United States Department of Labor
Employees' Compensation Appeals Board

R.R., Appellant	)	
and	)	**Docket No. 07-2141**
	)	**Issued: February 13, 2008**
DEPARTMENT OF HOMELAND SECURITY, IMMIGRATION & CUSTOMS ENFORCEMENT, Los Fresnos, TX, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 20, 2007 appellant filed a timely appeal of the Office of Workers' Compensation Programs' hearing representative's merit decision dated June 22, 2007 finding that he had not established an injury on December 10, 2004 in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant sustained an injury on December 10, 2004 as alleged; and (2) whether the hearing representative properly denied his request for a subpoena.

FACTUAL HISTORY

On December 10, 2004 appellant, then a 41-year-old immigration enforcement agent, filed a traumatic injury claim alleging that on that date he was involved in a motor vehicle accident on the employing establishment premises. He stated that the lights were off in the entire camp, that he missed a turn and drove into the drainage ditch hitting his head on the windshield

of his vehicle. Appellant experienced head and neck pain. He initially sought treatment from a chiropractor, Dr. R. Todd Brewer, who took x-rays on December 13, 2004 and diagnosed cervical facet syndrome and ligamentous strain as well as thoracic sprain/strain.

In a letter dated December 28, 2004, the Office requested additional factual and medical evidence from appellant regarding his claim. Appellant responded on January 27, 2005 and noted that the accident occurred on the employing establishment premises as he was driving from his duty station in route to the main building. He noted that it was dark and foggy and that he did not navigate a curve and drove into a ditch on the side of the roadway. Appellant alleged that he struck the steering wheel with his chest and the windshield with his face and head. He stated that pain in his head, face and neck was minimal and the following day he sought treatment with Dr. Brewer.

By decision dated February 2, 2005, the Office denied appellant's claim finding that he was not in the performance of duty at the time the injury occurred. Appellant requested an oral hearing on February 11, 2005. By decision dated September 1, 2005, the hearing representative set aside the Office's February 2, 2005 decision and remanded the case for additional development of the issue of whether appellant's motor vehicle accident occurred in the performance of duty.

The Office received additional information regarding the employing establishment premises from the employing establishment. By decision dated March 20, 2006, the Office found that appellant's motor vehicle accident occurred in the performance of duty, however, it found that the evidence was not sufficient to establish an injury resulting from this accident as appellant had not submitted medical evidence in support of his claim. The Office noted that the only documentation of appellant's claim was from a chiropractor and that there was no diagnosis of a subluxation of the spine as a result of the December 10, 2004 employment incident.

Appellant requested an oral hearing on April 15, 2006. In a letter dated May 31, 2006, he requested that the hearing representative issue a subpoena for Supervisor Ruth Schultz. Appellant resubmitted the documentation from Dr. Brewer. He testified at his oral hearing on April 12, 2007 that Dr. Brewer took x-rays and diagnosed sprained ligaments. Appellant stated that he did not have a copy of the emergency room report from the date of accident. He stated that he had a laceration on his head treated with a bandage by Public Health Service. Appellant felt dizzy later that night and sought treatment from the local emergency room where he was prescribed Tylenol and given a neck brace.

By decision dated June 22, 2007, the hearing representative affirmed the Office's March 20, 2006 decision finding that appellant had not submitted sufficient medical evidence to meet his burden of proof in establishing an injury as the result of his December 10, 2004 employment incident. He noted that Dr. Brewer took x-rays of appellant's spine, but that his reports did not include a diagnosis of subluxation of the spine and that therefore he was not a physician for the purposes of the Federal Employees' Compensation Act. The hearing representative stated that appellant had not submitted the necessary medical opinion evidence to meet his burden of proof. He also noted that appellant requested a subpoena for his supervisor, Ms. Schultz, but that he failed to state the pertinent facts that he expected Ms. Schultz to

establish and that it did not appear that her testimony would have served a useful purpose. The hearing representative denied the requested subpoena.

LEGAL PRECEDENT -- ISSUE 1

The Office's regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected.[1] 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 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. The second component is whether the employment incident caused a personal injury. Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.[2]

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."[3]

ANALYSIS -- ISSUE 1

The Office has accepted that appellant, a federal employee, was in the performance of duty on December 10, 2004 when his motor vehicle accident occurred. It found that he had not submitted sufficient medical opinion evidence to support his claim for a compensable injury resulting from this accident.

In support of his claim, appellant submitted a series of reports from Dr. Brewer, a chiropractor, who x-rayed appellant's cervical and thoracic spine on December 13, 2004. However, Dr. Brewer did not provide a diagnosis of cervical or thoracic spinal subluxation based on these x-rays as resulting from appellant's December 10, 2004 employment incident. As he did not diagnose a subluxation of the spine as demonstrated by x-ray, he is not a physician for the purpose of the Act.[4] It is well established that to constitute competent medical opinion evidence the medical evidence submitted must be signed by a qualified physician.[5] As Dr. Brewer is not a qualified physician under the Act, his reports do not constitute the medical evidence necessary to meet appellant's burden of proof in establishing his claim for a traumatic injury.

[1] 20 C.F.R. § 10.5(ee).

[2] *Steven S. Saleh*, 55 ECAB 169, 171-172 (2003).

[3] 5 U.S.C. § 8101(2).

[4] *Id.*

[5] *Vickey C. Randall*, 51 ECAB 357, 360 (2000); *Arnold A. Alley*, 44 ECAB 912, 921 (1993).

LEGAL PRECEDENT -- ISSUE 2

Section 8126 of the Act provides that the Secretary of Labor, on any matter within her jurisdiction, may issue subpoenas for and compel attendance of witnesses within a radius of 100 miles.[6] This provision gives the Office discretion to grant or reject requests for subpoenas. The Office regulation states that subpoenas for witnesses will be issued only where oral testimony is the best way to ascertain the facts.[7]

In requesting a subpoena, a claimant must explain why the testimony is relevant to the issues in the case and why a subpoena "is the best method or opportunity to obtain such evidence because there is no other means by which, the testimony could have been obtained."[8] The Office hearing representative retains discretion on whether to issue a subpoena. The function of the Board on appeal is to determine whether there has been an abuse of discretion. Abuse of discretion is generally shown through proof of manifest error, a clearly unreasonable exercise of judgment or actions taken which are clearly contrary to logic and probable deductions from established facts.[9]

ANALYSIS -- ISSUE 2

By letter dated May 31, 2006, appellant requested that the Office hearing representative issue a subpoena to compel Ms. Schultz to testify at his oral hearing. The hearing representative denied this request as appellant provided no reason explaining how the requested testimony was relevant for the hearing.

Appellant did not provide any explanation for his request for a subpoena or show why relevant evidence could not be provided by other means. The Board, therefore, finds that the Office hearing representative acted within his discretion in not issuing a subpoena to Ms. Schultz as requested by appellant.

CONCLUSION

The Board finds that appellant failed to submit the necessary medical opinion evidence to establish that he sustained a traumatic injury on December 10, 2004 as alleged. It further finds that the hearing representative properly denied appellant's request for a subpoena.

[6] *Merton J. Sills*, 39 ECAB 572, 575(1988).

[7] 20 C.F.R. § 10.619.

[8] *Id.*

[9] *Lottie M. Williams*, 56 ECAB 302, 309 (2005).

ORDER

IT IS HEREBY ORDERED THAT the June 22, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 13, 2008
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board