U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JACQUELINE GUICE and U.S. POSTAL SERVICE,
POST OFFICE, Jonesboro, GA

Docket No. 02-2033; Submitted on the Record;
Issued December 3, 2002

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
DAVID S. GERSON

The issue is whether appellant has established that she sustained an injury in the performance of duty on April 10, 2002.

On April 11, 2002 appellant, then a 61-year-old clerk, filed a traumatic injury claim alleging that on April 10, 2002 she injured her lower back in the performance of duty. Appellant stopped work on April 11, 2002 and returned to work on April 17, 2002.

In a form report dated April 15, 2002, Dr. Richard D. Buchanan, a chiropractor, diagnosed lumbar strain/sprain and a degenerative disc condition. He found that appellant could return to work with restrictions on April 16, 2002.

In an authorization for examination and/or treatment (Form CA-16), dated April 17, 2002, Dr. Buchanan diagnosed lumbar strain/sprain and checked "yes" that the injury was caused by the described employment activity of lifting at work. He found that appellant was totally disabled from April 11 to 16, 2002 and partially disabled from April 17 to 18, 2002.

By letter dated May 3, 2002, the Office of Workers' Compensation Programs advised appellant regarding when a chiropractor can be considered a physician pursuant to 5 U.S.C. § 8101(2).

By decision dated June 7, 2002, the Office accepted the occurrence of the claimed employment incident but found that there was no medical evidence to establish an injury resulting from the event. The Office explained the limitations under the Federal Employees' Compensation Act with respect to chiropractic services and found that as appellant's attending chiropractor was not a physician under the Act, his reports were insufficient to establish her claim.

The Board finds that appellant has not met her burden of proof to establish that she sustained an injury on April 10, 2002 in the performance of duty.

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 period of the Act[2] and that an injury was sustained in the performance of duty.[3] These are essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[4]

In this case, the Office accepted that appellant was a federal employee, that she timely filed her claim for compensation benefits and that the workplace incident occurred as alleged. The question, therefore, becomes whether this incident caused an injury.

The evidence submitted in support of appellant's claim consists of reports from Dr. Buchanan, a chiropractor. In assessing the probative value of chiropractic evidence, the initial question is whether the chiropractor is considered a physician under the Act. 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…."[5] Therefore, a chiropractor cannot be considered a physician under the Act unless it is established that there is a subluxation as demonstrated by x-ray evidence.[6] In this case, there is no indication that Dr. Buchanan obtained x-rays or made a diagnosis of a spinal subluxation. Thus, the Office properly determined that Dr. Buchanan could not be considered a physician under the Act. The record does not contain any probative medical evidence establishing that appellant sustained a medical condition due to the April 10, 2002 employment incident. Consequently, appellant has failed to establish that she sustained an injury in the performance of duty.

The Board notes that the record contains a properly completed Form CA-16, authorizing necessary medical treatment from Dr. Buchanan. The issuance of an Office Form CA-16, creates a contractual obligation to pay the cost for the authorized medical examination regardless of the action taken on the claim.[7] Appellant is, therefore, entitled to payment for medical treatment authorized by the Form CA-16.[8]

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[1] 5 U.S.C. §§ 8101-8193.

[2] *Joe D. Cameron*, 41 ECAB 153 (1989).

[3] *James E. Chadden Sr.*, 40 ECAB 312 (1988).

[4] *Delores C. Ellyet*, 41 ECAB 992 (1990).

[5] 5 U.S.C. § 8101(2); *see also Linda Holbrook*, 38 ECAB 229 (1986).

[6] *Kathryn Haggerty*, 45 ECAB 383 (1994).

[7] *See Danita E. Lindsey*, 40 ECAB 450 (1989).

[8] Appellant submitted additional evidence, which the Office received subsequent to its June 7, 2002 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c). Appellant can submit this evidence to the Office and request reconsideration pursuant to 5 U.S.C. § 8128.

The decision of the Office of Workers' Compensation Programs dated June 7, 2002 is hereby affirmed.

Dated, Washington, DC
December 3, 2002

Alec J. Koromilas
Member

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member