U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RODERICK V. BROWN and U.S. POSTAL SERVICE,
BULK MAIL CENTER, Greensboro, NC

Docket No. 00-1421; Oral Argument Held April 9, 2002;
Issued June 11, 2002

Appearances: *Roderick V. Brown, pro se*; *Thomas G. Giblin, Esq.*,
for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant had any disability after June 8, 1998 causally related to his January 4, 1998 employment injury; and (2) whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for a change in physicians.

On January 4, 1998 appellant, then a 32-year-old forklift operator, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1), alleging that on that date, he injured his right shoulder and shoulder blade when, after entering a trailer on his forklift, the trailer collapsed and the forklift slammed against the wall of the trailer.[1] His claim was accepted for cervical neck, lumbosacral, shoulder and arm sprains.

Appellant sought medical treatment with Dr. Paul D. Harkins, a Board-certified orthopedic surgeon. By note dated January 26, 1998, Dr. Harkins returned appellant to light work. Appellant returned to limited-duty work on January 29, 1998. In a note dated April 3, 1998, Dr. Harkins released appellant to his usual employment. However, in a note of May 11, 1998, he indicated that appellant returned complaining of pain in his low back and bilateral buttock and legs. Dr. Harkins recommended that appellant undergo a magnetic resonance imaging (MRI) scan of his lumbosacral spine. In a note dated June 8, 1998, he indicated:

> "Patient returns today having undergone an MRI study. The MRI study is normal with no evidence of degenerative disc disease or residuals of injury. I have

[1] Appellant also filed two notices of occupational disease and claims for compensation (Form CA-2) on February 9, 1998 for a lower back injury, contending that the January 4, 1998 incident aggravated a lower back injury and a right shoulder injury. On February 12 and 13, 1998 appellant filed notices of recurrences of disability (Form CA-2a) with regard to the same matter. These claims were considered together.

informed him of those findings. He was concerned about the conclusion of some degenerative spondylolytic changes on the report and this did not have anything to do with his injury and not likely to have much bearing on his symptom complex.

"Examination today remains relatively normal. I have advised him that I have nothing to offer him at this point in terms of for (sic) the treatment and advised him that he can be on activities as tolerated and see how he gets along. I filled out a CA-17 form to indicate that he can be doing his usual duties and work."

In a note from appellant dated June 1, 1998, appellant indicated that he no longer wanted Dr. Harkins to be his treating physician. He explained:

"I think he is very unprofessional when it comes to me. His words are not kind or truthful. His treatment regarding any and all injuries are very 'DESPARATE' and unethical! Some of his diagnoses are done with 'malicious' intent to do me mental harm as well as physical."

By letter dated July 7, 1998, the Office stated that appellant's complaints about Dr. Harkins were vague, asked for a further explanation and stated that the Office would not consider any change of physicians without understanding what the problem was.

Meanwhile, on June 18, 1998 appellant filed another notice of occupational disease and claim for compensation (Form CA-2), alleging that the forklift causes constant pain to his lower back and neck and that he first realized that this was caused or aggravated by his employment on June 8, 1998. The employing establishment controverted this claim. By note received from appellant on June 29, 1998, appellant again stated that he no longer wanted "him" as his treating physician. By note received by the Office on June 30, 1998, appellant again stated that he did not want Dr. Harkins to treat him any more as he was "negligent, unethical, conflict of interest and he is not trying to provide me with his best health advice or suggestions." By letter dated August 10, 1998, appellant noted that Dr. Harkins made some "unappealing remarks regarding illness." Appellant also submitted a patient satisfaction survey wherein he indicated that he received poor care from an unnamed doctor.

In attending physician's reports dated July 8, 1998, Dr. James S. Kramer, a Board-certified family practitioner, indicated that appellant was totally disabled from June 25 to July 6, 1998 and that the nature of his impairment was mechanical low back pain, cervical strain and rotator cuff tendinitis. In response to the question, "Do you believe the condition found was caused or aggravated by an employment activity? (Please explain answer)," Dr. Kramer checked the box marked "yes."

On August 13, 1998 the Office found that the evidence failed to establish that an injury resulted in disability after June 8, 1998 and denied appellant's requested for compensation for disability after that date. The request for a change in physician was also denied.

By letter dated September 10, 1998, appellant requested an oral hearing.

At the hearing held on January 27, 1999, appellant testified that he was claiming compensation from June 25 until July 26, 1998. Appellant noted that he had been seeing

Dr. Harkins for five or six years, that Dr. Harkins told appellant that he was retiring in October 1998, that shortly thereafter Dr. Harkins treatment went "down hill" and that Dr. Harkins was not giving his best professional judgments. For these reasons, appellant testified that he requested a change in physicians.

By decision dated March 18, 1999, the hearing representative affirmed the Office's August 13, 1998 decision denying appellant's request for change in physician and denying compensation after June 8, 1998.

