U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FRANCES FEDERICO-EYLER and DEPARTMENT OF THE NAVY, NAVAL INVENTORY CONTROL POINT, Mechanicsburg, PA

Docket No. 98-1636; Submitted on the Record;
Issued October 19, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
DAVID S. GERSON

The issue is whether appellant has met her burden of proof to establish that she sustained an injury while in the performance of the duty.

The Board has duly reviewed the case record in this appeal and finds that appellant has failed to meet her burden of proof to establish that she sustained an injury while in the performance of the duty.

On May 28, 1997 appellant, then a 48-year-old organizational development specialist, filed a traumatic injury claim alleging that on March 17, 1997 she sustained neck and back injuries due to an automobile accident. On the reverse of the claim form, Lester, G. Kissinger, Jr., appellant's supervisor, indicated that appellant was in travel status returning from a training class when her car was hit from behind at a red traffic light. Appellant did not stop work. Appellant's claim was accompanied by an accident report.

In a July 23, 1997 letter, the Office of Workers' Compensation Programs advised appellant to answer specific questions and to submit medical evidence supportive of her claim. In response, appellant answered the Office's questions.

By decision dated August 28, 1997, the Office found the evidence of record insufficient to establish that appellant sustained an injury due to the claimed accident. Specifically, the Office found the evidence of record sufficient to establish that appellant experienced the claimed accident, but insufficient to establish that a condition had been diagnosed due to the accident. In a November 10, 1997 letter, appellant requested reconsideration of the Office's decision accompanied by medical evidence.

By decision dated February 24, 1998, the Office denied appellant's request for modification based on a merit review of the claim.

An employee seeking benefits under the Federal Employees' Compensation Act[1] 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 limitations 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.[2] 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.[3]

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[4] In this case, the Office accepted that appellant actually experienced the claimed event. The Board finds that the evidence of record supports this incident.

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.[5] In the instant case, appellant has submitted no rationalized medical evidence establishing that she sustained a medical condition causally related to the March 17, 1997 employment incident.

The only medical evidence of record is an August 29, 1997 attending physician's report of Dr. Gerald M. Dincher, a chiropractor, revealing a history of appellant's car accident, and a diagnosis of cervicalgia, pain in the thoracic spine and lumbago. Dr. Dincher indicated that appellant's conditions were caused or aggravated by the employment activity by placing a checkmark in the box marked "yes." Under section 8101(2) of the Act,[6] "[t]he 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 of the spine as demonstrated by x-ray to exist and subject to regulation by the Secretary."[7] If a chiropractor's reports are not based on a diagnosis of subluxation as demonstrated by x-ray to exist, they do not

[1] 5 U.S.C. §§ 8101-8193.

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

[3] *Daniel J. Overfield*, 42 ECAB 718 (1991).

[4] *Elaine Pendleton*, *supra* note 2.

[5] 20 C.F.R. § 10.110(a); *see John M. Tornello*, 35 ECAB 234 (1983).

[6] 5 U.S.C. §§ 8101-8193.

[7] 5 U.S.C. § 8101(2); *see also* 20 C.F.R. § 10.400(a); *Robert J. McLennan*, 41 ECAB 599 (1990); *Robert F. Hamilton*, 41 ECAB 431 (1990).

constitute competent medical evidence to support a claim for compensation.[8] Dr. Dincher failed to diagnose a subluxation as demonstrated by x-ray; therefore, his report does not constitute competent medical evidence under the Act. Thus, appellant has failed to satisfy her burden of proof in this case.

The February 24, 1998 and August 28, 1997 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, D.C.
October 19, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

David S. Gerson
Member

[8] *Loras C. Dignann*, 34 ECAB 1049 (1983).