

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of TERESA W. JEFF and U.S. POSTAL SERVICE,  
POST OFFICE, Dania, FL

*Docket No. 03-388; Submitted on the Record;  
Issued July 3, 2003*

---

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether appellant met her burden of proof in establishing that she had any disability beginning July 19, 2002 causally related to her accepted injuries.

On June 24, 2002 appellant, then a 51-year-old mail processor, was injured when a general process container fell and hit her in the face. The Office of Workers' Compensation Programs accepted appellant's claim for contusion of the face, neck and scalp and paid appropriate compensation. Appellant did not stop work.

Accompanying appellant's claim were medical center treatment notes from June 24, 2002 and a report from Dr. Willis N. Dickens, a Board-certified neurologist, dated August 6, 2002. The medical center treatment notes indicated that appellant was treated for a nasal sprain and nasal contusion which occurred on June 24, 2002. No other conditions or complaints were noted. Appellant was advised to return to work regular duty on June 26, 2002. Dr. Dickens' report indicated that he began treating appellant on August 5, 2002 for an injury which occurred at work when she was struck in the face with a container. He noted that an x-ray of her face revealed no fracture. Dr. Dickens indicated that appellant also noted low back pain and dizziness. He indicated that appellant's physical examination was essentially normal and he believed that there was no serious injury.

Thereafter, appellant submitted records from Dr. Robert F. Hunt, an osteopath, dated August 9, 2002. He indicated that appellant was in a work-related accident on June 24, 2002. Dr. Hunt diagnosed appellant with postconcussion cephalgia and low back pain.

On August 21, 2002 appellant submitted a CA-7 requesting wage-loss compensation for disability for the period of July 19, 2002 to the present.

In an August 27, 2002 letter, the Office noted that it could not authorize Dr. Dickens' request for a lumbar spine x-ray. The Office noted the claim was accepted for a contusion of the face, scalp and neck and that there were no medical records regarding the low back until

August 6, 2002. The Office requested that Dr. Dickens submit evidence regarding the low back beginning June 24, 2002.

Appellant subsequently submitted reports by Dr. Barry Silverstein, a chiropractor, whose note dated August 15, 2002 indicated that appellant was disabled from July 19, 2002 forward due to a June 24, 2002 work-related injury.

By letters dated September 12 and 19, 2002, the Office requested additional factual evidence from appellant. The Office specifically indicated that appellant's chiropractor had submitted a report which did not provide a diagnosis of a subluxation as demonstrated by x-ray to exist, therefore under section 8101(2) of the Federal Employees' Compensation Act he would not be considered a physician and his reports would have no value in establishing her entitlement to benefits. The Office indicated that if appellant's chiropractor had taken x-rays and diagnosed a subluxation of the spine, she should submit these reports in support of her claim.

In response to the Office's request, appellant submitted reports from Dr. Dickens dated August 21 and October 9, 2002 and a report from Dr. Silverstein dated October 3, 2002. Dr. Dickens' report of August 21, 2002 noted appellant's complaints of low back pain and right lower extremity pain. He noted that appellant had maxillary sinus abnormality which was revealed on a magnetic resonance imaging (MRI) scan. Dr. Dickens' note of October 9, 2002 indicated that appellant presented with a low backache extending into the right lower extremity and foot. He noted that there was a question as to the onset of her back pain because it was not generally noticeable until August. Dr. Dickens indicated that appellant initially complained of back pain but this seemed a lesser problem than her face and head pain. He noted that appellant believed that her backache was attributable to her work-related injury. Dr. Silverstein's report of October 3, 2002 noted that he treated appellant for a contusion across the nose with severe cephalgia and dizziness, low back pain and right and left knee pain. He indicated that x-rays were taken on August 20, 2002 which revealed a slight scoliosis.

In a decision dated October 23, 2002, the Office denied appellant's claim, finding that the evidence was not sufficient to establish that the claimed period of disability beginning July 19, 2002 was causally related to appellant's accepted injury of June 24, 2002.

The Board finds that appellant has failed to establish that her condition during the claimed period of disability is causally related to the accepted employment injury of June 24, 2002.

