U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GAIL HILTY and U.S. POSTAL SERVICE,
JACKSON STREET POST OFFICE, Spring Grove, Pa.

Docket No. 97-582; Submitted on the Record;
Issued December 21, 1998

DECISION AND ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has established that she sustained a low back injury in the performance of duty as alleged.

On September 22, 1995 appellant, then a 23-year-old rural letter carrier, filed a claim for a low back injury sustained on September 9, 1995 when an automobile struck the driver's side of her postal vehicle.

In a September 13, 1995 work absence slip, Dr. Tina Sigafoose, a chiropractor, indicated that appellant was fit for light duty, with no lifting over 10 pounds or bending until September 27, 1995.

In an October 3, 1995 letter, the employing establishment stated that on September 9, 1995 appellant was "delivering mail when she was struck on the driver's side of her vehicle" by an automobile.

In October 10, 1995 letters, the Office of Workers' Compensation Programs advised appellant of the additional factual and medical evidence needed to establish her claim, in particular a rationalized statement from an attending physician explaining how appellant was injured in the September 9, 1995 accident. The Office also advised appellant of the Federal Employees' Compensation Act's limitation on chiropractors, and directed that she "submit an explanation of the treatment rendered by [her] chiropractor and the results of any x-ray taken …." The Office noted that appellant had 14 days in which to submit the required information, or her case would be decided on the evidence of record. The record indicates that appellant did not submit additional evidence prior to the issuance of the Office's November 6, 1995 decision.

By decision dated November 6, 1995, the Office denied appellant's claim on the grounds that fact of injury was not established. The Office found that appellant had submitted

insufficient factual and medical evidence to establish that the claimed injuries occurred as alleged.

The Board finds that appellant has not established that her low back injury occurred in the performance of duty as alleged.

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident in the time, place and in the manner alleged.[1] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[2]

Although the record establishes that the September 9, 1995 accident occurred as alleged, appellant has not submitted any medical evidence establishing a causal relationship between that accident and any medical condition. The only report of record from any health care practitioner which was before the Office at the time it issued its November 6, 1995 decision was the September 13, 1995 work absence slip, from Dr. Sigafoose, a chiropractor, releasing appellant to light duty through September 27, 1995. 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] There is no indication that Dr. Sigafoose diagnosed a spinal subluxation by x-ray or provided manual manipulation treatment of such a subluxation. Therefore, Dr. Sigafoose does not qualify as a physician under the Act in this case.

The Board notes that appellant was advised by the Office's October 10, 1995 letter of the Office's limitations on chiropractors, and of the type of medical evidence needed to establish her claim. However, appellant did not submit such evidence.

Consequently, appellant has not met her burden of proof as she submitted insufficient evidence establishing a causal relationship between the claimed low back injury and the September 9, 1995 accident.

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

[2] *Id.* For a definition of the term "injury," see 20 C.F.R. § 110.5(a)(14).

[3] 5 U.S.C. § 8101(2); *see also Linda Holbrook*, 38 ECAB 229 (1986).

The decision of the Office of Workers' Compensation Programs dated November 6, 1995 is hereby affirmed.[4]

Dated, Washington, D.C.
December 21, 1998

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

[4] Accompanying her appeal, appellant submitted new medical evidence. The Board may not consider evidence on appeal that was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c).