U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FOY E. THOMAS and TENNESSEE VALLEY AUTHORITY, BROWNS FERRY NUCLEAR PLANT, Decatur, AL

Docket No. 01-500; Submitted on the Record;
Issued May 17, 2002

DECISION and ORDER

Before ALEC J. KOROMILAS, MICHAEL E. GROOM, A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs properly denied appellant's request for reimbursement of postage and travel expense on February 23, 1999; (2) whether the Office properly determined that appellant sustained a low back strain for a period of eight weeks; (3) whether appellant has established that he sustained a consequential injury of a low back condition due to his accepted employment-related anterior ligament right knee tear; (4) whether the Office properly determined that appellant's request for reconsideration was insufficient to warrant merit review of the claim; and (5) whether the Office abused its discretion by determining that appellant was only entitled to reimbursement for 50 miles round-trip for treatment.

This is the third appeal before the Board in this case.[1] In the second appeal, the Board found that the Office properly reduced appellant's monetary compensation to zero on the grounds that he failed to cooperate with vocational rehabilitation efforts in a decision dated October 1, 1998.[2] The law and facts as set forth in the Board's decision are incorporated by reference.

Appellant submitted a request for reimbursement of $14.18 for his trip to the post office and stamps and envelopes. By decision dated June 21, 1999, the Office rejected his request for reimbursement for postage, envelopes and travel and cited 20 C.F.R. § 10.412.

In a second decision dated June 21, 1999, the Office rejected appellant's claim for treatment of his low back and any travel reimbursement due to this condition as the Office had not accepted a low back condition.

---

[1] Appellant's first appeal regarded the Office's denial of payment for orthopedic shoes. In a decision dated August 26, 1994, the Board affirmed the Office's denial of payment for orthopedic shoes in Docket No. 93-1353.

[2] Docket No. 96-1317.

Appellant disagreed with the Office's two decisions and requested an oral argument by letter dated July 14, 1999. A hearing was held on December 1, 1999 at which appellant testified and presented evidence.

By decision dated February 11, 2000 and finalized on February 14, 2000, the hearing representative found the evidence sufficient to establish that appellant sustained a low back strain as a result of his July 5, 1982 employment injury and that the condition resolved in eight weeks. Then, the hearing representative instructed the Office on remand to accept the claim of resolved low back strain. He found the evidence insufficient to establish that appellant's low back condition was a consequential injury of his accepted knee condition. Lastly, the hearing representative also found that appellant was not entitled to reimbursement for the purchase of stamps and travel to the post office.

By letter dated May 17, 2000, appellant's counsel requested reconsideration of the Office's acceptance of a low back condition for only eight weeks and denial of a consequential low back injury. On August 22, 2000 the Office issued a nonmerit decision denying appellant's request for reconsideration on the basis that he failed to submit any new and relevant evidence and did not raise a substantive legal issue.

By letter dated June 23, 2000, the Office advised appellant that in the future he would only be entitled to travel reimbursement for up to 50 miles round-trip. The Office based its decision upon a May 30, 2000 letter by Dr. William P. Garth, an attending orthopedic surgeon, indicating appellant could receive physical therapy and medical treatment closer to his home and the applicable regulation. Appellant responded by letter dated July 1, 2000, in which he noted that round-trip to HealthSouth, the facility for his physical therapy, was only 80 miles. In a letter dated October 13, 2000, appellant requested the Office grant his request to continue with Dr. Garth as his treating physician and continue his physical therapy.

In a decision dated October 24, 2000, the Office informed appellant that any travel claims for medical services submitted subsequent to October 24, 2000 would only be reimbursed for 50 miles round trip. The Office advised appellant by a June 23, 2000 letter that he could be treated by a physician closer to home and any further travel reimbursement would be limited to 50 miles.

The Board finds that the Office did not abuse its discretion by refusing to pay for appellant's postage and envelope expenses nor his travel expenses related to travel to the post office.

In the present case, the Office accepted appellant's claim for cervical sprain, anterior ligament tear right knee and contusions in both shins on September 21, 1983. Once the Office accepted these conditions as causally related to appellant's federal employment, he became entitled to treatment of these conditions under the provisions of the Federal Employees' Compensation Act.

Section 8103(a) of the Act states in pertinent part:

> "The United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances and supplies prescribed or

> recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation."[3]

In interpreting this section of the Act, the Board has recognized that the Office has broad discretion in approving services provided under the Act.[4] The only limitation on the Office's authority is that of reasonableness.[5]

In this case, appellant seeks reimbursement for certain expenses not related to services, appliances, or supplies prescribed or recommended by a qualified physician. The expenses incurred for postage to the Office and for the photocopying of evidence are not required as part of appellant's medical treatment nor were they incurred incidental to any physician's prescription or recommendation. Reimbursement for postage is not contemplated under the Act.[6] Such expense is purely personal to appellant and not required for him to receive appropriate medical treatment or for the successful pursuit of his claim.[7] Thus, the Office properly denied appellant's request for reimbursement of these expenses.

