U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHELLE SALAZAR and DEPARTMENT OF JUSTICE, FEDERAL CORRECTIONAL INSTITUTION, Phoenix, AZ

Docket No. 03-623; Submitted on the Record;
Issued April 11, 2003

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON, MICHAEL E. GROOM

The issue is whether appellant has established that she sustained an injury in the performance of duty on February 13, 2002.

On February 27, 2002 appellant, then a 48-year-old program development office employee, filed a notice of traumatic injury and claim for continuation of pay/compensation. Appellant alleged that on February 13, 2002 she sustained an injury to her left side while pushing a credenza in the performance of duty. The record indicates that appellant received continuation of pay through March 10, 2002, and then returned to work.

By decision dated June 19, 2002, the Office of Workers' Compensation Programs denied the claim. The Office found that the medical evidence was insufficient to establish the claim as the evidence from Dr. Timothy Peruch, a chiropractor, was of no probative value as he was not a physician under the Federal Employees' Compensation Act.

In a decision dated November 18, 2002, an Office hearing representative affirmed the June 19, 2002 decision.

The Board finds that appellant did not meet her burden of proof to establish an employment-related injury on February 13, 2002.

An employee seeking benefits under the Act[1] has the burden of establishing that he or she sustained an injury while in the performance of duty.[2] 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

[1] 5 U.S.C. §§ 8101-8193.

[2] *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

component to be established is that the employee actually experienced the employment incident that is alleged to have occurred. The second component is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.[3]

The Office does not contest that an incident occurred as alleged on February 13, 2002. The medical evidence of record, however, is limited to the reports of the chiropractor, Dr. Peruch. 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."[4]

Dr. Peruch does not provide a report with a diagnosis of subluxation as demonstrated by x-ray. The February 27, 2002 x-ray report from Dr. Peruch reports abnormal positioning of C3-7, T1-2 and L1-5, without further explanation or description of the findings as a subluxation.[5] In a report dated April 12, 2002, Dr. Peruch diagnosed lumbosacral strain/sprain, sciatic disc syndrome, muscle contracture/spasm, muscle myositis and myofascitis. He did not diagnose a subluxation.

In the absence of a diagnosis of subluxation based on x-rays, Dr. Peruch is not a "physician" under the Act. Since he is not a physician, his reports are of no probative medical value to the claim.[6] The Board therefore finds that appellant has not met her burden of proof in this case.

The Board notes that, on appeal, appellant states that she filed a CA-1 for an injury on January 30, 2002, and she received only one case number from the Office for both incidents. The record transmitted to the Board, OWCP File No. 132048865, does not provide any indication that a January 30, 2002 claim was developed under this claim number. If appellant is alleging that the February 27, 2002 incident aggravated an alleged injury resulting from a January 30, 2002 employment incident, then the Office may administratively combine the claims. On this appeal, however, the only decisions before the Board are decisions adjudicating a claim for an injury sustained on February 13, 2002.

[3] *See John J. Carlone*, 41 ECAB 354, 357 (1989).

[4] 5 U.S.C. § 8101(2).

[5] The Office's implementing federal regulations define subluxation to mean an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae which must be demonstrated on x-ray. *See* 20 C.F.R. § 10.5(bb) (1999).

[6] *See Jack B. Wood*, 40 ECAB 95, 109 (1988).

The decisions of the Office of Workers' Compensation Programs dated November 18, 2002 and June 19, 2002 are affirmed.

Dated, Washington, DC
April 11, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member