U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES D. HERMAN and DEPARTMENT OF THE TREASURY, BUREAU OF ENGRAVING & PRINTING, Fort Worth, TX

Docket No. 03-1546; Submitted on the Record;
Issued October 6, 2003

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON, WILLIE T.C. THOMAS

The issues are: (1) whether appellant is entitled to a schedule award under section 8107 of the Federal Employees' Compensation Act,[1] based on his accepted condition of lumbar strain; and (2) whether appellant sustained a recurrence of disability on March 31, 2003 causally related to his accepted lumbar strain of March 1, 2000.

Appellant's claim, filed on March 1, 2000 for an injury that day, was accepted by the Office of Workers' Compensation Programs for a lumbar strain. He underwent physical therapy and, after a period of light duty, returned to his regular duties as a plate printer. The medical reports of record indicate that appellant had a preexisting herniated nucleus pulpous at L5-S1, which was diagnosed in a March 1999 magnetic resonance imaging (MRI) scan.

In a report dated February 26, 2001, appellant's treating physician, Dr. Marvin Van Hal, a Board-certified orthopedic surgeon, noted the lumbar disc herniation at L5-S1 and, in a May 21, 2001 report, repeated the MRI scan findings and advised that appellant had an eight percent impairment rating of the spine. Findings on examination at that time were normal with the exception of the reflexes, which were asymmetrical and noted as being 2+ at the right knee and ankle, 2+ at the left knee and absent at the left ankle. Straight leg raising revealed low back discomfort and pulling into the left thigh, but was relatively well tolerated by appellant. A November 15, 2002 MRI scan again demonstrated herniation at L5-S1 with protrusion. Dr. Van Hal continued to submit progress reports regarding appellant's lumbar condition.

On January 6, 2003 appellant filed a claim for a schedule award. By decision dated January 27, 2003, the Office denied the claim, noting that the lumbar spine was not a scheduled member for which an impairment rating could be paid.

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[1] 5 U.S.C. § 8107.

In reports dated March 31, 2003, Dr. Van Hal advised that appellant presented with a history of loss of bladder function on March 29, 2003 with numbness in the perirectal and genital area. He opined that appellant had developed cauda equina syndrome, which necessitated immediate surgery. Dr. Van Hal further requested authorization for an emergency MRI scan. An MRI scan performed on March 31, 2003 demonstrated L5-S1 degenerative disc disease with a broad-based herniation superimposed upon a congenitally narrow canal. This was interpreted as appearing larger than on the MRI scan of November 15, 2002. On that same day appellant underwent decompression laminectomy at L5-S2 with bilateral disc excision at L5-S1 and removal of extruded fragments at the S2 nerve root.

On April 4, 2003 appellant submitted a CA-7 form, claiming wage-loss compensation from May 5, 2003 onward.[2] In an April 17, 2003 letter, the Office advised him that he should file a CA-2A, notice of recurrence and asked him for medical evidence establishing disability due to the accepted work injury. The Office added that appellant's physician needed to explain how his current disability was connected to the original work injury or employment factors. It further advised him to describe his work activities since returning to regular duty on May 21, 2001 and explain why he was incapable of working beginning May 5, 2003. Any changes in work assignments were also to be discussed. On May 5, 2003 appellant filed a recurrence claim for disability commencing March 31, 2003.

Appellant thereafter submitted a May 8, 2003 report, in which Dr. Van Hal referred to the results of the MRI scans conducted in 2000, on November 15, 2002 and March 31, 2003. He again advised that the L5-S1 disc herniation appeared to be the basis for appellant's bowel and bladder dysfunction, which had necessitated the surgery. Dr. Van Hal diagnosed cauda equina syndrome associated with the herniation at L5-S1 and opined that there was a "direct relationship between [appellant's] work situation and his disc herniation." He advised that appellant was currently totally disabled but should eventually be able to return to work. A May 12, 2003 progress note pertaining to the follow-up of appellant's cauda equina syndrome was also submitted.

By decision dated May 19, 2003, the Office denied that appellant sustained a recurrence of disability on March 31, 2003, finding that the factual and medical evidence failed to establish the claim.

The Board finds that appellant is not entitled to a schedule award.

The schedule award provisions of the Act and its implementing regulation[3] set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to

[2] May 5, 2003 represented the date appellant would begin leave-without-pay status.

