U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONNIE W. RHYMES and DEPARTMENT OF LABOR,
OFFICE OF WORKERS' COMPENSATION PROGRAMS, Dallas, TX

Docket No. 03-1040; Submitted on the Record;
Issued June 24, 2003

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether appellant established that his claimed lordosis and prostatitis are causally related to his January 12, 2000 employment injury; and (2) whether appellant sustained consequential injuries to his right lower extremity as a result of his January 12, 2000 employment injury.

On January 12, 2000 appellant, then a 45-year-old claims examiner, sustained a traumatic injury while in the performance of duty. He stated that he injured his back while moving shelves of case files in preparation for the arrival of new office furniture. The Office of Workers' Compensation Programs initially accepted appellant's claim for lumbar strain and later expanded the claim to include aggravation of degenerative disc disease at L4-5 and L5-S1.[1]

Appellant requested that his claim be expanded to included additional diagnoses relevant to his back and right lower extremity. In May 2001, he alleged that, as a consequence of his employment-related back injury, he developed a right drop foot condition, which affected his gait. Appellant explained that his spinal stenosis caused a weakness in his right lower extremity, thus resulting in the drop foot condition. He further claimed that his right foot condition aggravated his right knee.

By letter dated July 17, 2001, the Office requested that appellant submit additional factual and medical evidence regarding his claimed right lower extremity conditions. He submitted an August 4, 2001 statement wherein he explained that he was an avid jogger and power walker prior to his January 12, 2000 employment injury. However, subsequent to the injury, appellant stated that he was unable to run or jog, but he could walk short distances, sometimes without stumbling. He further stated that his loss of control in his right lower

[1] The Office authorized a series of spinal epidural injections followed by a November 17, 2000 discogram. In May 2001, the Office authorized the purchase of a custom made brace or prosthetic for appellant's right leg. His treating physician, Dr. John A. Sazy, an orthopedic surgeon, prescribed the device to "aid right ankle in foot clearance in gait cycle due to weakness resulting from spinal stenosis."

extremity and the resulting stumbling had sufficiently aggravated his right knee and had a degenerative affect. He stated that prior to his injury he did not need to wear special shoes or a handcrafted prosthetic device. In support of his claim, appellant referenced a March 3, 2001 electromyography and nerve conduction velocity (EMG/NCV) study that purportedly showed a delay in his right lower extremity. Appellant explained that he underwent arthroscopic surgery in June 1986 to repair a torn lateral meniscus in his right knee. He stated that he had a "very rapid recovery" following surgery.

Appellant also submitted two reports from his treating physician, Dr. John A. Sazy, an orthopedic surgeon. In an undated report, he explained that appellant's employment injury exacerbated his degenerative spine condition, including exacerbated symptoms of spinal stenosis. Dr. Sazy further explained that the symptoms were severe enough that they created a loss of foot function, which created a right drop foot and resulted in an antalgic gait. He stated that appellant was experiencing a significant amount of knee pain and if the drop foot had never occurred, he would not have knee pain. According to Dr. Sazy, appellant's altered gait caused a rapid degeneration of his right knee. In a second report dated July 24, 2001, he again attributed appellant's right foot and knee conditions to his January 12, 2000 employment injury. Dr. Sazy explained that appellant had objective evidence of nerve root dysfunction at the L4, L5 and S1 nerves and could easily have right knee pain from either primary nerve root dysfunction by radiculopathy or internal derangement of the knee or both.

The Office referred the case file to its medical adviser, who, in a report dated October 19, 2001, stated that the record did not support that appellant sustained a consequential injury to his right lower extremity as a result of the January 12, 2000 employment injury. The Office medical adviser noted that the March 3, 2001 EMG/NCV study administered by Dr. Mitchell did not indicate that a drop foot was a consequence of the accepted condition at the lumbar level. He explained that the study showed significant abnormalities affecting the left lower extremity, but not the right lower extremity. The Office medical adviser also stated that a January 23, 2001 report from Dr. Charles D. Marable, a Board-certified neurologist, did not confirm that appellant had a footdrop weakness or touch upon any symptoms affecting the right knee. He diagnosed lumbar disc at L4-5 and L5-S1. On physical examination of the lower extremities, he noted that the motor examination was 5/5 and that the sensory examination was decreased in the right lower extremity. The Office medical adviser stated that motor examination results of 5/5 indicated normal strength. With respect to the reported decreased sensory examination of the right lower extremity, the Office medical adviser stated that Dr. Marable's report was too vague because it was unclear whether the decreased sensory examination was in a dermatomial or nondermatomial fashion. Accordingly, the Office medical adviser concluded that the available documentation did not support the existence of a consequential injury to appellant's right lower extremity.[2]

In a decision dated November 16, 2001, the Office denied appellant's claimed right lower extremity condition. Regarding Dr. Sazy's recent reports attributing appellant's lower extremity

[2] Although the Office in referring the case to its medical adviser asked that he address Dr. Sazy's diagnoses of footdrop and right knee degeneration, the Office medical adviser did not specifically comment on either of Dr. Sazy's recently submitted reports.

condition to his accepted back injury, the Office found that his opinion was not supported by a firm diagnosis.

