U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KELVIN E. ROANE and U.S. POSTAL SERVICE,
POST OFFICE, Wilmington, DE

Docket No. 02-1854; Submitted on the Record;
Issued December 3, 2002

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant met his burden of proof to establish that he is entitled to wage-loss compensation for the period February 26 through March 13, 2000.

On December 31, 1999 appellant, then a 42-year-old flexible city carrier, sustained an employment-related low back strain when he lifted and carried a 60-pound parcel. He stopped work on January 10, 2000 and received continuation of pay through February 24, 2000. By letter dated February 29, 2000, the Office of Workers' Compensation Programs informed appellant of the evidence necessary to support his claim upon the expiration of continuation of pay. Appellant subsequently filed CA-7 forms, claims for compensation, for the period February 26 through March 10, 2000, and submitted medical evidence. He returned to limited duty on March 14, 2000.

In a letter dated March 27, 2000, the Office again informed appellant of the type evidence needed to support his claim. By decision dated May 12, 2000, the Office found that appellant was not entitled to wage-loss compensation for the period February 26 through March 13, 2000 on the grounds that the medical evidence of record was insufficient to establish his disability for work. On December 30, 2001 appellant requested reconsideration and submitted additional medical evidence.[1] In a decision dated March 27, 2002, the Office denied modification of the prior decision, finding that appellant had sustained an intervening injury. The instant appeal follows.

The Board finds that appellant failed to establish that he is entitled to wage-loss compensation for the period February 26 through March 13, 2000.

[1] Appellant also submitted medical evidence that was not relevant to the period of the claimed disability.

Under the Federal Employees' Compensation Act[2] the term "disability" means incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury. Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn the wages. An employee who has a physical impairment causally related to a federal employment injury, but who nonetheless has the capacity to earn wages he was receiving at the time of injury, has no disability as that term is used in the Act, and whether a particular injury causes an employee disability for employment is a medical issue which must be resolved by competent medical evidence.[3]

Causal relationship is a medical issue,[4] and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[5]

The medical evidence relevant to appellant's ability to work for the period February 26 through March 13, 2000 includes[6] disability slips from his treating Board-certified family practitioners, Drs. Yvette Gbemudu and Neil Lattin, who advised that he could not work for the period February 23 through March 1, 2000. In a treatment note dated February 23, 2000, Dr. Lattin noted that appellant's low back pain was better but still present. Findings on examination included mild lumbosacral tenderness. Dr. Lattin advised that appellant should not return to work until March 1, 2000. In a treatment note dated February 29, 2000, Dr. Gbemudu noted that appellant advised that he "had a lot of pain with putting together a television stand that required much bending and lifting." She noted findings on examination and diagnosed lumbosacral strain. In a treatment note dated March 6, 2000, Dr. Gbemudu reiterated her diagnosis and noted full range of motion of the back with good flexibility. She advised that appellant could return to limited duty on March 11, 2000. By report dated May 29, 2001, Dr. Gbemudu explained her treatment note dated February 29, 2000, stating:

> "It should be noted that the patient was medically cleared to try simple home activities. His activity with said construction was within the realm of allowed attempts at routine home activity in which [he] was warned to stop if he had pain. These instructions are general instructions given and implied to include physical therapy as well as any behaviors. The pain that he suffered while assisting with

[2] 5 U.S.C. §§ 8101-8193.

[3] *Maxine J. Sanders*, 46 ECAB 835 (1995).

[4] *Mary J. Briggs*, 37 ECAB 578 (1986).

[5] *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[6] A January 6, 2000 lumbosacral spine x-ray revealed no fractures and a lumbosacral imaging dated March 18, 2000 was within normal limits.

the assembly of the stand was simply confirmation of that discomfort that he was already experiencing, secondary to his work injury, between the dates of February 26 and March 13, 2000."

Appellant also underwent physical therapy during the period in question.

It is an accepted principle of workers' compensation law 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 which is attributable to the employee's own intentional conduct.[7] Once the work-connected character of any injury has been established, the subsequent progression of that condition remains compensable so long as the worsening is not shown to have been produced by an independent nonindustrial cause and so long as it is clear that the real operative factor is the progression of the compensable injury, associated with an exertion that in itself would not be unreasonable under the circumstances.[8]

Applying the principles noted above in the instant case, the Board finds that the triggering event for appellant's continued pain and inability to work after February 26, 2000 was his act in putting together the television stand and was not due to the progression of the accepted low back strain. In her treatment note dated February 29, 2000, Dr. Gbemudu advised that appellant suffered a "lot" of pain from the bending and lifting while putting together a television stand. While she stated, in a report dated May 29, 2001, over a year after the claimed period of disability, that the pain appellant suffered while "assisting" with the assembly of the stand was simply confirmation of that discomfort that he was already experiencing secondary to his work injury, the Board finds this report not sufficiently rationalized to meet appellant's burden of establishing a causal relationship between the December 31, 1999 employment injury and his claimed disability after February 26, 2000.[9]

[7] *See Raymond A. Nester*, 50 ECAB 173 (1998).

[8] *Id.*

[9] The Board notes that appellant submitted medical evidence after the March 27, 2002 decision of the Office. The Board cannot consider this evidence, however, as its review of the case is limited to the evidence of record which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).

The decision of the Office of Workers' Compensation Programs dated March 27, 2002 is hereby affirmed.

Dated, Washington, DC
December 3, 2002

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member