical evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in her employment, she is entitled to continuation of pay or monetary compensation for any loss of wage-earning capacity resulting from such incapacity.[6]

The evidence generally required to establish causal relationship is rationalized medical opinion evidence. The claimant must submit a reasoned medical opinion that supports a causal connection between the claimed disability and the employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of the claimant's employment injury and must explain medically how the claimed disability is related to the injury.[7]

In this case, appellant sustained a lumbar strain on June 27, 1999 in the performance of duty. However, there is insufficient medical evidence to establish that appellant was disabled from June 28, 1999 as a result of her employment injury.

Regarding appellant's claim for continuation of pay from June 28, 1999, the medical evidence in this case contains no medical opinion to support a disability. In a medical report dated June 28, 1999, Dr. Cason stated that appellant sustained a lumbar strain at work on June 27, 1999 and was released to return to limited duty effective that day. He did not note that appellant was disabled from work and thus this report fails to establish that appellant was entitled to continuation of pay. In a medical report dated June 28, 1999, Dr. Lee, appellant's treating chiropractor, stated that appellant was out of work from that date to June 30, 1999. However, under section 8101(2) of the Act, chiropractors are only considered physicians, and their reports considered medical evidence, to the extent that they treat spinal subluxations as demonstrated by x-ray to exist. As Dr. Lee did not diagnose a lumbar subluxation as shown by x-rays to exist, he

[2] 5 U.S.C. §§ 8101-8193.

[3] *Nathaniel Milton*, 37 ECAB 7112 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and the cases cited therein.

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

[5] *Richard T. DeVito*, 39 ECAB 668 (1988); *Frazier V. Nichol*, 37 ECAB 528 (1986); *Elden H. Tietze*, 2 ECAB 38 (1948); 20 C.F.R. § 10.5(17).

[6] *Bobby W. Hornbuckle*, 38 ECAB 626 (1987); 20 C.F.R. § 10.201.

[7] *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

is not considered a physician under the Act and this report is not sufficient to establish that appellant sustained any disability from June 28 to June 30, 1999 causally related to her employment injury.

Regarding appellant's claim for wage loss, Dr. Coyle stated in a May 23, 2000 medical report that appellant's degenerative lumbar disc disease was exacerbated "at work in January 1999 with acute flare up of symptoms." He also noted in a June 12, 2000 medical report that appellant had degenerative disc changes at L4-5 and L5-S1. However, in neither report did Dr. Coyle attribute her condition to her work-related injury, nor did he find that appellant was unable to work at any time. Similarly, Dr. Tate, in her June 14, 2000 medical report, stated that her examination revealed no objective findings to support appellant's complaints and opined that she could return to work without restrictions. Further, Dr. Lee's reports are of no probative value for the reasons stated regarding appellant's claim for continuation of pay. Because the medical evidence fails to support that appellant was disabled for the dates claimed due to her work-related injury, she is not entitled to continuation of pay or monetary compensation for those dates.

The decisions of the Office of Workers' Compensation Programs dated August 1 and May 16, 2000 are hereby affirmed.[8]

Dated, Washington, DC
May 9, 2001

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

[8] On September 20, 2000 appellant requested an oral argument. The Board notes that by letter from the Clerk of the Board dated November 30, 2000 appellant was requested to inform the Board by December 15, 2000 if she wanted oral argument in this case. As no response was received, the Board has proceeded to decide the case on the record. Further, the Board notes that this case record contains evidence, which was submitted subsequent to the Office's August 1, 2000 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35, 36 (1952).