U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSEPH A. BROWN, JR. and U.S. POSTAL SERVICE, POST OFFICE, New Orleans, LA

Docket No. 03-641; Submitted on the Record; Issued April 29, 2003

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO, DAVID S. GERSON

The issue is whether appellant's current condition and disability are causally related to his accepted employment injury.

In the last appeal of this case,[1] the Board found that the Office of Workers' Compensation Programs met its burden of proof to justify the termination of compensation benefits for appellant's employment-related left shoulder strain and aggravation of degenerative arthritis. When the Office terminated benefits, the weight of the medical evidence rested with the opinion of the Office referral physician, Dr. Dudley S. Burwell, Jr., an orthopedic surgeon, who explained that appellant no longer suffered residuals of his employment injury because the work-related aggravation of his degenerative process had ample time to resolve. The Board affirmed the Office's decision to terminate compensation but remanded the case for further development. As the Office hearing representative found, appellant's attending orthopedic surgeon, Dr. Charles W. Krieger, created a conflict in medical opinion after the termination of benefits, a conflict that necessitated referral to a referee medical specialist. The facts of this case as set forth in the Board's prior decision are hereby incorporated by reference.

To resolve the conflict, the Office referred appellant, together with the medical record and a statement of accepted facts, to Dr. Robert A. McGuire, Jr., a Board-certified orthopedic surgeon of professorial rank and Chairman of the Department of Orthopedic Surgery and Rehabilitation at the University of Mississippi Medical Center.

In a report dated September 9, 2002, Dr. McGuire related appellant's history and medical treatment, described his findings on physical examination and reviewed the radiographic studies

[1] Docket No. 00-2533 (issued April 9, 2002).

that appellant brought with him. He also reviewed the statement of accepted facts and all of appellant's previous records. Dr. McGuire offered the following opinion:

> "At the present time, I do not feel that [appellant] is able to perform any type of work activities due to the continued degenerative changes in the cervical and lumbar spine causing neurogenic claudication from the spinal stenosis. These occur as a result of continued degenerative changes from the neck and the back, not due to the strain of the shoulder that was described in 1976. I would tend to agree with Dr. Burwell and the fact that this type of strain injury has a limited time frame and will not result in progression of the degenerative process. The continued complaints of low back pain would be as a result of the natural history of the degenerative process rather than of a traumatic injury. Dr. Kregor [sic] is right that he is unable to work, but the inability to work is due to the degenerative changes in the neck, the back and the extremities rather than the on-the-job injury that occurred as a letter carrier. This particular job had nothing to do whatsoever with the progression of the degenerative changes in the neck, back or knees. [Appellant] is not able at this time to return back to work activities either of a light or sedentary category and any type of rehabilitation would not be expected to increase the odds of this happening to any substantial extent. There is nothing from the standpoint of the restriction form OWCP-5C that needs to be addressed as he is essentially disabled from performing any type of eight-hour work pattern. I would tend to agree with Dr. Burwell that the shoulder strain resolved long ago and that the present problems that prevent him from working are as a result of the continued degenerative changes in the neck and back. These are going to be a continued progression in the future. Therefore, this disability is not going to change."

In a decision dated November 25, 2002, the Office found that the weight of the medical evidence rested with the opinion of Dr. McGuire and established that appellant's current medical condition was not causally related to the accepted employment injury in 1976.

The Board finds that appellant's current condition and disability are not causally related to his accepted employment injury.

When the Office meets its burden of proof to justify the termination of compensation, the burden shifts to the claimant to establish that any subsequent disability is causally related to the accepted employment injury.[2] As the Board found in the prior appeal, the Office met its burden to justify the termination of compensation. The burden of proof, therefore, shifts to appellant to establish the element of causal relationship and thereby establish entitlement to continuing compensation benefits.

[2] *Maurice E. King*, 6 ECAB 35 (1953); *Wentworth M. Murray*, 7 ECAB 570 (1955) (after a termination of compensation payments, warranted on the basis of the medical evidence, the burden shifts to the claimant to show by the weight of the reliable, probative and substantial evidence that, for the period for which he claims compensation, he had a disability causally related to the employment resulting in a loss of wage-earning capacity).

The evidence generally required to establish causal relationship is rationalized medical opinion evidence. The claimant must submit a rationalized medical opinion that supports a causal connection between his current condition 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 from a medical perspective how the current condition is related to the injury.[3]

The Office hearing representative determined that the opinion of appellant's attending physician, Dr. Krieger, was sufficiently supportive of the element of causal relationship to create a conflict with the opinion of the Office referral physician, Dr. Burwell. Section 8123(a) of the Federal Employees' Compensation Act provides in part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."[4]

The Office properly referred appellant to Dr. McGuire to resolve the conflict in medical opinion. Dr. McGuire reported that appellant was unable to perform any type of work activity due to the continued degenerative changes in his cervical and lumbar spine, but that these changes were not due to the shoulder strain described in 1976. Rather, Dr. McGuire explained, this type of strain injury had a limited time frame and would not result in a progression of appellant's degenerative process. Dr. McGuire concluded that appellant's continued complaints of low back pain were a result of the natural history of the degenerative process rather than of a traumatic injury. Dr. McGuire also reported that appellant's shoulder strain resolved long ago and that the present problems preventing appellant from working were as a result of the continued degenerative changes in his neck and back.

When there exist opposing medical reports of virtually equal weight and rationale, and the case is referred to a referee medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[5]

The Board finds that Dr. McGuire's opinion is based on a proper factual and medical background and is sufficiently well rationalized that it must be given special weight in resolving the conflict in this case. The opinion of the referee medical specialist represents the weight of the medical evidence and establishes that appellant's current condition and disability for work are not causally related to his accepted employment injury in 1976. For this reason, appellant has not met his burden of proof to establish entitlement to continuing compensation benefits.

[3] *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

[4] 5 U.S.C. § 8123(a).

[5] *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

The November 25, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
April 29, 2003

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member