U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CONNIE M. FIORI and U.S. POSTAL SERVICE,
PROCESSING & DISTRIBUTION CENTER, Raleigh, NC

Docket No. 03-437; Submitted on the Record;
Issued April 3, 2003

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant established that she sustained an injury in the performance of duty on March 20, 2002.

On April 13, 2002 appellant, a 49-year-old mailhandler, filed a notice of traumatic injury and claim for compensation (Form CA-1) alleging that she sustained a lower back injury in the performance of duty on March 20, 2002.[1] She explained that she injured her back while lifting heavy standard mail trays. Appellant characterized her injury as a ruptured disc. She ceased working on March 22, 2002.

In support of her claim, appellant submitted, among other things, an April 24, 2002 report from her chiropractor, who diagnosed lumbar intervertebral disc syndrome, muscle spasms and overextension/strenuous movement.

By letter dated June 14, 2002, the Office of Workers' Compensation Programs advised appellant of the need for additional medical evidence to support her claim. The Office also explained the statutory limitations with respect to chiropractic services.

In a decision dated August 28, 2002, the Office denied appellant's claim on the basis that the evidence failed to establish that she sustained an injury as alleged.

The Board finds that appellant failed to establish that she sustained an injury in the performance of duty on March 20, 2002.

In order to determine whether an employee sustained a traumatic 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 that must be considered in

[1] Appellant later clarified that, while her tour of duty began at 8:30 p.m. on March 20, 2002 and was scheduled to conclude the following day at 5:00 a.m., her injury occurred at approximately 3:00 a.m. on March 21, 2002.

conjunction with one another. The first component to be established is that the employee actually experienced the employment incident that is alleged to have occurred.[2] The second component is whether the employment incident caused a personal injury.[3] Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.[4]

The only evidence that included a diagnosis of an employment-related condition was submitted by appellant's chiropractor, Dr. Mathew A. Schmid. As previously indicated, Dr. Schmid in an April 24, 2002 report diagnosed lumbar intervertebral disc syndrome, muscle spasms and overextension/strenuous movement. In a later report dated May 9, 2002, he additionally diagnosed sciatic neuralgia. He attributed the diagnosed conditions to appellant's March 20, 2002 employment injury.

In assessing the probative value of chiropractic evidence, the initial question is whether the chiropractor is considered a physician under the Federal Employees' Compensation 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 instance, Dr. Schmid did not diagnose a subluxation and the only x-ray of record dated March 21, 2002 does not support such a diagnosis. As his reports do not include a diagnosis of subluxation, he is not considered a "physician" under the Act and, therefore, his opinion lacks probative value.

On March 22, 2002 Dr. Robert M. Horton, a family practitioner, wrote a brief note on a prescription pad indicating that appellant was seen that day with a "back strain" and she was unable to work. Dr. Horton, however, did not provide any information regarding the cause of appellant's back strain. The record also indicates that appellant was seen by Drs. Tomas Ojeda, Gary Smoot and Dennis E. Ballard; however, none of the physicians provided a rationalized opinion diagnosing a back condition referable to appellant's March 20, 2002 employment incident.

---

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

[3] *John J. Carlone*, 41 ECAB 354 (1989).

[4] *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on the issue of causal relationship must be based on a complete factual and medical background of the claimant. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and claimant's specific employment factors. *Id.*

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

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

The record on appeal does not include a physician's opinion diagnosing an employment-related back injury arising on or about March 20, 2002. Accordingly, the Office properly denied appellant's claim based upon her failure to establish that she sustained an injury in the performance of duty on March 20, 2002.

The August 28, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
April 3, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member