U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONALD S. QUIMBY and DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Bay Pines, FL

Docket No. 01-547; Submitted on the Record;
Issued June 26, 2002

DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs properly denied appellant continuation of pay from September 14 to 21, 2000.

The Board finds that appellant has established that he was disabled from work from September 14 to 20, 2000 and was entitled to continuation of pay for those dates.

On or about September 18, 2000 appellant, then a 63-year-old custodial worker, filed a claim alleging that on September 12, 2000 he injured his back while in the performance of duty.[1]

In a report dated September 13, 2000, Dr. Theophil T. Sutton, who holds Board certifications in both Emergency Medicine and Preventive Medicine, noted that as a result of an examination of appellant in connection with his work-related injury, he was found to have had a disability caused by back strain rendering him unable to fully perform the duties of his position. Dr. Sutton listed restrictions against carrying or lifting no more than five pounds, and prohibited him from walking and standing. He added that these restrictions "should last approximately five days." It was noted on the report that the supervisor should notify "Kate Cramer if this employee is being moved to day shift due to limited duty."

In a report dated September 14, 2000, Dr. Sutton stated that he had treated appellant that day and determined that he had sustained a back strain. He related appellant's history of injury that he was injured on September 12, 2000.

By letter decision dated October 30, 2000, the Office denied appellant's continuation of pay from September 14 to September 21, 2000.

---

[1] The record does not include a copy of his claim form, but an agency-generated log notes that notice of the work-related injury was given on September 18, 2000.

By letter decision of the same day, the Office accepted appellant's claim for lumbosacral strain.

A claimant seeking benefits under the Federal Employees' Compensation Act[2] has the burden of proof to establish the essential elements of his claim by the weight of the evidence,[3] including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he 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 September 12, 2000. 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 his employment, he 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, the Office accepted that appellant sustained a lumbar strain on September 12, 2000 in the performance of duty. In support of his claim for continuation of pay, appellant submitted medical evidence which suppports that he was disabled from September 14 to 20, 2000. For example, Dr. Sutton stated that appellant sustained a work-related injury on September 12, 2000 and that he could work only with restrictions.

Appellant's treating physician, Dr. Jeffrey W. Loux, reported in a certificate to return to work that appellant was disabled from September 14 to 20, 2000.

The regulations governing continuation of pay authorize the employing establishment to terminate continuation of pay when "The medical evidence from the treating physician shows

[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).

that the employee is not disabled from his or her regular position," or when "Medical evidence from the treating physician shows that the employee is not totally disabled, and the employee refuses a written offer of a suitable alternative position which is approved by the attending physician."[8] In this case, Dr. Sutton stated that appellant was unable to perform fully the requirements of his position and noted restrictions which would accommodate his disability such as no walking and no standing. The record is silent regarding whether the employing establishment accommodated appellant's limited-duty status as authorized by Dr. Sutton and is silent regarding whether any limited-duty position was approved pursuant to section 10.222(a)(3). Consequently, the Office's October 30, 2000 decision must be reversed and the Office shall authorize continuation of pay for the days in question.

The October 30, 2000 decision of the Office of Workers' Compensation Programs is reversed.

Dated, Washington, DC
June 26, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

[8] 20 C.F.R. § 10.222(a)(2), (3).