U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GEORGE SCOCCA and U.S. POSTAL SERVICE,
POST OFFICE, Flushing, NY

Docket No. 00-1592; Submitted on the Record;
Issued May 6, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has established that he sustained a recurrence of disability on or after June 25, 1975 causally related to his accepted April 3, 1967 employment injury.

This case has previously been before the Board on appeal. In an April 1, 1998 decision, the Board affirmed the October 24, 1995 decision of the Office of Workers' Compensation Programs finding that appellant had failed to establish that he sustained a recurrence of disability on or after June 25, 1975 causally related to his accepted April 3, 1967 employment injury. The facts of the case are set forth in that decision.[1]

In a letter dated March 11, 1999, appellant, through his counsel, requested reconsideration.

By decision dated March 31, 1999, the Office denied appellant's request for a review of the merits of his claim on the grounds that it was untimely filed. In an April 22, 1999 letter, appellant, through his counsel, appealed the Office's decision to the Board.

On September 21, 1999 the Board issued an order granting remand based on the Office's motion to do so for further development of the case on the grounds that appellant's March 11, 1999 request for reconsideration was timely filed.

[1] Docket No. 96-656 (issued April 1, 1998).

On remand, the Office denied appellant's request for modification based on a merit review of the claim by decision dated February 3, 2000.[2]

The Board has duly reviewed the case record and finds that appellant has failed to establish that he sustained a recurrence of disability on or after June 25, 1975 causally related to his accepted April 3, 1967 employment injury.

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and who supports that conclusion with sound medical reasoning.[3]

In this case, appellant submitted a March 30, 1995 report of Dr. Arnold M. Schwartz, a Board-certified orthopedic surgeon and his treating physician, indicating that he had not seen appellant in over a year. He noted appellant's complaints of pain in his right leg and right lower back. He further noted his findings on physical examination and opined that there was evidence of sciatica. Dr. Schwartz recommended that appellant undergo magnetic resonance imaging and then intervention. He concluded that he did not see any significant evidence that appellant would have any improvement in the near future. In an accompanying work capacity evaluation dated April 12, 1995, Dr. Schwartz noted appellant's physical restrictions and that appellant was permanently disabled due to a herniated disc.

Appellant also submitted Dr. Schwartz's March 12, 1999 report revealing a history of his employment injury and medical treatment. Dr. Schwartz stated that appellant got better and then had a recurrence of his injury in 1975. He further stated that appellant continued to have symptoms of ongoing right lumbosacral radiculopathy. Dr. Schwartz stated that the second episode was related to the first episode. Dr. Schwartz provided his findings on physical examination and opined that appellant had symptoms of sciatica that appeared to be related to his injury of 1967. He noted that appellant had never gotten better.

[2] The Board notes that, subsequent to the Office's February 3, 2000 decision, the Office received additional evidence. The Board, however, cannot consider evidence that was not before the Office at the time of the final decision. *See Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35 (1952); 20 C.F.R. § 501.2(c)(1). Appellant may resubmit this evidence and legal contentions to the Office accompanied by a request for reconsideration pursuant to 5 U.S.C. § 8128(a). 20 C.F.R. § 501.2(c).

[3] *Louise G. Malloy*, 45 ECAB 613 (1994); *Lourdes Davila*, 45 ECAB 139 (1993); *Robert H. St. Onge*, 43 ECAB 1169 (1992).

Dr. Schwartz's March 30 and April 12, 1995 and March 12, 1999 reports are insufficient to establish appellant's burden because they failed to provide any medical rationale explaining how or why appellant's back conditions were caused by the April 3, 1967 employment injury.[4]

The February 3, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
May 6, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

[4] On appeal, as well as on reconsideration before the Office, appellant alleged that he should receive compensation for total rather than partial disability because he submitted evidence contrary to the Office's finding in its September 10, 1971 and January 22, 1973 decisions that the selected position of general clerk represented his wage-earning capacity. Appellant stated that his disability compensation should not have been reduced because the general clerk position was no longer available in his commuting area. In support of his allegation, appellant submitted a June 25, 1975 letter from the New York State, Department of Labor indicating that there were no clerical jobs available in his commuting area that fell within his physical restrictions. The Office has not issued a final decision regarding appellant's contention and, therefore, the Board has no jurisdiction to consider it on this appeal. *See* 20 C.F.R. § 501.2(c).