U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DENIS D. MEUNIER and U.S. POSTAL SERVICE,
POST OFFICE, Portland, OR

Docket No. 00-1688; Submitted on the Record;
Issued April 19, 2001

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issue is whether appellant's disability from April 29, 1999 to January 28, 2000 is causally related to his accepted employment injury of 1996.

On February 23, 1996 appellant, then a 48-year-old parcel post distributor, filed an occupational disease claim asserting that his duties caused a repetitive motion injury to his left neck, arm and shoulder. The Office of Workers' Compensation Programs accepted his claim for a temporary strain of the left neck and shoulder superimposed on degenerative joint disease. The Office also accepted a herniated nucleus pulposus (HNP) at C6-7 and left C7 radiculopathy.

Appellant was reemployed as a distribution clerk effective September 13, 1997 with no loss of wage-earning capacity. On June 12, 1998 the employing establishment advised appellant that it was necessary to change his starting time. Effective July 18, 1998 his starting time changed from 6:00 a.m. to 9:00 a.m.

Beginning on September 20, 1999, appellant filed claims seeking compensation for disability from April 29, 1999 to January 28, 2000.

In support thereof he submitted a June 3, 1999 report from his attending family practitioner, Dr. Randell P. Jura. After noting appellant's myofascial soft tissue and chronic cervical and thoracic strains, he reported:

> "In addition, [appellant] takes medication in the form of anti-inflammatory Motrin in doses of 800 milligrams at least once per day. [He] states that the dose makes [him] feel sleepy and drowsy. [Appellant's] current working hours are from 9 a.m. to 5:50 p.m. [at] night. [He] takes the Motrin at 3 p.m. in the afternoon in order to treat his upper back chronic pain. The Motrin then causes drowsiness which affects [appellant's] ability to work at the [employing establishment] … [appellant] is particularly worried about having an accident on the way home due to the side effects of the medication. [His] contention is that working from the

hours of 6 a.m. in the morning to 2:30 p.m. in the afternoon will allow him to go home and take his medication in safety. The result will be no drowsy side effects for work nor will it affect his nighttime commute.

"In conclusion, it is well known that anti-inflammatory medication all the way from aspirin to Motrin and other types can cause drowsiness in patients who take them and that [appellant] will be best served by not having to take the Motrin at work and risk drowsiness and resultant effects on the job as well as risk with his … commute, therefore I believe that it is medically necessary for [appellant] to change his work schedule back to the end point of 2:30 p.m. starting at 6 a.m."

On November 16, 1999 the Office asked appellant for additional information, including the reason he could not take his medication at 6:00 p.m. when he returned home from work.

In response, Dr. Jura submitted to the Office a December 23, 1999 report, which states as follows:

"[Appellant] has asked me to clarify my previous letter to you from June 1999 stating the reasons that [he] must be allowed to work earlier in his workday. These are medical facts and indisputable. [Appellant] has chronic debilitating and painful degenerative disease of the spine causing chronic daily pain. [He] must take anti-inflammatory medication to manage the pain or he [will] become physically dysfunctional both at home and at work. The name of the medication is Motrin. Motrin can cause drowsiness and in [appellant's] case, does cause drowsiness. [Appellant's] degenerative spinal pain is activity related. Every hour after [he] arises from sleep the pain increases. Th[is] occurs at work as the work day progresses or at home even when not working. As a result, [appellant] must take medication by 3:00 p.m. every day, work or not, in order to control the pain and maintain physical functioning at work at the [employing establishment] or at home. When [appellant] takes Motrin he gets drowsy.

"With [appellant's] current work schedule of 9 a.m. to 5:50 p.m., [he] must take his Motrin at work which then makes him drowsy at work. Having sedation at work and certainly driving home from work is very ill-advised and may result in work or vehicular accident and injury to [appellant]. [He] has on many occasions petitioned the [employing establishment] to change his shift to 6 a.m. to 2:30 p.m.. Under that schedule, [appellant] could go home and safely take his medication without the danger of drowsiness at work or driving. It is my conclusion from the above medical facts that it is very important that the [employing establishment] service change[d] [appellant's] work hours to accommodate his medical condition and treatment against possible disastrous results from medication drowsiness used on the job."

In a decision dated February 23, 2000, the Office denied appellant's claims for compensation. The Office found that he had provided no satisfactory explanation of why he could not continue his practice of taking Motrin for pain relief upon returning home from work after his later shift.

The Board finds that appellant has not met his burden of proof to establish that his disability from April 29, 1999 to January 28, 2000 is causally related to his accepted employment injury of 1996.

A claimant seeking benefits under the Federal Employees' Compensation Act[1] has the burden of proof to establish the essential elements of his claim by the weight of the evidence,[2] including that any specific condition or disability for work for which he claims compensation is causally related to that employment injury.[3]

The evidence generally required to establish causal relationship is rationalized medical opinion evidence. The claimant must submit a rationalized medical opinion that supports a causal connection between his current condition or disability and the employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of the claimant's employment injury and must explain from a medical perspective how the current condition or disability is related to the injury.[4]

Appellant seeks compensation for disability from April 29, 1999 to January 28, 2000, but the medical evidence of record is insufficient to establish that the claimed disability is causally related to the accepted employment injury of 1996. Dr. Jura has explained that appellant must take his anti-inflammatory medication by 3:00 p.m. every day, which worked well when appellant's shift ended at 2:30 p.m. because he could then take the medication at home and not become drowsy at work or on his commute. The shift in appellant's starting time, however, meant that appellant would have to take his sedation-inducing medication at work, which Dr. Jura reported was very ill advised.

The Board finds that Dr. Jura's argument is not sufficiently reasoned to establish appellant's claims. Appellant's degenerative spinal pain is activity related and every hour after he arises from sleep the pain increases. If he arises from sleep at the same time he arose previously, when his work shift began at 6:00 a.m., appellant must take his medication by 3:00 p.m. regardless of whether he is working or at home.

What the evidence fails to explain is the reason appellant must arise from sleep at the same time he arose previously. Dr. Jura offered no medical reason why appellant could not go to bed a few hours later or arise from sleep a few hours later beginning July 18, 1998 when his starting time changed from 6:00 a.m. to 9:00 a.m. Such a shift in sleep would, under Dr. Jura's reasoning, allow appellant to work his full 9:00 a.m. shift and take medication upon returning home that evening.

Further, Dr. Jura has failed to identify any periods of disability for work. In fact, on June 3, 1999 he completed an attending physician's report showing numerous treatment dates but

[1] 5 U.S.C. §§ 8101-8193.

[2] *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

[3] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[4] *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

reporting no total or partial disability for work at any time. This fails to support appellant's claims for disability beginning April 29, 1999.

The February 23, 2000 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
April 19, 2001

David S. Gerson
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member