U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DEBRA COCHRAN and DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Boston, MA

Docket No. 00-2330; Submitted on the Record;
Issued May 11, 2001

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant met her burden of proof to establish that she sustained an injury in the performance of duty on December 10, 1999 as alleged.

On January 3, 2000 appellant, then a 40-year-old licensed nurse practitioner, filed a traumatic injury claim, alleging that on December 10, 1999 she sustained an injury in the form of pain in her neck and lower back and tingling down her left arm. Appellant alleged that the injury occurred while lifting a patient whose legs had given out from a chair to a stretcher. She stopped work on December 11, 1999.

Appellant's traumatic injury claim was accompanied by a medical report dated January 3, 2000 from Dr. Robert Astapoveh, a chiropractor, who reported that appellant was treated for a cervical thoracic strain with associated myofascitis on December 13, 1999 for injuries sustained while on the job. In a duty status report accompanying the claim, a physician's assistant noted that appellant was disabled from work from January 3 to 6, 2000 due to the December 10, 1999 injury.

By letter dated January 28, 2000, the Office of Workers' Compensation Programs informed appellant that additional evidence was needed in order to make a determination on her claim. The Office allowed her 30 days to respond.

Appellant submitted reports dated January 7 and 26, 2000 from Dr. Astapoveh in response to the Office request. In the January 7, 2000 report, Dr. Astapoveh stated that appellant was treated for cervical subluxations along with cervical thoracic strain injuries on December 13, 1999 due to injuries sustained while on the job. In the January 26, 2000 report, he stated that he reevaluated appellant on January 24, 2000 and recommended that she remain off work. In an accompanying attending physician's report, Dr. Astaproveh diagnosed cervical thoracic strain with subluxation complex myofascitis and indicated by checkmark that her condition was caused

or aggravated by a work-related injury on December 10, 1999. He further indicated that appellant was disabled from work at that time with no anticipated date of return.

By decision dated March 1, 2000, the Office denied appellant's claim on the grounds that the medical evidence was insufficient to establish that she sustained an injury in the performance of duty as alleged. The Office noted that the evidence submitted consisted of reports from a chiropractor and that a chiropractor could only be considered a physician under the Federal Employees' Compensation Act when a subluxation of the spine was diagnosed and supported by x-ray evidence. The Office found that as no x-ray evidence was submitted, appellant's claim must be denied.

On appeal, appellant argued that she was seven months pregnant at the time of her injury and was advised by her chiropractor that she should not submit to x-rays due to that condition.

The Board finds that appellant did not meet her burden of proof to establish that she sustained an injury in the performance of duty on December 10, 1999, as alleged.

An employee seeking benefits under the 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 limitation established in 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]

To determine whether an employee satisfied his or her burden of proof, the Office first considers whether the employment incident occurred at the time, place and in the manner alleged.[3] Second, the Office must determine whether there is a causal relationship between the employment incident and the disability and/or condition for which compensation is claimed.[4] An employee may satisfy the burden of proof establishing that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition is related to that incident.

In its March 1, 2000 decision, the Office accepted that the employment incident occurred on December 10, 1999, as alleged. The remaining issue is whether the alleged injury was caused by the employment incident. The causal relationship between the incident and the alleged disability and/or condition is generally established only by medical evidence.[5] The employee must submit evidence containing a rationalized medical opinion based on a complete factual and medical background in support of the causal relationship.[6] Such evidence includes a physician's

[1] 5 U.S.C. §§ 8101-8193.

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

[3] *Shirley A. Temple*, 48 ECAB 404, 407 (1997); *Elaine Pendleton*, *supra* note 2 at 1145.

[4] *See Elaine Pendleton*, *supra* note 2 at 1147.

[5] *David M. Ibarra*, 48 ECAB 218, 219 (1996).

[6] *Gary L. Fowler*, 45 ECAB 365, 371 (1994).

rationalized medical opinion on the issue of whether there is a causal relationship between the employee's injury and/or condition and the employment incident.[7] The physician's opinion must be based on a complete factual and medical background of the claimant, must be reasonably certain and must rationally explain the relationship between the diagnosed condition and the employment incident as alleged by the claimant.[8]

In this case, appellant submitted no physician's rationalized medical opinion to support her claim of a personal injury to her neck, arm and lower back, sustained in the performance of duty. Appellant submitted reports from Dr. Astaproveh, a chiropractor, who diagnosed subluxations along with cervical thoracic strain injuries which he opined were related to the December 10, 1999 employment incident; however, the reports of appellant's chiropractor have no probative value in this case. Under section 8101(2) of the Act, chiropractors are only considered physicians and their reports considered medical evidence, to the extent that they treat spinal subluxations as demonstrated by x-ray to exist.[9] Although Dr. Astaproveh did indicate that he treated appellant for cervical subluxations related to the December 10, 1999 employment incident, he did not establish the presence of a subluxation demonstrated by x-ray.

Similarly, the December 3, 2000 duty status report, noting that appellant was disabled from January 3 to 6, 2000, is of no probative medical value since a physician's assistant does not qualify as a physician under section 8101 of the Act.

The Board notes that appellant argues on appeal that she was pregnant at the time of her injury and was advised by her chiropractor against x-rays. Appellant's pregnancy does not mitigate the statutory requirement that before a chiropractor can be considered a physician for purposes of the Act he must utilize x-rays to diagnose a subluxation of the spine. Therefore, the Office properly found that Dr. Astaproveh's report could not be afforded the evidentiary weight in this case. The Office properly denied her claim.

[7] *Id.*

[8] *See Shirley A. Temple*, *supra* note 3 at 407.

[9] 5 U.S.C. § 8107(a); *see Jack B. Wood*, 40 ECAB 95, 109 (1988).

The decision of the Office of Workers' Compensation Programs dated March 1, 2000 is affirmed.

Dated, Washington, DC
May 11, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member