On November 3, 2002 appellant requested reconsideration and submitted additional medical evidence. He requested that the Office expand his claim to include L3-4 disc protrusion and mild bilateral neural foraminal stenosis, lordosis, prostatitis, spondylolisthesis at L4-5 and bilateral sciatica with right footdrop and right knee derangement.

The Office again referred the case record to its medical adviser and, in a report dated November 24, 2002, he recommended that the Office expand the claim to include spondylolisthesis at L4-5, posterior disc bulge at L4-5, spinal stenosis at L4-5 and disc protrusion at L5-S1. The Office medical adviser further advised that the claim should not be accepted for lordosis, prostatitis, right footdrop or any diagnosis affecting appellant's right knee.

By decision dated December 17, 2002, the Office expanded appellant's claim to include spondylolisthesis at L4-5, spinal stenosis at L4-5, posterior disc bulge at L4-5 and left-sided disc protrusion at L5-S1. However, the Office denied appellant's claim with respect to the conditions of lordosis, prostatitis, right drop foot and right knee meniscal tears caused by an antalgic gait.[3]

The Board finds that appellant failed to establish that the claimed conditions of prostatitis and lordosis are causally related to his January 12, 2000 employment injury.

A claimant seeking benefits under the Federal Employees' Compensation Act[4] has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence, including that any specific condition or disability for work for which he claims compensation is causally related to the employment injury.[5] Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.[6] Where appellant claims that a condition not accepted or approved by the Office was due to his employment injury, he bears the burden of proof to establish that the condition is causally related to the employment injury.[7]

Appellant sustained a recurrence of disability on March 22, 2002, which the Office accepted. He was hospitalized for a period of four days in March 2002, because of severe back

[3] The Office did not make any specific findings with respect to appellant's claimed L3-4 disc protrusion and bilateral sciatica.

[4] 5 U.S.C. §§ 8101-8193.

[5] *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

[6] *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's employment. *Id.*

[7] *Jacquelyn L. Oliver*, *supra* note 5.

pain and spasms. During his hospitalization, appellant was also diagnosed with prostatitis, an inflammation of the prostate. Following his hospitalization, he had a June 1, 2002 magnetic resonance imaging (MRI) scan of the lumbar spine that noted, among other things, "overall straightening of the normal lumbar lordosis consistent with muscle spasms." Appellant claimed that the lordosis and prostatitis were due to his back spasms and, therefore, both conditions should be accepted as related to his January 12, 2000 employment injury and subsequent recurrence of disability in March 2002.

In his November 24, 2002 report, the Office medical adviser stated that lordosis was not a diagnosis. He explained that the concept of lordosis had to do with the contours of the axial skeleton. Consequently, the Office medical adviser stated that lordosis could not be accepted as a condition related to appellant's January 12, 2000 employment injury. The Office medical adviser further stated that it was medically impossible to develop prostatitis from severe spasms and lordosis, as claimed by appellant. He explained that appellant was treated with antibiotics for his prostatitis and that prostatitis on an infectious or inflammatory basis could not be accepted as a consequence of appellant's January 12, 2000 employment injury. Furthermore, Dr. Robert Stroud, an osteopath, who treated appellant's prostatitis, did not opine that this condition was in any way related to appellant's January 12, 2000 employment injury or subsequent back spasms. Accordingly, the Office properly declined to accept lordosis and prostatitis as a condition that arose either directly or consequentially from appellant's January 12, 2000 employment injury.

The Board further finds that the case is not in posture for a decision regarding the issue of whether appellant sustained consequential injuries to his right knee and right foot.

Appellant alleged that his accepted back injury resulted in weakness and loss of control in his right foot. This condition was diagnosed as right drop foot. He further claimed that his right foot condition affected his gait, which in turn aggravated his right knee.

It is an accepted principle of worker's compensation law 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 attributable to the employee's own intentional conduct.[8]

The record includes two EMG/NCV studies. Dr. Mitchell interpreted the first study, administered on March 3, 2001 as suggestive of "subtle root dysfunction bilaterally with mild irritability on needle EMG of the praspinous muscles bilaterally, as well as a relatively delayed right H-reflex and a relatively delayed left peroneal F-wave latency." Dr. Mitchell stated that the findings were indicative of subtle root dysfunction, affecting the L4, L5 and S1 roots. He also reported a delay of the left sural nerve latency and borderline left superficial peroneal nerve latency, suggesting some dysfunction of the peripheral nerves in the region.

