United States Department of Labor
Employees' Compensation Appeals Board

A.J., Appellant	)	
and	)	**Docket No. 08-1073**
	)	**Issued: November 13, 2008**
U.S. POSTAL SERVICE, BULK MAIL FACILITY, Philadelphia, PA, Employer	)	

Appearances:
Robert Land, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 27, 2008 appellant, through his attorney, filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated November 29, 2007 denying his claim for a recurrence of disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has met his burden of proof in establishing that he sustained a recurrence of total disability on May 5, 2000 causally related to his April 14, 1999 employment injury; and (2) whether appellant has met his burden of proof in establishing that he sustained a traumatic injury on May 5, 2000.

FACTUAL HISTORY

On April 16, 1999 appellant, then a 54-year-old mail handler, filed a traumatic injury claim alleging that he sustained a chest wall contusion on April 14, 1999 when a tow motor struck him. He returned to work on April 19, 1999.

Appellant filed a notice of recurrence of disability on May 1, 1999 and stated that he sustained a recurrence of total disability on April 24, 1999. He stated that following his April 14, 1999 injury he continued to experience chest pains, difficulty breathing and pain with movement. Appellant alleged that he had developed constant anterior chest pains, painful breathing, pain with movement of the upper body and exacerbation of chest pain.

By decision dated June 9, 1999, the Office accepted appellant's claim for chest wall contusion. On January 6, 2000 it issued a decision denying his claim for compensation finding that he failed to submit the necessary medical opinion evidence to establish that he was totally disabled beginning April 22, 1999.

Dr. Jonathan Bromberg, a Board-certified orthopedic surgeon, completed a report on September 3, 1999 and noted that appellant still reported discomfort in his sternum. He stated that clinically appellant was fine, discharged him from care and released him to return to work on September 7, 1999. On February 18, 2000 Dr. Bromberg indicated that appellant could return to light duty on February 21, 2000 with 10-pound restrictions on lifting, pushing and pulling due to costochondritis of the chest.

Appellant filed a recurrence of disability claim on August 16, 2000 alleging that on February 18, 2000 he sustained a recurrence of disability causally related to his April 14, 1999 employment injury. He stopped work on May 5, 2000. In a report dated February 18, 2000, Dr. Bromberg noted that appellant reported continued chest pain. Appellant stated that he was required to lift and carry over 25 pounds at the employing establishment. Dr. Bromberg found tenderness over the costochondral areas and evidence of costochondritis of the chest wall. He provided work restrictions.

The employing establishment responded to appellant's claim on August 24, 2000 and stated that appellant never worked outside his light-duty medical restrictions. The employing establishment further noted that appellant did not report to work on May 5, 2000 due to difficulties with his automobile.

In a report dated May 5, 2000, Dr. Bromberg stated that he examined appellant on that date as appellant had developed chest pain due to sneezing. He found no tenderness over the chest wall, full motion of the shoulders and good strength in the upper extremities. Dr. Bromberg stated that while appellant may be inflaming his sternal costal joints when he sneezed no treatment was needed.

In a letter dated September 12, 2000, the Office requested additional factual and medical evidence from appellant regarding his May 5, 2000 recurrence of total disability. It allowed 30 days for a response.

Appellant, through his attorney, requested reconsideration of the January 6, 2000 decision on December 29, 2000. In support of his request, he submitted a report dated May 12, 2000 from Dr. Ghassem Kalani, a Board-certified physiatrist, which noted the history of injury on April 14, 1999. Dr. Kalani examined appellant and found that in the thoracic area there appeared to be a projection of the upper third of the sternum and indentation in the lower part of the sternum. He diagnosed crush injury to the anterior chest secondary to appellant's employment

injury and evidences of fracture of the proximal body of the sternum as well as sprain, strain and contusion of the right shoulder and clavicle. Dr. Kalani indicated that appellant could have sustained a peripheral nerve injury to the brachial plexus. He recommended physical therapy. On May 19, 2000 Dr. Kalani found electrophysiological evidence of bilateral brachial plexopathy. In a note dated October 24, 2000, he stated that appellant was unable to perform his date-of-injury duties since April 14, 1999.

By decision dated February 15, 2001, the Office denied appellant's May 5, 2000 claim for a recurrence of total disability. Appellant, through his attorney, requested an oral hearing on this decision on February 26, 2001. By decision dated July 2, 2001, the hearing representative set aside the Office's February 15, 2001 decision finding that the Office had not properly reviewed the reports of Dr. Bromberg and Kalani.

By decision dated October 15, 2001, the Office denied modification of the January 6, 2000 decision finding that the medical evidence did not support that appellant was totally disabled following his April 20, 1999 return to light-duty work.

By decision dated October 26, 2001, the Office again denied appellant's claim for recurrence of total disability on May 5, 2000.

