U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FREDERIC K. SAMUELS and U.S. POSTAL SERVICE,
POST OFFICE, Billings, Mont.

Docket No. 97-615; Submitted on the Record;
Issued December 9, 1998

DECISION and ORDER

Before GEORGE E. RIVERS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained a back injury on August 10, 1995 in the performance of duty, causally related to factors of his federal employment.

On April 25, 1996 appellant, then a 44-year-old city letter carrier, filed a claim alleging that on August 10, 1995 he sustained pain in his lower back as he performed a flexibility test at an employing establishment-sponsored health fair. He noted that he needed help walking when leaving the health fair and had to be driven home.

By letter dated June 10, 1996 the Office of Workers' Compensation Programs requested that appellant submit medical evidence to support his claim, including a physician's rationalized opinion supporting causal relationship.

In response, appellant provided a statement in which he claimed that he was originally injured April 21, 1993, that he was fine thereafter until August 10, 1995, and that on August 15, 1995 he went to a chiropractor who told him that he had vertebrae at the top of his neck which were out of alignment.

By report dated June 28, 1996, Dr. S. Scott Matz, a chiropractor, noted that appellant was unable to stand up straight due to severe muscle spasms of the upper and lower back, and that there were no x-ray findings, and he diagnosed "severe strain/sprain of thoracic/lumbar spine."

By decision dated July 10, 1996, the Office rejected appellant's claim finding that fact of injury had not been established as the medical evidence of record did not support that a medical condition had resulted from the claimed event. The Office explained that Dr. Matz was not considered to be a physician under the Federal Employees' Compensation Act as he failed to diagnose a subluxation as demonstrated to exist by x-ray, and that therefore his report did not constitute competent, probative medical evidence.

By letter dated July 29, 1996, appellant requested a review of the written record.

By decision dated October 16, 1996, the Branch of Hearings and Review affirmed the July 10, 1996 Office decision finding that the medical evidence of record was insufficient to establish that an injury was sustained as alleged, as Dr. Matz did not diagnose a subluxation as demonstrated by x-ray to exist, and therefore he was not considered to be a physician under the Act and his report did not constitute probative medical evidence in support of appellant's claim.

By letter dated October 29, 1996, appellant requested reconsideration.

By decision dated November 5, 1996, the Office denied appellant's request for reconsideration finding that he neither raised substantive legal questions nor included new and relevant evidence.

The Board finds that appellant has failed to establish that he sustained a back injury on August 10, 1995 in the performance of duty, causally related to factors of his federal employment.

An employee seeking benefits under the Act[1] has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[2] These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[3]

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 at the time, place and in the manner alleged.[4] 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.[5]

In this case, the Office accepts that appellant experienced the employment incident at the time, place and in the manner alleged. However, appellant has submitted insufficient medical evidence to establish that the employment incident caused a personal injury.

[1] 5 U.S.C. §§ 8101-8193.

[2] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[3] *Victor J. Woodhams*, 41 ECAB 345 (1989); *Delores C. Ellyet*, 41 ECAB 992 (1990).

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

[5] *Id.* For a definition of the term "injury," see 20 C.F.R. § 10.5(a)(14).

The only medical evidence appellant submitted in support of his claim was the June 28, 1996 report from Dr. Matz, a chiropractor.

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."[6]

Therefore, without diagnosing a subluxation from an x-ray, a chiropractor is not a "physician" under the Act and his opinion on causal relationship does not constitute competent medical evidence.[7] In the instant case, Dr. Matz did not diagnose a subluxation and did not provide x-rays demonstrating a subluxation as existing, such that he cannot be considered to be a physician under the Act and his medical report does not constitute probative medical evidence in support of appellant's claim.

Consequently, appellant has failed to submit medical evidence sufficient to establish his injury claim.

Accordingly, the decisions of the Office of Workers' Compensation Programs dated November 5, October 16 and July 10, 1996 are hereby affirmed.

Dated, Washington, D.C.
December 9, 1998

George E. Rivers
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

[6] *See* 5 U.S.C. § 8101(2). This subsection defines the term "physician." *See also Linda Holbrook*, 38 ECAB 229 (1986); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board held that medical opinion, in general, can only be given by a qualified physician).

[7] *See generally Theresa K. McKenna*, 30 ECAB 702 (1979).