Appellant has the burden of establishing by the weight of reliable, probative and substantial evidence that the period of claimed disability was caused or adversely affected by the employment injury. As part of this burden, she must submit rationalized medical opinion evidence based on a complete factual and medical background showing a causal relationship between her disability and the federal employment.<sup>1</sup>

The Office accepted appellant's claims for contusion of the face, scalp and neck and paid appropriate compensation. However, the medical evidence submitted in support of the wage-loss

---

<sup>1</sup> See *Nicolea Bruso*, 33 ECAB 1138 (1982).

compensation claim for disability for the period beginning July 19, 2002 to the present is insufficient to establish that the claimed period of disability was caused or aggravated by the accepted employment injury.

In this case, appellant alleges that a back condition caused her disability beginning July 19, 2002. However, the medical records submitted most contemporaneously with the date of the alleged injury, specifically, the medical center treatment notes, dated June 24, 2002, indicated that appellant was treated for a nasal sprain and nasal contusion which occurred on that same date; however, initial treatment reports failed to mention a back injury. The Board has consistently held that contemporaneous evidence is entitled to greater probative value than later evidence.<sup>2</sup> The first mention of back pain was in Dr. Dickens' report of August 6, 2002, nearly six weeks after the work-related injury. He noted that appellant was treated for a facial injury which occurred when a container fell on her face, but also complained of low back pain and dizziness, but indicated that appellant's physical examination was essentially normal. Dr. Dickens' report of August 21, 2002 noted that appellant principally complained of low back pain and right lower extremity pain; however, there was a question as to the onset of appellant's back pain because it was not generally noticeable until August. His reports are insufficient to establish a work-related disability because they did not attempt to explain the relationship between the claimed period of disability beginning July 19, 2001 and the June 24, 2002 work injury.<sup>3</sup> Additionally, even though Dr. Dickens noted that appellant was experiencing symptoms of a back condition, he failed to provide a rationalized opinion indicating how the diagnosed back condition was causally related to the June 24, 2002 injury. In his report of October 9, 2002, he indicated that appellant wrote a detailed report after the injury regarding her backache and he concluded that "her backache was attributable to her injury of June 24, 2002." Although Dr. Dickens supported causal relationship in this conclusory statement he did not provide a rationalized opinion explaining how an injury for which contemporary medical reports diagnosed a nasal abrasion, could result in a low back injury about six weeks later. Therefore, these reports are insufficient to meet appellant's burden of proof.

Appellant submitted a report from Dr. Hunt dated August 9, 2002 which indicated that appellant was in a work-related accident on June 24, 2002 and was treated on July 24, 2002 for postconcussion and low back pain. However, this report was also deficient as it did not attempt to explain the relationship between the claimed period of disability beginning July 19, 2001 and the June 24, 2002 work injury. Furthermore, Dr. Hunt did not submit any treatment notes contemporaneous with his June 24, 2002 examination to substantiate appellant's complaints of back pain at that time. Therefore, this report is insufficient to meet appellant's burden of proof.

Appellant also submitted reports from Dr. Silverstein, a chiropractor, dated August 15 and October 3, 2002. However, Dr. Silverstein is not a physician as he did not diagnose a spinal subluxation based on x-rays. Section 8101(2) of the Act provides that chiropractors are considered physicians "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

---

<sup>2</sup> See *Katherine A. Williamson*, 33 ECAB 1696 (1982); *Arthur N. Meyers*, 23 ECAB 111 (1971).

<sup>3</sup> See *Theron J. Barham*, 34 ECAB 1070 (1983) (where the Board found that a vague and unrationalized medical opinion on causal relationship had little probative value).

to exist and subject to regulation by the Secretary.”<sup>4</sup> Thus, where x-rays do not demonstrate a subluxation (a diagnosis of a subluxation based on x-rays has not been made), a chiropractor is not considered a “physician,” and his or her reports cannot be considered as competent medical evidence under the Act.<sup>5</sup>

The remainder of the medical evidence fails to provide a specific opinion on causal relationship between the claimed period of disability and the accepted employment injury of June 24, 2002. Consequently, the medical evidence did not establish that the claimed periods of disability were due to appellant’s employment injury.

The decision of the Office of Workers’ Compensation Programs dated October 23, 2002 is hereby affirmed.

Dated, Washington, DC  
July 3, 2003

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member

---

<sup>4</sup> 5 U.S.C. § 8101(2).

<sup>5</sup> See *Susan M. Herman*, 35 ECAB 669 (1984).