Appellant, through his attorney, requested reconsideration of the October 15, 2001 decision on October 11, 2002. By decision dated October 25, 2002, the Office found that this evidence was not sufficient to modify the January 6, 2000 and October 15, 2001 decisions denying a recurrence of total disability on April 20, 1999.[1]

Appellant, through his attorney, requested reconsideration of the October 26, 2001 decision on October 25, 2002. He argued that appellant had submitted sufficient medical evidence to establish that his recurrence of disability beginning May 5, 2000 was due to his accepted employment injury. Appellant submitted a June 13, 2000 magnetic resonance imaging (MRI) scan which found no definite fractures of the medial aspect of the right clavicle, sternoclavicular joint or manubruim. A June 10, 1999 bone scan showed increased accumulation within the proximal body of the sternum and within the medial right clavicle. The diagnoses were fractures of the medial right clavicle and the proximal body of the sternum.

By decision dated January 29, 2003, the Office accepted that appellant sustained the additional conditions of fractured clavicle and fractured sternum as a result of the April 14, 1999 employment injury. It further accepted that appellant sustained a recurrence of chest pain on February 18, 2000 due to residuals of the April 14, 1999 employment injury resulting in a diagnosis of costochondritis. However, the Office found that the medical evidence did not establish that appellant was totally disabled beginning May 5, 2000 due to his accepted employment injuries.

[1] The Office issued its last decision on this issue on October 25, 2002. As this decision was more than one year prior to the February 27, 2008 appeal to the Board, the Board lacks jurisdiction to consider this issue on appeal. *See* 20 C.F.R. § 501.3(d)(2).

In a letter dated January 27, 2004, appellant's attorney disagreed with the Office's denial of appellant's alleged recurrence of total disability beginning May 5, 2000. He submitted a report from Dr. Kalani dated January 26, 2004 which opined that appellant's brachial plexopathy was due to the work injury, as "the brachial plexus directly passes underneath the fractured clavicle on the right side." Counsel further stated that appellant's chronic symptomatology was the direct result of his work injuries due to the deformity of the fractures and the development of costochondritis. Dr. Kalani concluded, "It is my opinion that the work performed by [appellant] from February 2000 to May 5, 2000 albeit lighter duty that the patient's normal work produced a period of total disability commencing May 5, 2000. This work aggravated the original work injury producing the period of disability from May 5, 2000." He stated that appellant was capable of light work beginning February 9, 2001.

By decision dated April 28, 2004, the Office denied appellant's claim for a recurrence of total disability beginning May 5, 2000. It found that Dr. Kalani's report was not sufficient to meet appellant's burden of proof as it was not consistent with the contemporaneous evidence. The Office further found that appellant had not submitted sufficient evidence to establish brachial plexopathy as a result of the accepted employment injuries.

Appellant, through his attorney, requested reconsideration of the April 28, 2004 decision on April 18, 2005. He submitted a narrative statement alleging that while performing light-duty work on May 5, 2000 he lifted a box and experienced "exquisite pain" in his chest. Counsel submitted medical treatment records dated May 9, 2000 from Chestnut Hill Healthcare Emergency Department mentioning that appellant dropped a box on May 9, 2000 and diagnosing nonspecific chest pain.

By decision dated August 22, 2005, the Office reviewed the merits of appellant's claim denied modification of its prior decision and noted that the evidence submitted suggested that appellant believed that he had sustained a new injury on May 5, 2000 rather than a recurrence of total disability.

Appellant, through his attorney, requested reconsideration on August 10, 2006 and submitted a report from Dr. Bromberg dated May 3, 2005. Dr. Bromberg stated, "The assumption I will make is that [appellant] did sustain an injury on May 5, 2000 by picking up a box at work on that date." He noted that appellant reported to the Chestnut Hill emergency room and complained of increased discomfort in his chest on May 9, 2000. Dr. Bromberg concluded, "Based upon that assumption and if I knew about the further work injury on May 5, 2000, I would have advised a period of rest and avoidance of work on May 5, 2000.

By decision dated October 11, 2006, the Office denied modification of its prior decisions addressing appellant's alleged recurrence of total disability on May 5, 2000. It found that Dr. Bromberg's report was not sufficiently detailed and based on a proper factual background to support appellant's claim for recurrence of total disability. The Office stated, "The evidence does not establish that you sustained a recurrence of disability on May 5, 2000 when you stopped work or that you sustained a new injury on May 5, 2000." It then analyzed the medical evidence to determine if this established a claim for a new injury on May 5, 2000.