By letter dated May 12, 1999, appellant requested reconsideration. In support thereof, appellant submitted a certificate to return to work or school dated June 17, 1998, by Dr. Veita J. Bland, a Board-certified family practitioner, wherein she indicated that appellant could return to his normal activities at work on July 6, 1998. However, in a similar certificate dated July 17, 1998, Dr. Bland placed appellant under restrictions as set forth in the Form CA-17 of that date. In this form, Dr. Bland limited appellant to lifting 15 pounds a day and no forklift and conveyer operation.[2] In an attending physician's report dated July 29, 1998 (Form CA-20), Dr. Bland responded to the question, "Do you believe the condition found was caused or aggravated by an employment activity? (Please explain answer)," by checking the box marked "yes."

Appellant also submitted additional progress notes by Dr. Kramer. In his July 1, 1998 note, Dr. Kramer indicated that appellant had mechanical low back pain, cervical strain and right rotator cuff tendinitis. In his October 23, 1998 note, he indicated that appellant was to return to work on October 26, 1998 for part full duty and part restricted duty. In his December 4, 1998 note, Dr. Kramer indicated that appellant was back to regular duty.

By decision dated August 24, 1999, the Office denied modification of the March 18, 1999 decision.

The Board finds that appellant has failed to establish a work-related disability after June 8, 1998.

An employee seeking benefits under the Federal Employees' Compensation Act[3] has the burden of establishing the essential elements of his or her claim by the weight of reliable, probative and substantial evidence, including the fact that the individual is an "employee of the United States" within the meaning of the Act and that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[4]

[2] These reports appear to have been in the record prior to the issuance of the March 18, 1999 decision. However, the records were not addressed until the decision on reconsideration. As the Office reconsidered this case on the merits, any error in not reviewing Dr. Bland's reports earlier is moot.

[3] 5 U.S.C. §§ 8101-8193.

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

There is no evidence that appellant sustained any disability after June 8, 1998 causally related to the accepted January 4, 1998 employment injury. Dr. Harkins, appellant's treating physician, indicated that appellant was capable of performing his usual duties as of June 8, 1998. He noted that appellant's MRI scan was normal and that he had no evidence of residuals of the injury. Furthermore, the reports of Drs. Bland and Kramer are insufficient to establish causal relationship. Although both Drs. Kramer and Bland indicated that appellant's condition was caused or aggravated by an employment activity, neither doctor provided any further explanation. The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form question on whether the claimant's disability was related to the history is of diminished probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.[5] Furthermore, neither Dr. Bland nor Dr. Kramer provided any objective findings to support disability. Accordingly, the denial of compensation benefits after June 8, 1998 is affirmed.

The Board further finds that the Office properly exercised its discretion in declining to authorize a change in treating physicians.

Under section 8103(a) of the Act,[6] an employee is permitted the initial selection of a physician. However, Congress did not restrict the Office's power to approve appropriate medical care after the initial choice of a physician. The Office still has the general objective of ensuring that an employee recovers from his injury to the fullest extent possible in the shortest amount of time. The Office, therefore, has broad administrative discretion in choosing the means to achieve this goal within the limitation of allowing an employee the initial choice of a doctor. An employee who wishes to change physicians must submit a written request to the Office fully explaining the reasons for the request. The Office may approve the request in its discretion if sufficient justification is shown.[7]

In the instant case, appellant initially chose Dr. Harkins to be his treating physician. However, after Dr. Harkins decided that appellant was capable of returning to his regular work, appellant requested a change of physicians. In support of his request, appellant made general allegations as to Dr. Harkins' competence and indicated that Dr. Harkins was, *inter alia*, negligent, unethical and not providing his best health advice. However, despite being giving an opportunity to do so, appellant was unable to elaborate on his allegations. An abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions which are contrary to both logic and probable deductions from known facts.[8] In this case, appellant's general allegations do not show any reason why the Office's decision to deny the change of physician was unreasonable. As such, appellant has failed to establish that the Office abused its discretion by refusing to authorize a change of physicians on the basis of inadequate treatment or improperly care.

[5] *Lawrence M. Nielson*, 42 ECAB 583, 594 (1991).

[6] 5 U.S.C. § 8103(a).

[7] *Elizabeth Stanislav*, 49 ECAB 540 (1998).

[8] *See Billy Ware Forbess*, 45 ECAB 742 (1993).

The decisions of the Office of Workers Compensation Programs dated August 24 and March 18, 1999 are hereby affirmed.[9]

Dated, Washington, DC
June 11, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

[9] The Board notes that the record contains new evidence which was received after the Office's decision of August 24, 1999. The Board's jurisdiction on appeal is limited to a review of the evidence which was in the case record before the Office at the time of its final decision; *see* 20 C.F.R. § 501.2(c). Therefore, the Board is precluded from reviewing this evidence.