Next, the Board finds that the Office did not meet its burden of proof in terminating compensation for the accepted condition of low back strain after a period of eight weeks.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.[8] After it has been determined that there is disability causally related to an employee's federal employment, the Office may not terminate or modify compensation without establishing that the disabling condition has ceased or that it is no longer related to the employment.[9] The fact that the Office accepted appellant's claim for a specified period of disability does not shift the burden of proof to appellant. The burden of proof is on the Office with respect to the period subsequent to that date when compensation is terminated or modified.[10]

In the present case, the hearing representative found that appellant's low back strain was due to his July 5, 1982 employment injury. After finding that appellant's low back strain was employment related, he erroneously shifted the burden to appellant to prove that his accepted

---

[3] 5 U.S.C. § 8103(a). While the Office is obligated to pay for treatment of employment-related conditions, appellant has the burden to establish that expenditures are incurred for treatment of the effects of an employment-related condition. *Mamie L. Morgan*, 41 ECAB 661, 667 (1990).

[4] *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

[5] *Id.*

[6] *Wanda L. Campbell*, 44 ECAB 633 (1993).

[7] *Id.*

[8] *Bettye F. Wade*, 37 ECAB 556 (1986); *Ella M. Garner*, 36 ECAB 238 (1984).

[9] *John Wilkes, Jr.*, 36 ECAB 451 (1985); *Betty J. Glover*, 34 ECAB 465 (1982); *Fred Foster*, 1 ECAB 21 (1947).

[10] *George J. Hoffman*, 41 ECAB 135, 141 (1989).

low back strain had not ceased within eight weeks. In determining that appellant's low back condition had resolved within eight weeks, he referred to the Office procedure manual which stated that low back strains should resolve within eight weeks. There is no medical evidence in the record indicating that appellant's disability related to his July 5, 1982 employment injury ceased within eight weeks of the injury. The Board notes that an aggravation of a low back and low back pain was noted at the time of the injury, but documentation prior to 1997 referred to problems with appellant's knee. As there is no medical evidence that appellant's disability related to the July 5, 1982 employment injury ended within eight weeks, the Office did not meet its burden of proof in this case. Furthermore, the Office's procedure manual provides that, having accepted a claim and initiated payments, the Office may not terminate compensation without a positive demonstration, by the weight of evidence, that entitlement to benefits has ceased.[11] The inadequacy or absence of a report in support of continuing benefits is not sufficient to support termination and benefits should not be suspended for that reason.[12] The Office has, therefore, not met its burden to terminate benefits.

The Board finds that appellant has not established that he sustained a consequential injury of a low back condition due to his accepted employment-related anterior ligament right knee tear.

Appellant asserts that his low back condition was caused by his altered gait, which was a consequence of his accepted right knee condition. It is an accepted principle of workers' compensation law and the Board has so recognized, 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 conduct.[13]

In discussing how far the range of compensable consequences is carried, once the primary injury is causally connected with the employment, Professor Larson notes in his treatise:

> "When the question is whether compensability should be extended to a subsequent injury or aggravation related in some way to the primary injury, the rules that come into play are essentially based upon the concepts of 'direct and natural results' and of claimant's own conduct as an independent intervening cause.
>
> "The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury."[14]

[11] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Periodic Review of Disability Cases*, Chapter 2.812.3 (July 1993).

[12] *Id*. at Chapter 2.812.7(c)(1).

[13] Larson, *The Law of Workers' Compensation* § 13.00; *see John R. Knox*, 42 ECAB 193 (1990).

[14] *See also John R. Knox, supra* note 13. *Id.* at § 13.11.

Thus it is accepted that once the work-connected character of any condition is 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.[15] If a member weakened by an employment injury contributes to a later fall or other injury, the subsequent injury will be compensable as a consequential injury.[16] If further complication flows from the compensable injury, *i.e.*, so long as it is clear that the real operative factor is the progression of the compensable injury, with an exertion that in itself would not be unreasonable under the circumstances, the condition is compensable.[17]

Appellant has failed to meet his burden of proof to demonstrate that his right knee employment injury caused or contributed to a back condition. In support of his claim for a consequential injury, appellant submitted various progress and treatment notes from Dr. Kerry Maher, an attending physician, hospital reports from Medical Center Shoals dated June 6 and July 24, 1999. Dr. Robert Kilpatrick, a treating physician, noted appellant's complaints of back and right knee pain with the cause of the injury noted as an employment-related automobile accident in a July 24, 1999 hospital report. In a June 6, 1999 hospital report, Dr. Larry Layne, a treating physician, diagnosed low back pain and noted appellant was walking stiffly with a cane. A medical conclusion without supporting rationale is of little probative value.[18] The reports submitted by Drs. Kilpatrick, Layne and Maher are insufficient to support appellant's burden as none of the physicians provided a rationalized medical opinion explaining how appellant's low back condition is employment related. Consequently, none of the reports by Drs. Kilpatrick, Layne or Maher are sufficient to establish appellant's claim as the opinions lack medical rationale.

