U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WALTER R. MACKOWSKI and U.S. POSTAL SERVICE,
POST OFFICE, Scranton, PA

Docket No. 01-2007; Submitted on the Record;
Issued December 13, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
COLLEEN DUFFY KIKO

The issue is whether appellant has established that his right shoulder and low back conditions are causally related to his July 14, 1999 employment injury.

On July 23, 1999 appellant, then a 38-year-old custodian, filed a claim for a traumatic injury to his low back and the top of his right arm sustained on July 14, 1999 by cutting trees. Appellant stopped work on July 22, 1999.

In a report dated July 22, 1999, Dr. Ted Piotrowski set forth a history that appellant, while trimming a tree on July 14, 1999, "felt some sort of twinge or pinch in the lower back area and had some discomfort. He also noticed some slight discomfort in the shoulder area, the low back pain appeared to be more bothersome that day, the next day the shoulder started bothering him more. He has been trying to work through things but having pain and discomfort, reported here today for evaluation." After describing appellant's findings on physical examination and on x-rays of the lumbar spine and right shoulder, Dr. Piotrowski diagnosed right shoulder pain, with probable strain and possible bursitis or tendinitis, and low back pain, with probable strain with spasm. He restricted appellant's lifting to 20 pounds. In a July 22, 1999 report of appellant's work tolerance limitations on an Office of Workers' Compensation Programs' form, Dr. Piotrowski described appellant's clinical findings as right shoulder pain and low back pain, and filled in "yes" for the next block, "Diagnosis Due to Injury." In a report dated July 30, 1999, Dr. Martin J. Moran set forth a history of clearing one-half acre of trees and brush, and based on examinations of appellant on July 23 and 30, 1999, diagnosed, as conditions due to injury, rotator cuff tendinitis and low back strain. Dr. Moran listed work tolerance limitations, indicating that appellant could work with his left arm only and could lift no more than 20 pounds.

On July 23, 1999 the employing establishment offered appellant a limited-duty assignment with duties of light sweeping and dusting, and restrictions against repetitive bending,

overhead work and lifting over 20 pounds. Appellant accepted this offer on July 23, 1999, but did not return to work at that time.[1]

By letters dated August 10, 1999, the Office advised appellant that it need a further description of the injury and its sequelae, and a medical report including the "physician's opinion supported by a medical explanation as to how the reported work incident caused or aggravated the claimed injury. This explanation is crucial to your claim."

Appellant submitted results of a magnetic resonance imaging (MRI) of his lumbar spine done on August 26, 1999, which showed advanced degenerative changes and a mild central herniation at L5-S1, and degenerative changes and a mild central herniation at L4-5. Appellant also submitted a September 1, 1999 report from Dr. Moran, who stated that he saw appellant on July 23, 1999 for rotator cuff tendinitis, that appellant tried to return to limited duty on August 4, 1999 but had to leave due to pain, and that appellant was seen on August 31, 1999 with low back pain with radiculopathy and right shoulder impingement.

By decision dated September 16, 1999, the Office found that appellant had not established that his condition was caused by the July 14, 1999 incident, as he had not submitted a well-reasoned medical opinion relating his advanced degenerative changes to his claimed employment injury.

Appellant requested reconsideration and submitted a description of the effects of his injury and an explanation of his delay in seeking medical attention. Appellant also submitted further medical evidence. In a report dated September 10, 1999, Dr. Bo H. Yoo set forth a history of an injury to appellant's back and shoulder on July 14, 1999 as he was cutting trees, and of severe pain in his back radiating to his ankles since that time. Dr. Yoo diagnosed multiple level degenerative disc disease with centrally herniated discs at L4-5 and L5-S1. Results of an MRI of appellant's right shoulder on September 23, 1999 showed "changes suggesting those of a supraspinatus tendinitis or partial tear, the etiology possibly on the basis of impingement from a downsloping acromion. Changes that may indicate those of a mild bicipital tendinitis."

In a report dated October 1, 1999, Dr. Moran stated that the findings on the lumbar MRI "could have been irritating [sic] by the strenuous work performed July 14, 1999." Dr. Moran stated that the shoulder MRI was "positive for tendinitis and partial tear of the supraspinatus tendon," which was consistent with appellant's findings. Dr. Moran then stated, "This condition could also have been a direct result of the strenuous work performed."

By decision dated August 31, 2000, the Office found that the additional medical evidence was insufficient to establish that the claimed conditions were causally related to the employment activity described, as Dr. Moran's additional report was speculative and was not fortified by medical rationale.

The Board finds that further development of the evidence is necessary.

[1] In a letter of controversion dated August 11, 1999, the employing establishment reported that appellant had not yet returned to work. It is not clear when, or if, appellant returned to work.

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that his condition was caused or adversely affected by his employment. As part of this burden he must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relation. 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 relation.[2]

In an October 1, 1999 report, Dr. Moran stated that the findings on the lumbar MRI "could have been irritating [sic] by the strenuous work performed July 14, 1999," and that the findings on the right shoulder MRI "could also have been a direct result of the strenuous work performed." These reports contained no rationale supporting causal relation,[3] and are also too speculative to meet appellant's burden of proof.[4] Appellant has not established that the findings on the MRIs of his shoulder and lumbar spine are causally related to his July 14, 1999 injury.

However, these were not the only conditions diagnosed in connection with appellant's July 14, 1999 injury. Dr. Piotrowski, the first physician to examine appellant after the July 14, 1999 injury, diagnosed probable strains of the right shoulder and of the low back, and in a separate report of the same date, indicated that appellant's conditions were related to the July 14, 1999 injury, which the doctor accurately described. Similarly, Dr. Moran, in his initial report, diagnosed a low back strain as a condition due to appellant's injury.

Proceedings under the Federal Employees' Compensation Act are not adversarial in nature nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation benefits, the Office shares responsibility in the development of the evidence. It has the obligation to see that justice is done.[5] Although these reports did not contain rationale and are insufficient to meet appellant's burden of proof, they are sufficient to require that the Office further develop the evidence on appellant's low back strain and right shoulder strain.[6] The Office should refer appellant to an appropriate medical specialist for a reasoned opinion whether these conditions are causally related to appellant's July 14, 1999 employment activities, to be followed by an appropriate decision.

[2] *Froilan Negron Marrero*, 33 ECAB 796 (1982).

[3] Medical reports not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet an employee's burden of proof. *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

[4] *See Charles A. Massenzo*, 30 ECAB 844 (1979).

[5] *Isidore J. Gennino*, 35 ECAB 442 (1983).

[6] *See Daniel J. Gury*, 32 ECAB 261 (1980); *Horace Langhorne*, 29 ECAB 820 (1978).

The August 31, 2000 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to the Office for action consistent with the decision of the Board.

Dated, Washington, DC
December 13, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

Colleen Duffy Kiko
Member