U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FREDERICK J. BRADSHAW and U.S. POSTAL SERVICE,
POST OFFICE, Cumberland, RI

Docket No. 02-1995; Submitted on the Record;
Issued June 27, 2003

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof to establish that he sustained an injury on June 19, 2000 in the performance of duty.

On October 25, 2000 appellant, then a 47-year-old letter carrier, filed a claim for a traumatic injury occurring on June 19, 2000 in the performance of duty. He stated: "As I was twisting to reach a third bundle I had a muscle spasm in the lower back." Appellant stopped work on June 23, 2000 and returned to part-time work on July 12, 2000.

By decision dated December 15, 2000, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that he did not establish an injury in the performance of duty.[1] The Office found that appellant had established that he experienced the claimed employment incident but had not submitted medical evidence sufficient to show that he sustained a medical condition causally related to the accepted employment incident.

On April 12, 2001 appellant, through his representative, requested reconsideration of his claim. By decision dated July 9, 2001, the Office denied modification of its prior merit decision. Appellant again requested reconsideration on January 4, 2002. In a decision dated March 18, 2002, the Office found that the information submitted was insufficient to warrant modification of its July 9, 2001 decision. The Office, in a memorandum accompanying the decision, noted that appellant had not established that he experienced the claimed employment incident due to inconsistencies in the evidence.

The Board finds that the case is not in posture for a decision.

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[1] Appellant previously filed a notice of recurrence of disability on July 19, 2000 causally related to a June 24, 1978 employment injury. By decision dated September 26, 2000, the Office denied his claim on the grounds that the evidence was insufficient to establish that he sustained a recurrence of disability causally related to the accepted employment injury.

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident, which is alleged to have occurred.[2] An injury does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.[3] An employee has not met his or her burden of proof of establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.[4] Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may, if otherwise unexplained, cast doubt on an employee's statements in determining whether a *prima facie* case has been established.[5] However, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative force and will stand unless refuted by strong or persuasive evidence.[6]

The Board finds that the evidence does not contain inconsistencies sufficient to cast serious doubt on appellant's version of the employment incident. While appellant initially informed his supervisor that he believed that he had sustained a recurrence of disability from a 1978 injury rather than a traumatic injury, this does not render the claim factually deficient.[7] Appellant sought medical treatment and stopped work within four days of the alleged June 19, 2000 employment incident. The medical reports of record contain a history of injury generally consistent with appellant's account of events and the record contains no contemporaneous factual evidence indicating that the claimed incident did not occur as alleged.[8] Thus, under the circumstances of this case, the Board finds that appellant's allegations have not been refuted by strong or persuasive evidence. The Board, therefore, finds that the evidence of record is sufficient to establish that the twisting incident occurred at the time, place and in the manner alleged by appellant on June 19, 2000.

The remaining issue is whether the medical evidence establishes that appellant sustained an injury causally related to the employment incident. In order to establish a causal relationship between the diagnosed condition and any disability therefrom and the employment incident,

[2] *See Elaine Pendelton*, 40 ECAB 1142 (1989).

[3] *Charles B. Ward*, 38 ECAB 667 (1989).

[4] *Tia L. Love*, 40 ECAB 586 (1989).

[5] *Merton J. Sills*, 39 ECAB 572 (1988).

[6] *Constance G. Patterson*, 41 ECAB 206 (1989); *Thelma S. Buffington*, 34 ECAB 104 (1982).

[7] Appellant identified the cause of his recurrence of disability as twisting and turning on the job.

[8] *See Thelma Rogers*, 42 ECAB 866 (1991).

appellant must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such causal relationship.[9]

In support of his claim, appellant submitted a chart note dated July 19, 2000 from Dr. Geoffrey H. Berg, a Board-certified internist and his attending physician, who indicated that he treated appellant on that date for a "recurrence of back pain" and noted that he was "still twisting and lifting trays." In a duty status report dated July 26, 2000, Dr. Berg diagnosed sciatica and noted the history of injury as appellant hurting his back "twisting [and] lifting." He found that appellant could resume part-time limited-duty employment for four hours a day for one week and six hours a day for the next week. In a report dated August 9, 2000, Dr. Berg diagnosed a low back strain, listed the date of injury as July 24, 1998 and checked "yes" that the condition was caused or aggravated by employment. He found that appellant was totally disabled from June 30 to July 11, 2000 and partially disabled beginning July 11, 2000. In a duty status report dated September 14, 2000, Dr. Berg indicated that appellant could work six hours a day with restrictions.[10] In a form report dated October 20, 2000, he diagnosed degenerative joint disease, facet arthritis and lumbar disc disease and checked "yes" that these conditions were causally related to appellant's employment.[11]

In a report dated January 2, 2002, Dr. Berg stated that he treated appellant on June 23, 2000 for a June 19, 2000 on-the-job back strain injury. He related:

> "After conducting a thorough examination of [appellant] on June 23, [2000] and after a discussion with [him] of the details of his injury, I can indeed state to a reasonable degree of medical certainty that he suffered a severe back strain in addition to all of his previous back problems. In my reasoned medical opinion, this was directly related to the incident of June 19, 2000. The twisting motion and sudden discomfort to [appellant] exposed [him] to a new ailment and diagnosis. I attempted to indicate this belief in the [Form] CA-20 dated October 26, 2000."

Dr. Berg found that appellant was totally disabled from June 23 through July 11, 2000, could work four hours a day from July 12 through 18, 2000 and six hours a day from July 18 through August 13, 2000. He stated that his August 9, 2000 form report, which listed appellant's date of injury as July 24, 2000, was incorrect.

Proceedings under the Federal Employees' Compensation Act are not adversarial in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.[12] Although Dr. Berg's reports do not contain sufficient rationale to

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[9] *James Mack*, 43 ECAB 321 (1991).

[10] By letter dated September 11, 2000, Dr. Berg requested authorization to perform a magnetic resonance imaging (MRI) scan on appellant.

[11] In a report dated April 9, 2001, Dr. Berg indicated that he had treated appellant for low back pain on June 23, 2000 and opined that the injury was an aggravation of a prior injury sustained in the 1980's.

[12] *William J. Cantrell*, 34 ECAB 1223 (1983).

discharge appellant's burden of proving by the weight of the reliable, substantial and probative evidence that appellant sustained a back injury due to the June 19, 2000 employment incident, they raise an uncontroverted inference of causal relationship sufficient to require further development of the case record by the Office.[13] Additionally, the Board notes that the record contains no medical opinion contrary to appellant's position. The Board, therefore, will remand the case for further development of the medical evidence.

On remand, the Office should refer appellant, the case record and a statement of accepted facts to an appropriate medical specialist for an evaluation and a rationalized medical opinion on the issue of whether appellant sustained an injury to his back caused by the June 19, 2000 employment incident. After such development of the case record as the Office deems necessary, it shall issue a *de novo* decision.

The decisions of the Office of Workers' Compensation Programs dated March 18, 2002 and July 9, 2001 are set aside and the case is remanded for further proceedings consistent with this decision.

Dated, Washington, DC
June 27, 2003

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[13] *See John J. Carlone*, 41 ECAB 354 (1989).