[3] 20 C.F.R. § 10.404 (1999).

all claimants. The A.M.A., *Guides*[4] has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.[5]

No schedule award is payable for permanent loss of or loss of use of, anatomical members or functions or organ of the body not specified in the Act or in the implementing regulations.[6] As neither the Act nor the regulations provide for the payment of a schedule award for the permanent loss of use of the back or the body as a whole,[7] no claimant is entitled to such an award.[8] However, a schedule award is payable for a permanent impairment of any of the extremities that is due to an employment-related back condition.[9]

In the present case, the medical evidence of record is insufficient to establish that appellant is entitled to a schedule award in accordance with the fifth edition of the A.M.A., *Guides*. The only medical evidence submitted containing an impairment rating was a report from Dr. Van Hal dated May 21, 2001, in which he reported that appellant had an eight percent physical impairment rating of the lumbar spine, based on structural abnormality with significant previous radiculopathy. The Board, however, notes that the disc herniation at L5-S1 has not been accepted as employment related. Furthermore, the record does not contain medical evidence indicating that appellant sustained a nerve impairment in an extremity as a result of the employment-related back condition and the required analysis for such under the A.M.A., *Guides*. Consequently, he has not established entitlement to a schedule award.

The Board further finds that appellant has failed to meet his burden of proof to establish that he sustained a recurrence of disability causally related to the accepted work injury.

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the recurrence of the disabling condition for which compensation is sought is causally related to the accepted employment injury.[10] This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.[11] Causal

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[4] American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB ___ (Docket No. 01-1361, issued February 4, 2002).

[5] *See Joseph Lawrence, Jr., supra* note 3; *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

[6] *Henry B. Floyd, III*, 52 ECAB 220 (2001).

[7] The Act itself specifically excludes the back from the definition of "organ." 5 U.S.C. § 8101(19); *see also Jay K. Tomokiyo*, 51 ECAB 361 (2000); *Rozella L. Skinner*, 37 ECAB 398 (1986).

[8] *George E. Williams*, 44 ECAB 530 (1993).

[9] *Denise D. Cason*, 48 ECAB 530, 531 (1997); *S. Gordon McNeil*, 42 ECAB 140 (1990).

[10] *Ronald C. Hand*, 49 ECAB 113 (1997).

[11] *Helen K. Holt*, 50 ECAB 279 (1999).

relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[12]

In this case, the Board finds that appellant has submitted no evidence showing that his duties at work were changed. The Board further finds that the medical evidence is insufficiently probative to establish that appellant's accepted back strain worsened to the extent of preventing him from working or that his disability after March 31, 2003 was causally related to the accepted work injury in March 2000. Although Dr. Van Hal continually diagnosed a herniated nucleus pulpous at L5-S1, with protrusion or fragmentation and, in his report of May 8, 2003, opined that appellant's current back condition was causally related to the March 1, 2000 injury, the Board finds that the opinion of Dr. Van Hal fails to have the reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue of the present case. He provided no rationale to support his conclusion pertaining to causation. Dr. Van Hal did not explain how a lumbar strain caused by appellant's duties as a plate printer in March 2000, resulted in a herniated disc. In fact, the medical record contains a report indicating that a March 1999 MRI scan revealed a herniated nucleus pulpous at L5-S1. Furthermore, in his October 28, 2002 report, Dr. Van Hal noted that appellant had a prior back condition for which he had underwent an epidural procedure in 1999. Thus, his May 8, 2003 report is of decreased probative value as he failed to explain the inconsistencies regarding the 1999 MRI scan findings and epidural treatment. The Board, therefore, finds that Dr. Van Hal's opinion regarding causal connection between the accepted work injury and appellant's disability commencing March 31, 2003 is not supported by the requisite medical rationale.[13] Thus, appellant has failed to meet his burden of proof to establish that he sustained a recurrence of disability commencing March 31, 2003 causally related to his March 1, 2000 employment injury.[14]

[12] *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[13] *See Dennis Mascarenas*, 49 ECAB 215 (1997).

[14] *See Carmen Gould*, 50 ECAB 504, 508 (1999) (finding that a physician's opinion that failed to explain the relationship between appellant's current back condition and the accepted lumbar sprain was insufficient to establish causation and thus failed to meet appellant's burden of proof).

The May 19 and January 27, 2003 decisions of the Office of Workers' Compensation Programs are hereby affirmed.[15]

Dated, Washington, DC
October 6, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

[15] The Board notes that the record contains new evidence after the Office's May 19, 2003 decision. However, the Board cannot consider evidence that was not before the Office at the time of the final decision; *see Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35 (1952); 20 C.F.R. § 501.2(c)(1). Appellant may resubmit this evidence and legal contentions to the Office accompanied by a request for reconsideration pursuant to 5 U.S.C. § 8128(a). 20 C.F.R. § 501.2(c).