

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LESLIE D. HEACOCK and SMITHSONIAN INSTITUTION,
OFFICE OF PHYSICAL PLANT, Washington, D.C.

*Docket No. 97-2675; Oral Argument Held September 10, 1998;
Issued October 13, 1998*

Appearances: *Leslie D. Heacock, pro se; Paul J. Klingenberg, Esq.,
for the Director, Office of Workers' Compensation Programs.*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant sustained an injury in the performance of duty on April 22, 1996 as alleged.

On May 1, 1996 appellant, then a 56-year-old project manager, filed a claim for compensation alleging that on April 22, 1996, he injured his lower back while in the performance of duty.

In an undated report received by the Office of Workers' Compensation Programs on September 9, 1996, Dr. Alan K. Sokoloff, a chiropractor, noted that he performed an orthopedic and neurological evaluation on April 25, 1996 and determined that appellant had sustained a lumbosacral sprain and strain with suspected lumbosacral radiculitis.

By letter dated September 6, 1996, the Office advised appellant that chiropractor's services are limited under the Federal Employees' Compensation Act¹ to manual manipulation of the spine to correct a subluxation as demonstrated by x-rays to exist. The Office further noted that if a chiropractor diagnosed something other than a subluxation, that diagnosis must be confirmed by an orthopedic surgeon.

By decision dated October 17, 1996, the Office found that appellant had not established a causal relationship between his medical condition and performance of duty.

¹ 5 U.S.C. §§ 8101-8193.

On October 22, 1996 appellant requested an oral hearing. A hearing was held on April 10, 1997 at which time appellant testified that he was treated by Dr. Sokoloff on about April 24, 1996 although he did not take x-rays at that time.

By decision dated June 9, 1997, an Office hearing representative found that appellant had not established that he sustained an injury in the performance of duty as alleged. The Office hearing representative stated that appellant's chiropractor did not take x-rays of the lumbar spine, nor did he diagnose subluxation and, therefore, he was not considered a physician as defined by the Act and his report did not constitute medical evidence.

The Board finds that appellant has not established that he sustained an injury in the performance of duty on April 22, 1996 as alleged.

An employee seeking benefits under the Act² has the burden of establishing the essential elements of his or her claim³ including the fact that the individual is an "employee of the United States" within the meaning of the Act,⁴ that the claim was timely filed within the applicable time limitation period of the Act,⁵ 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.⁶

To accept fact of injury in a traumatic injury case, the Office, in addition to finding that the employment incident occurred in the performance of duty as alleged, must also find that the employment incident resulted in an "injury." The term "injury" as defined by the Act, as commonly used, refers to some physical or mental condition caused either by trauma or by continued or repeated exposure to, or contact with, certain factors, elements or conditions.⁷ The question of whether an employment incident caused a personal injury generally can be established only by medical evidence.⁸

In the present case, the Office accepted that appellant experienced an employment incident on April 22, 1996 as alleged. The issue is whether appellant has submitted sufficient medical evidence to establish that he sustained an injury due to the incident and the Board finds that appellant has not met his burden of proof in this case. The medical evidence submitted prior to the Office decision consisted essentially of an initial and final evaluation of appellant from Dr. Sokoloff, a chiropractor. In neither report did the doctor indicate that he had taken x-rays or

² *Id.*

³ See *Daniel R. Hickman*, 34 ECAB 1220 (1983); 20 C.F.R. § 10.110.

⁴ *James A. Lynch*, 32 ECAB 216 (1980); see also 5 U.S.C. § 8101(1).

⁵ 5 U.S.C. § 8122.

⁶ See *Daniel R. Hickman*, *supra* note 3.

⁷ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁸ *John J. Carlone*, 41 ECAB 354 (1989).

had reviewed x-rays in order to support his diagnosis of lumbosacral sprain and strain with suspect lumbosacral radiculitis.

Section 8101(2) of the Act provides that the term “‘physician’ ... includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.”⁹ In order for Dr. Sokoloff to be considered a “physician” under the Act and, therefore, establish his reports as probative medical evidence, he must diagnose a subluxation as demonstrated by x-ray. Dr. Sokoloff did not diagnose a subluxation nor indicate that x-rays were taken. Accordingly, the Board finds that Dr. Sokoloff is not a “physician” under the Act and his reports are of no probative value to appellant’s claim. Since appellant did not submit supporting medical evidence, he has not established an injury in the performance of duty on April 22, 1996.

The decisions of the Office of Workers’ Compensation Programs dated June 9, 1997 and October 17, 1996 are hereby affirmed.

Dated, Washington, D.C.

October 13, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member

⁹ 5 U.S.C. § 8101(2).