When reviewing this study on October 19, 2001, the Office medical adviser commented that it was not indicative of a right footdrop because the study "showed significant abnormalities

[8] *Carlos A. Marrero*, 50 ECAB 117, 119-20 (1998); *Clement Jay After Buffalo*, 45 ECAB 707, 715 (1994); *see* A. Larson, *The Law of Workers' Compensation* § 10 (2000).

affecting the [left], not the [right], lower extremity." The Office echoed this statement, when it initially denied appellant's request to expand his claim to include right footdrop as an accepted condition. Although Dr. Mitchell identified abnormalities on the left as indicated by the Office and its medical adviser, appellant correctly noted that the physician also identified "a relatively delayed right H-reflex" and later commented that the "findings were indicative of subtle root dysfunction, affecting the L4, L5 and S1 roots."

A second EMG/NCV study, administered on April 5, 2002, revealed "bilateral L5 lumbosacral radiculopathy with both acute and chronic features." Dr. Patrick W. Donovan, a Board-certified physiatrist, characterized the study as abnormal. He further noted that the EMG needle testing showed "markedly abnormal findings of increased insertional activity in the bilateral L5 innervated muscles (tibialis anterior, extensor hallucis longus, peroneus longus, gluteus medius and lower lumbar paravertebral muscles) along with abnormal spontaneous motor unit action potentials…." The Office medical adviser did not specifically comment on this more recent study when he reviewed the case file on November 24, 2002.

Appellant's treating physician, Dr. Sazy, reported that appellant's January 12, 2000 employment injury exacerbated his degenerative spine condition, including exacerbated symptoms of spinal stenosis. The symptoms were severe enough that they created a loss of foot function, which created a right foot drop and resulted in an antalgic gait. According to Dr. Sazy, appellant's altered gait caused a rapid degeneration of his right knee. In a second report dated July 24, 2001, he explained that appellant had objective evidence of nerve root dysfunction at the L4, L5 and S1 nerves and could easily have right knee pain from either primary nerve root dysfunction by radiculopathy or internal derangement of the knee or both. The Office, however, rejected Dr. Sazy's opinion on the basis that it was not supported by a firm diagnosis. Specifically, the Office stated that the reports "note that [appellant has] pain (radiculopathy) of the lower extremities rather than a diagnosis."

A December 31, 2001 right knee MRI revealed small joint effusions in the right knee, meniscal tears involving the inferior surfaces of the posterior and anterior horns of the lateral meniscus, moderate degenerative changes in the patellofemoral compartment with full thickness chondral defects of the medial and lateral patellar facets, moderate degenerative changes in the medial compartment and mild degenerative changes in the lateral compartment.

Appellant was also examined by Dr. Craig C. Callewart, Board-certified orthopedic surgeon, who, in a report dated June 25, 2002, diagnosed internal derangement, right knee and spondylolisthesis at L4-5 with footdrop and bilateral sciatica. He recommended L4 to sacrum decompression, fusion and instrumentation. In a July 15, 2002 addendum to his earlier report, Dr. Callewart stated that all of appellant's complaints started with his January 12, 2000 employment injury and his diagnosis of spondylolisthesis at L4-5 with footdrop and bilateral sciatica was a result of the employment injury. He also examined appellant on October 10, 2002 and noted on physical examination that his gait demonstrated a right footdrop. Dr. Callewart reiterated his earlier diagnoses and again advised appellant to consider decompression surgery.

In a report dated October 30, 2002, Dr. Benjamin Ybarra, a family practitioner, stated that appellant had been his patient since December 14, 2001 and had complained of low back pain with right lower extremity weakness and resulting footdrop. He explained that appellant's

problem with his right knee and lower extremity was secondary to his worsening lumbosacral disc disease, with resultant neuropathy affecting his right lower extremity. Dr. Ybarra referred to appellant's April 5, 2002 EMG/NCV study as indicative of L5-S1 radiculopathy and abnormal reflex. He also quoted from Dr. Sazy's earlier report wherein he explained the causal relationship between appellant's back condition and the problems he experienced with his right lower extremity. Dr. Ybarra concluded that the secondary condition occurred due to the primary condition.

Proceedings under the 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.[9] While reports from Drs. Sazy, Callewart and Ybarra do not contain sufficient rationale to discharge appellant's burden of proof that his claimed right lower extremity condition is causally related to his July 12, 2000 employment injury; these reports raise an inference of causal relationship sufficient to require further development of the case record by the Office.[10]

On remand the Office should refer appellant, the case record and a statement of accepted facts to an appropriate specialist for an evaluation and a rationalized medical opinion regarding the cause and extent of appellant's claimed right lower extremity condition. After such development of the case record as the Office deems necessary, a *de novo* decision shall by issued.

The December 17, 2002 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part and the case is remanded to the Office for further action consistent with this decision.

Dated, Washington, DC
June 24, 2003

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

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

[10] *See John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).