U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SYLVIA A. SMITH and U.S. POSTAL SERVICE,
POST OFFICE, Red Oak, Tex.

Docket No. 97-645; Submitted on the Record;
Issued October 6, 1998

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has established an injury in the performance of duty on August 15, 1995.

In the present case, appellant filed a claim on August 16, 1995 alleging that on August 15, 1995 she injured her neck while lifting and transferring circulars and catalogs. Appellant submitted a form report (Form CA-17) dated September 12, 1995 from Dr. Martin Williams, a chiropractor. He diagnosed multiple cervical and upper thoracic subluxations, complicated by diffuse bilateral cervicobrachial syndrome. Dr. Williams did not indicate in this report whether x-rays were taken.

By letter dated November 3, 1995, the Office of Workers' Compensation Programs requested additional medical evidence, including a reasoned opinion as to how the work incident caused or aggravated the claimed injury. Appellant submitted a form report (Form CA-16) from Dr. Williams dated October 11, 1995, diagnosing multiple cervical, T3 and L3-S1 misalignments. Dr. Williams noted that cervical x-rays were taken, although he did not indicate when the x-rays had been taken. He noted that appellant reported lifting circulars and catalogs on August 15, 1995 and checked a box "yes" that the condition found was caused by the described employment activity.

In a decision dated November 28, 1995, the Office denied the claim on the grounds that the medical evidence was not sufficient to establish an injury in the performance of duty.

The Board has reviewed the record and finds that appellant has not established an injury in the performance of duty on August 15, 1995.

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

[1] 5 U.S.C. §§ 8101-8193.

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 component to be established is that the employee actually experienced the employment incident which 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]

In this case, the Office found that the alleged work incidents on August 15, 1995 did occur as alleged.[4] The issue is whether the medical evidence establishes an injury causally related to the work incidents on August 15, 1995. With respect to the reports from Dr. Williams, 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."[5] Dr. Williams did diagnose subluxations in his September 12, 1995 form report; however, he did not indicate whether x-rays had been obtained. In the October 11, 1995 Form CA-16 report, Dr. Williams did note x-rays had been taken and diagnosed misalignments of the spine;[6] therefore, the Board finds that the October 11, 1995 report is from a "physician" under the Act.[7] The October 11, 1995 report does not, however, provide a reasoned opinion as to causal relationship. The checking of a box "yes" in a form report, without additional explanation or rationale, is not sufficient to establish causal relationship.[8] The Board, therefore, finds that appellant has not submitted sufficient medical evidence to establish her claim.[9]

The decision of the Office of Workers' Compensation Programs dated November 28, 1995 is affirmed.

Dated, Washington, D.C.

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[2] *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.110(a).

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

[4] The Office, however, incorrectly stated in the memorandum accompanying the November 28, 1995 decision that "fact of injury" had, therefore, been established. As noted above, to establish fact of injury there must be medical evidence establishing an injury causally related to the accepted work incidents.

[5] 5 U.S.C. § 8101(2).

[6] The term subluxation means an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae. 20 C.F.R. § 10.400(e).

[7] The Board notes that a Form CA-16 can create a contractual obligation to pay for authorized medical treatment regardless of the action of the claim; in this case, however, the form failed to give the name and address of the physician authorized to provide treatment; *see Anthony Centu*, 40 ECAB 563, 565 (1989).

[8] *See Barbara J. Williams*, 40 ECAB 649, 656 (1989).

[9] Appellant did submit additional evidence on appeal; the Board cannot review this evidence unless it was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).

October 6, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member