U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PHILIP J. MORIS and U.S. POSTAL SERVICE,
POST OFFICE, Minneapolis, MN

Docket No. 02-2257; Submitted on the Record;
Issued March 11, 2003

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has established that his current back condition is causally related to his employment.

On December 31, 2001 appellant, then a 46-year-old tractor-trailer driver, filed a traumatic injury claim assigned number 102006869, alleging that on December 31, 2001 he drove over a bump and felt a pain shooting down his leg and developed numbness in his left toes, foot and ankle. Appellant also noted that his condition occurred while driving and "progressively" worsened as time went on.[1] Appellant did not stop work but was reassigned to a light-duty position that did not involve driving. In response to requests by the Office of Workers' Compensation Programs dated January 14 and February 6, 2002, appellant submitted additional medical evidence in support of his claim.

In a February 14, 2002 letter controverting appellant's claim, the employing establishment indicated that appellant had recently filed a similar claim for a low back injury, assigned number 102001086, which had been denied by the Office on September 13, 2001, approximately three months before he filed the instant claim. There is no copy of this decision contained in the record and it is unclear whether the record before the Board contains all of the medical and factual evidence submitted in support of appellant's prior claim.

By decision dated March 1, 2002, the Office found the evidence of record insufficient to establish that appellant's current back condition is causally related to his employment.

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

[1] The Board notes that, it is unclear whether appellant is alleging that his condition worsened over the course of more than one work shift. If so, his claim would be properly classified as one for an occupational disease. However, the Board notes that the essential elements of each and every compensation claim are the same, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease. *Charles E. Evans*, 48 ECAB 692 (1997).

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[2]

In accordance with the Federal (FECA) Procedure Manual, in order to determine whether an employee actually sustained an injury in the performance of his duty, the Office begins with the analysis of whether "fact of injury" has been established. Generally, "fact of injury" consists of two components, which must be considered in conjunction with the other. The first component to be established is that the employee actually experienced the employment incident or exposure, which is alleged to have occurred.[3] In order to meet his burden of proof to establish the fact that he sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he actually experienced the employment injury or exposure at the time, place and in the manner alleged.

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[4] The evidence required to establish causal relationship is rationalized medical opinion evidence based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.[5] The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish a causal relationship.[6]

In this case, it is undisputed that appellant drives a tractor-trailer for the employing establishment and that he was driving his truck on the day in question. Therefore, the only issue is whether appellant established that he sustained an injury as a result of his employment duties.

In this case, appellant submitted a July 16, 2001 workers' compensation follow-up injury report from Dr. Charles K. Dunham, a Board-certified family practitioner, who noted that appellant was status post spinal fusion, performed on October 17, 1994 and had experienced an onset of low back pain with radiculopathy down both legs on June 11, 2001. Dr. Dunham further noted that a magnetic resonance imaging (MRI), performed June 25, 2001 revealed spondylolisthesis, degenerative spondylosis at multiple levels and spinal stenosis and stated that appellant had experienced an exacerbation of his condition due to work-related trauma probably

[2] *Charles E. Evans*, *supra* note 1.

[3] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

[4] *John J. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. § 10.5(q) ("occupational disease" defined).

[5] *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

[6] *Charles E. Evans*, *supra* note 1.

related to the vehicle he drives. In an initial injury report dated January 2, 2002, Dr. Dunham noted that on December 31, 2002, while driving, appellant's toes, foot and ankle began going numb. He noted that appellant had sustained a previous injury a few months earlier and was symptomatic post fusion for spondylolisthesis and spondylosis at multiple levels. The physician recorded that appellant felt his condition was aggravated by driving, but indicated with a check mark and a question mark that he was unsure whether appellant's condition was work related. Dr. Dunham noted that he had referred appellant to a specialist. In a follow-up report dated February 12, 2002, Dr. Dunham again noted the date of injury as June 11, 2001, diagnosed chronic back pain status post fusion and indicated that appellant required a sedentary or light-duty job.

In a narrative report dated January 23, 2002, Dr. John A. Dowdle, the Board-certified orthopedic surgeon, to whom appellant was referred by Dr. Dunham, noted that appellant had a fusion of his lumbar spine for a spondylolysis and spondylolisthesis and that on December 31, 2001 he began having back pain and pain and numbness in his left foot. Dr. Dowdle performed a physical examination and reviewed x-rays and diagnosed lumbar spinal stenosis with degenerative facet disease at L4-5, above the level of his previous lumbar fusion. He recommended light duty and conservative treatment, but noted that surgical decompression could be necessary. In an accompanying form report also dated January 23, 2002, Dr. Dowdle released appellant to restricted light duty, stated that he could not drive a tractor-trailer and indicated that appellant's condition was work related.

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.[7] Dr. Dunham nor Dr. Dowdle provided sufficient rationale to discharge appellant's burden of proving by the weight of the reliable, substantial and probative evidence that his current back condition is causally related, either directly or through aggravation, precipitation or acceleration, to his employment, as neither physician explained, with medical reasoning, why they felt his current condition was due his employment.[8] However, their reports, taken together, raise an uncontroverted inference of causal relationship sufficient to require further development of the case record by the Office.[9] Additionally, the Board notes that in this case the record contains no medical opinion contrary to appellant's position. The Board will remand the case for further development of the medical evidence.

On remand the Office should double this case file assigned number 102006869 with any other injury claims appellant has filed for the same parts of the body, including case file assigned number 102001086.[10] The Office should also prepare a statement of accepted facts and refer it

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

[8] *Beverly J. Duffey*, 48 ECAB 569 (1997); *Lee R. Haywood*, 48 ECAB 145 (1996).

[9] *See John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978); *see also Donald L. Morris*, 36 ECAB 140 (1984).

[10] FECA Bulletin No. 97-10 (issued February 15, 1997) provides that cases should be doubled when a new injury case is reported for an employee who has filed a previous injury claim for the same part of the body.

along with appellant and his medical records for a second opinion examination to obtain a rationalized opinion as to whether appellant's current diagnosed back conditions are causally related to factors of appellant's federal employment, either directly or through aggravation, precipitation or acceleration. Following such further development as may be necessary, the Office shall issue an appropriate final decision on appellant's claim.

The March 1, 2002 decision of the Office of Workers' Compensation Programs is hereby set aside and the case is remanded for further development consistent with this decision.

Dated, Washington, DC
March 11, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member