Appellant, through his attorney, requested reconsideration on October 10, 2007. In support of this request, he submitted notes from Dr. Raymond Lohier, appellant's family physician, dated May 11, 2000 which read in the entirety, "pain stenocostal region." By decision dated November 29, 2007, the Office denied modification of its prior decisions finding that Dr. Lohier's notes were not sufficient to establish that appellant was totally disabled due to his employment beginning May 5, 2000.

LEGAL PRECEDENT -- ISSUE 1

A recurrence of disability is the inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment which caused the illness. The term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force), or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.[2] When an employee who is disabled from the job he held when injured on account of employment-related residuals returns to a limited-duty position or the medical evidence of record establishes that he can perform the limited-duty position, the employee has the burden of establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and to show that he cannot perform such limited-duty work. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the limited-duty job requirements.[3]

ANALYSIS -- ISSUE 1

The Office has accepted that appellant sustained a chest wall contusion, costochondritis, a fractured clavicle and a fractured sternum as a result of the April 14, 1999 employment injury. Appellant returned to light-duty work on April 19, 1999 and again in September 7, 1999. He alleged a recurrence of total disability beginning May 5, 2000. The Office has repeatedly found that appellant failed to submit the necessary medical opinion evidence to establish that he sustained a recurrence of total disability beginning May 5, 2000 due to a change in the nature and extent of his injury-related condition.[4]

In support of his claim for total disability beginning on May 5, 2000, appellant submitted a report dated October 24, 2000, from Dr. Kalani, a Board-certified physiatrist, which stated that appellant had been unable to perform his regular duties since April 14, 1999. While this report supports that appellant was partially disabled due to his accepted employment injuries, Dr. Kalani did not provide a date of total disability and did not describe any change in the nature and extent of appellant's injury-related condition on or after May 5, 2000.

[2] 20 C.F.R. § 10.5(x).

[3] *Joseph D. Duncan*, 54 ECAB 471, 472 (2003); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

[4] Appellant did not allege that his light-duty job requirements change on May 5, 2000.

On January 26, 2004 Dr. Kalani stated that appellant's light-duty work from February 2000 to May 5, 2000 produced a period of total disability beginning May 5, 2000. He did not describe or diagnose a change in the nature and extent of appellant's injury-related condition on or after May 5, 2000. Furthermore, Dr. Kalani did not explain how or why appellant's employment-injury resulted in a period of total disability beginning May 5, 2000. For these reasons, this report is not sufficient to meet appellant's burden of proof.

LEGAL PRECEDENT -- ISSUE 2

An employee seeking benefits under the Federal Employees' Compensation Act[5] 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 and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[6]

The Office's regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected.[7] To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. The employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged. An employee has the burden of establishing the occurrence of an injury at the time, place and in the manner alleged, by the preponderance of the reliable, probative and substantial evidence. An injury does not have to be confirmed by eyewitnesses in order to establish the fact that the 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 subsequent course of action. An employee has not met his burden of proof where there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.[8]

The employee must also submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury. The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized 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

[5] 5 U.S.C. §§ 8101-8193.

[6] *Jussara L. Arcanjo*, 55 ECAB 281, 283 (2004).

[7] 20 C.F.R. § 10.5(ee).

[8] *Id.*

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.[9]

ANALYSIS -- ISSUE 2

Appellant also submitted factual and medical evidence addressing a new injury arising on May 5, 2000. He alleged that he lifted a box in the performance of duty on that date and experienced "exquisite" chest pain. Appellant submitted medical treatment notes from the Chestnut Hill emergency room noting that he dropped a box on May 9, 2000. He submitted a report from Dr. Bromberg noting that he sought treatment on May 5, 2000 due to sneezing. The employing establishment disputed appellant's claim noting that he did not report to work on May 5, 2000 due to difficulties with his car. The Office found that appellant had not met his burden of proof in establishing that he sustained a new injury on May 5, 2000.

The Board finds that there are such discrepancies in the factual evidence as to cast serious doubt upon the validity of the claim. Appellant alleged that he lifted a box in the performance of duty on May 5, 2000. The employing establishment denied that he reported to work on the date. Appellant sought medical treatment from Dr. Bromberg on May 5, 2000 and did not describe the alleged employment injury, instead noting that he had chest pain following repeated sneezing. Finally, the emergency room notes from Chestnut Hill hospital state that appellant dropped a box on May 9, 2000 and do not discuss whether this incident occurred at work. Due to these factual discrepancies, the Board finds that appellant has not met his burden of proof in establishing a new traumatic injury on May 5, 2000.

CONCLUSION

The Board finds that appellant has not submitted sufficient medical evidence to meet his burden of proof in establishing a recurrence of total disability on May 5, 2000. The Board further finds that there are such discrepancies in the factual evidence that appellant has not established a new traumatic injury on May 5, 2000.

[9] *Id.*

ORDER

IT IS HEREBY ORDERED THAT the November 29, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 13, 2008
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board