U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PETER M. THEODORAKOS and DEPARTMENT OF THE INTERIOR, U.S. GEOLOGICAL SURVEY, Denver, CO

Docket No. 01-2112; Submitted on the Record;
Issued April 26, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
A. PETER KANJORSKI

The issue is whether appellant has established that the fractured veneer on tooth number eight is causally related to the employment-related fracture of tooth number nine.

On September 13, 1989 appellant, then a 33-year-old physical science technician, sustained an employment-related chip to tooth number nine when he was hit by a piece of rock while operating a grinder. He missed no time from work. In an attending physician's report dated November 2, 1989, John P. Graber, D.D.S., advised that appellant had undergone resin restoration to tooth number nine on September 22, 1989.

On June 28, 1999 appellant filed a recurrence claim, alleging that an injury to tooth number eight was caused because the restored veneer on tooth number nine broke. In support of this claim, he submitted an undated report from Adam Saeks, D.D.S., who advised that the veneer on tooth number eight had been fractured and needed to be replaced. In an attending physician's report dated September 28, 1999, Dr. Saeks advised that appellant had previously fractured a tooth which necessitated restoration.[1] He advised that appellant had fractured the veneer of tooth number eight and that the accident five years previously required placement of veneer, which he completed. Dr. Saeks stated:

> "The original fractured tooth was taken care of five years prior to presenting to our office. The initial injury caused damage which needed repair. This repair served [appellant] for five years but will periodically need to be redone."

By letter dated April 13, 2000, the Office of Workers' Compensation Programs informed appellant that he needed to submit a narrative medical report explaining how the employment injury to tooth number nine caused the injury to tooth number eight.[2] In response, appellant

[1] Dr. Saeks did not identify the tooth by number.

[2] In the April 13, 2000 letter, the Office inadvertently switched the teeth numbers, stating that appellant's employment-related injury was to tooth number eight.

submitted a form report dated May 17, 2000, in which Richard Handleman, D.D.S., advised that tooth number nine had been injured at work in September 1989 and repaired in October 1989. He further indicated that on June 25, 1999 appellant had undergone veneer restoration on both teeth, at a cost of $390.00 each, totaling $780.00. Appellant also submitted a proposed treatment plan dated May 27, 1999 and an undated report that was stamped received by the Office on August 10, 2000 in which Amy Browning, D.D.S., advised that she had not been appellant's treating dentist. She further advised that "the notes made by the treating dentist are that number nine was a broken veneer (done previously) and that number eight was fractured."

The Board finds that the Office properly found that the injury to tooth number eight was not a consequence of the employment-related injury to tooth number nine.

It is an accepted principle of workers' compensation law and the Board has so recognized, that when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause.[3] As is noted by Professor Larson in his treatise: "[O]nce the work-connected character of any injury, has been established the subsequent progression of the condition remains compensable so long as the worsening is not shown to have been produced by an independent nonindustrial cause."[4] Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that his or her condition was caused or adversely affected by his employment. As part of this burden he or she must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship. The mere fact that a disease manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the disease became apparent during a period of employment, nor the belief of appellant that the disease was caused or aggravated by employment conditions, is sufficient to establish causal relationship.[5]

In the instant case, the medical evidence of record does not demonstrate that the injury to tooth number eight is related to the employment injury to tooth number nine. In a September 28, 1999 report, Dr. Saeks advised that tooth number eight needed to be repaired but stated that it had been fractured in an accident five years previously. The work-related injury was to tooth number nine and occurred in September 1989, ten years previously. Dr. Handleman merely advised that tooth number nine had been injured at work and that both teeth had been repaired in June 1999. Dr. Browning, who had not been appellant's treating dentist, advised that the treating dentist indicated that tooth number nine had a broken veneer and that number eight was fractured. Thus, none of the medical evidence contains an opinion that the injury to tooth

[3] Larson, *The Law of Workers' Compensation* § 13.00; *see also Stuart K. Stanton*, 40 ECAB 859 (1989); *Charles J. Jenkins*, 40 ECAB 362 (1988).

[4] *Id*. at § 13.11(a).

[5] *Robert G. Morris*, 48 ECAB 238 (1996).

number eight was caused by the work-related injury to tooth number nine and appellant failed to meet his burden of proof.[6]

The decision of the Office of Workers' Compensation Programs dated October 12, 2000 is hereby affirmed.

Dated, Washington, DC
April 26, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

A. Peter Kanjorski
Alternate Member

[6] The Board notes that, concurrently with his appeal to the Board, appellant requested reconsideration with the Office. The Board and the Office, however, may not have concurrent jurisdiction over the same issue in the same case. *Douglas E. Billings*, 41 ECAB 880 (1990).