As appellant submitted no other medical evidence supporting that his low back condition was a direct consequence of the July 5, 1982 right knee injury, he has failed to meet his burden of proof to establish his consequential injury claim. Therefore, the Office correctly found that the consequential injury to his back had not been established.

The Board also finds that the Office properly determined that appellant's request for reconsideration was insufficient to warrant merit review of the claim.[19]

---

[15] Larson, *supra* note 13 at § 13.11(a). *See also Dennis J. Lasanen*, 41 ECAB 933 (1990). In *Lasanen*, appellant had a work-related knee condition. Subsequently, appellant fell while ice-skating and reinjured the knee. The Board remanded the case for a determination of whether appellant's recurrence of disability was a further medical complication flowing from the employment injury or whether it was caused by an independent intervening cause, the ice-skating incident.

[16] *Id.* at § 13.12(a). *See Howard S. Wiley*, 7 ECAB 126 (1954).

[17] *Robert W. Meeson*, 44 ECAB 834 (1993).

[18] *Jean Culliton*, 47 ECAB 728 (1996).

[19] The Board notes that the issue of merit review of the hearing representative's decision regarding acceptance of a low back strain is moot in view of the disposition of that issue *supra.* However, the issue of merit review is not moot in regards to a low back consequential injury as the Board affirmed the denial of a low back consequential injury, *supra*.

Section 10.608(a) of the Code of Federal Regulations provides that a timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of the standards described in section 10.606(b)(2).[20] This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; or (ii) advances a relevant legal argument not previously considered by the Office; or (iii) constitutes relevant and pertinent new evidence not previously considered by the Office.[21] Section 10.608(b) provides that when a request for reconsideration is timely but fails to meet at least one of these three requirements, the Office will deny the application for reconsideration without reopening the case for a review on the merits.[22]

In the present case, the Office denied appellant's reconsideration request on August 22, 2000 without conducting a merit review on the grounds that appellant failed to submit any new and relevant evidence to warrant a merit review of the prior decision. Appellant's counsel requested reconsideration by letter dated May 17, 2000 without submitting any medical evidence with his request. He neither showed that the Office erroneously applied or interpreted a point of law; advanced a point of law not previously considered by the Office; nor did he submit relevant and pertinent evidence not previously considered by the Office.

Lastly, the Board finds that the Office did not abuse its discretion by determining that appellant was only entitled to reimbursement for 50 miles round-trip for medical and physical therapy treatment.

The applicable regulations are contained at 20 C.F.R. § 10.315 and state:

> "The employee is entitled to reimbursement of reasonable and necessary expenses, including transportation needed to obtain authorized medical services, appliances or supplies. To determine what is a reasonable distance to travel, [the Office] will consider the availability of services, the employee's condition and the means of transportation. Generally, 25 miles from the place of injury, the work site, or the employee's home, is considered a reasonable distance to travel."[23]

In the instant case, the Office advised appellant by decision dated October 24, 2000, that travel reimbursement for more than 50 miles would not be granted as he could be treated by a physician closer to home and the regulations limited travel reimbursement to 50 miles. While appellant has indicated that he travels 80 miles to receive his physical therapy, the record contains no evidence that appellant could not receive medical and physical therapy treatment closer to home. In reaching its decision, the Office relied upon Dr. Garth's May 30, 2000 letter indicating that physical therapy and treatment by a physician were available closer to appellant's

[20] 20 C.F.R. § 10.608(a).

[21] 20 C.F.R. § 10.606(b)(1) and (2).

[22] 20 C.F.R. § 10.608(b).

[23] 20 C.F.R. § 10.315 (1999).

home and the language contained in 20 C.F.R. § 10.315. As there is no contrary evidence in the record indicating that the availability of services, employee's condition and the means of transportation require travel of more than 50 miles round-trip, the Office properly determined that appellant was only entitled to a reimbursement for 50 miles round-trip.

The decision of the Office of Workers' Compensation Programs dated February 11, 2000 and finalized on February 14, 2000 is hereby affirmed in part, set aside in part and the case remanded for further proceedings consistent with the above opinion. The decision dated August 22, 2000 is affirmed. The decision dated October 24, 2000 is hereby affirmed.[24]

Dated, Washington, DC
May 17, 2002

Alec J. Koromilas
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[24] On appeal, appellant's counsel raised issues regarding schedule award and the cessation of appellant's workers' compensation benefits. The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal. As appellant filed his appeal with the Board on November 17, 2000 the only decisions before the Board are the Office's decision dated October 24 and August 22, 2000 and the hearing representative's decision dated February 11, 2000 and finalized on February 14, 2000; *see* 20 C.F.R. §§ 501.2(c), 501.3(d)(2). The Board notes that, in a prior appeal, the Board affirmed the Office decision reducing appellant's compensation benefits to zero based upon his refusal to cooperate with vocational rehabilitation services.