U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL S. KUMMELMAN and U.S. POSTAL SERVICE, TAMPA FIELD OFFICE, Tampa, FL

Docket No. 03-222; Submitted on the Record;
Issued March 7, 2003

DECISION and ORDER

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

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

On April 24, 2002 appellant, then a 54-year-old postal worker, filed a claim for a recurrence of disability alleging that on April 16, 2002 he reinjured his back when he replaced an empty five-gallon water cooler jug with a full one weighing approximately 45 pounds. Appellant reported the incident to his supervisor, but continued to work through April 17, 2002. Appellant stopped work on April 18, 2002, and returned to work on May 8, 2002. By letter dated August 23, 2002, the Office of Workers' Compensation Programs informed appellant that, based on the facts of his case, his claim would be developed as a new claim for a traumatic injury, assigned claim number 062065274, rather than one for a recurrence of disability. The Office further informed appellant of the type of evidence necessary to establish his claim.

The Board notes that material contained in the record indicates that appellant filed a prior claim for a back injury sustained on November 30, 1990, assigned claim number 060504027, which necessitated surgical laminectomy, discectomy and foraminotomy at L4-5.

By decision dated October 7, 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.

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.[1]

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.[2] 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.[3] 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.[4] The belief of the claimant that a condition was caused or aggravated by the employment is not sufficient to establish a causal relationship.[5]

In this case, it is undisputed that on the day in question appellant replaced the empty five-gallon water cooler jug with a full jug weighing approximately 45 pounds. Therefore, the only issue is whether appellant established that he sustained an injury as a result of this incident.

The evidence relevant to appellant's April 16, 2002 injury consists of treatment notes and medical reports from Dr. John C. Baker, a Board-certified orthopedic surgeon. In a treatment note dated April 19, 2002, Dr. Baker noted that appellant reported experiencing increased back pain in the area of his prior injury after lifting a five-gallon water jug at work. Dr. Baker recommended appellant undergo magnetic resonance imaging (MRI) and advised appellant to remain off work for approximately 10 days. In a follow-up report dated April 29, 2002, Dr. Baker listed the date of appellant's injury as November 30, 1990 and indicated the injury was claim number 060504027. Dr. Baker listed his diagnosis as a herniated lumbar disc but did not provide any explanation for his conclusion. An MRI performed on May 2, 2002 revealed postoperative findings at L4-5, moderate degenerative disc disease and facet disease with bilateral lateral recess stenosis at L2-3, L3-4 and L4-5, but no evidence of focal disc herniation or frank cord compromise. In addition, the record contains additional treatment notes and an attending physician's report, Form CA-20, dated June 24, 2002, in which Dr. Baker noted

[1] *Charles E. Evans*, 48 ECAB 692 (1997).

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

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

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

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

appellant's history of a prior lumbar injury, diagnosed a herniated lumbar disc, and indicated by check mark that appellant's diagnosed condition was causally related to his employment. Finally, the record contains an attending physician's report, Form CA-20, dated September 9, 2002, in which Dr. Baker noted the date of injury as November 30, 1990, with reinjury April 16, 2002, diagnosed a herniated lumbar disc, and indicated by check mark that appellant's diagnosed condition was causally related to his employment.

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.[6] Dr. Baker did not provide 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 the physician did not explain, with medical reasoning, why he felt appellant's current condition was due to his employment.[7] However, Dr. Baker's reports, taken together, raise an uncontroverted inference of causal relationship sufficient to require further development of the case record by the Office.[8] The Board will remand the case for further development of the medical evidence.

On remand the Office should double this case file assigned number 062065274 with any other injury claims appellant has filed for the same parts of the body, including case file assigned number 060504027.[9] The Office should also prepare a statement of accepted facts and refer it 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 his 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.

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

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

[8] *See John J. Carlone, supra* note 3; *Horace Langhorne*, 29 ECAB 820 (1978); *see also Donald L. Morris*, 36 ECAB 140 (1984).

[9] 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.

The October 7, 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.[10]

Dated, Washington, DC
March 7, 2003

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[10] The Board notes that, subsequent to the Office's October 7, 2002 decision and together with his letter of appeal, appellant submitted additional medical evidence from Dr. Baker. The Board cannot review this evidence, however, as the Board's review is limited to the evidence that was before the Office at the time it issued its final decision. *Charles P. Mulholland, Jr.*, 48 ECAB 604 (1997); *Robert D. Clark*, 48 ECAB 422 (1997).