U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LOYD E. PAYNE and DEPARTMENT OF THE ARMY, IOWA NATIONAL GUARD CAMP DODGE, Johnston, IA

Docket No. 00-2128; Submitted on the Record;
Issued March 18, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly reduced appellant's compensation effective January 30, 1999 on the basis of his wage-earning capacity as an information clerk.

On January 31, 1980 appellant, then a 44-year-old heavy mobile equipment operator, sustained an injury to his low back when he slipped and fell on ice. The Office initially denied appellant's claim for a recurrence of disability beginning April 8, 1981, but after further development of the evidence, the Office determined that this recurrence of disability was related to appellant's January 31, 1980 injury and began payment of compensation for temporary total disability on June 17, 1981.[1]

By decision dated June 22, 1994, the Office reduced appellant's compensation on the basis of his wage-earning capacity as an information clerk for four hours per day. This decision was affirmed by an Office hearing representative in a June 2, 1995 decision. Appellant appealed this decision to the Board. The Director of the Office filed a motion to remand the case for further development of the evidence, stating that the Office did not meet its burden of proof to reduce appellant's compensation, as it failed to confirm that the position of information clerk was available on a part-time basis. By order dated March 19, 1998, the Board granted the Director's motion to remand[2] and the Office reinstated appellant's compensation for temporary total disability retroactive to June 26, 1994.

On December 16, 1998 the Office issued a notice of proposed reduction of compensation on the basis of appellant's wage-earning capacity as an information clerk for four hours per day.

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[1] Appellant used sick leave from April 8 to June 16, 1981.

[2] Docket No. 95-2457.

By decision dated January 19, 1999, the Office reduced appellant's compensation effective January 30, 1999 on the basis of his wage-earning capacity as an information clerk for four hours per day.

Appellant requested a hearing, which was held on January 26, 2000.

By decision dated April 10, 2000, an Office hearing representative found that the physical requirements of the position of information clerk were within the work tolerance limitations set forth by Dr. James O'Hara, that appellant's experience indicated that he could perform the position, that the statement of a rehabilitation counselor that appellant could not perform the position of information clerk was not credible and that appellant's depression was not a preexisting condition and was not shown to be causally related to his employment injury.

The Board finds that the Office improperly reduced appellant's compensation on the basis of his wage-earning capacity as an information clerk.

Section 8115 of the Federal Employees' Compensation Act,[3] titled "Determination of wage-earning capacity" states in pertinent part:

> "In determining compensation for partial disability, … if the actual earnings of the employee do not fairly and reasonably represent his wage-earning capacity or if the employee has no actual earnings, his wage-earning capacity as appears reasonable under the circumstances is determined with due regard to --
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> (1) the nature of his injury;
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> (2) the degree of physical impairment;
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> (3) his usual employment;
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> (4) his age;
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> (5) his qualifications for other employment;
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> (6) the availability of suitable employment; and
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> (7) other factors or circumstances which may affect his wage-earning capacity in his disabled condition."

Appellant had no actual earnings and the Office used the position of information clerk as representative of his wage-earning capacity.

The evidence does not establish that appellant's education and work experience qualified him for the position of information clerk. The Department of Labor, *Dictionary of Occupational Titles* indicates that the position of information clerk requires six months to one year of specific vocational preparation. A rehabilitation counselor to whom the Office referred appellant

[3] 5 U.S.C. § 8115.

indicated on January 23, 1994 that this requirement was satisfied by "[e]ducation, [t]raining and/or [e]xperience," but did not specify what education, training or experience satisfied the specific vocational preparation requirement. This same rehabilitation counselor also prepared a July 21, 1993 narrative report describing appellant's education and vocational history, but did not indicate what elements of either satisfied the specific vocational preparation requirement for the position of information clerk.

Appellant submitted a February 17, 1995 report from another rehabilitation counselor, who concluded that appellant did not have transferable skills and was unable to perform substantial gainful employment and specifically was unable to perform the position of information clerk. Although this rehabilitation counselor relied in part on appellant's mental condition acquired subsequent to his employment injury,[4] she also cited his lack of transferable skills and stated that the position of information clerk required greater training than appellant had. As the evidence is equivocal on whether appellant has the specific vocational preparation required to perform the selected position, the Office has not established that appellant was qualified for the position of information clerk.

The Board finds that appellant has not established an emotional condition causally related to his January 31, 1980 employment injury.

The Board has held that an emotional condition related to chronic pain and limitations from an employment injury is covered under the Act.[5] In a report dated February 14, 1995, appellant's attending psychiatrist, Dr. Michael J. Taylor, stated, "[I]t is my opinion that his [m]ajor [d]epressive [d]isorder is directly causally related to the ongoing pain that he is experiencing and the physical limitations which result from that pain." This report is not sufficient to meet appellant's burden of proof[6] because it does not contain rationale.[7] In a January 24, 2000 sworn statement, Dr. Taylor attempted to explain how sufferers of chronic pain frequently developed depressive disorders: "In males, most often it is the fact that the male is accustomed to being the breadwinner for the family, is accustomed to being able to work and his sense of self-worth and self-being are tied up into his ability to work and as the individual becomes limited physically and unable to work and unable to provide for his family and individuals such as [appellant] become dependent upon people that he previously had taken care of, that is the most frequent pattern we see in individuals who have chronic pain developing

[4] Subsequently, acquired impairments unrelated to an employment injury are excluded from consideration in determining a claimant's wage-earning capacity. *Thelma E. Borter*, 31 ECAB 1271 (1980).

[5] *Arnold A. Alley*, 44 ECAB 912 (1993); *Charles J. Jenkins*, 40 ECAB 362 (1988).

[6] 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. *Bruce E. Martin*, 35 ECAB 1090 (1984).

[7] Medical reports not containing rationale are generally not sufficient to meet appellant's burden of proof. *Herbert J. Hazard*, 40 ECAB 973 (1989).

major depressive disorder." Dr. Taylor also stated that "people with major depressive disorder have a tendency to be very sensitive to anything that they view as criticism" and "are always inclined to put things in the most negative possible light, so it's not at all surprising that [appellant] was significantly upset by the fact that the Department of Labor was, from his point of view, trying to interfere with his life." He also stated that the death of appellant's wife the previous fall had no major impact on his depression.

Dr. Taylor's sworn statement is not sufficient to meet appellant's burden of proof to establish an emotional condition causally related to his January 31, 1980 employment injury. His explanation of how chronic pain results in the development of depressive disorders was largely of general application rather than addressed to the particular circumstances of appellant's situation.[8] In particular, Dr. Taylor's statement about individuals being unable to provide for their families does not seem to apply to appellant, as he received compensation for temporary total disability during the period he was not working.

The April 10, 2000 decision of the Office of Workers' Compensation Programs is reversed with regard to the reduction of appellant's compensation. With regard to the finding that appellant did not have an emotional condition causally related to his January 31, 1980 employment injury, the April 10, 2000 decision is affirmed.

Dated, Washington, DC
March 18, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

[8] *See Robert W. Blaine*, 42 ECAB 474 (1991) for a discussion of the probative value of such evidence.