U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANTHONY A. POLICH and DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Des Moines, IA

Docket No. 98-2589; Submitted on the Record;
Issued August 16, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS, MICHAEL E. GROOM

The issue is whether appellant has met his burden of proof in establishing that he sustained an injury in the performance of duty on August 18, 1995 as alleged.

This case has previously been on appeal before the Board.[1] In its May 19, 1998 decision, the Board remanded the case for the Office of Workers' Compensation Programs to advise appellant of the defects in the initial evidence submitted in support of his claim, to give appellant an opportunity to submit medical evidence in support of his claim, and to advise appellant when a chiropractor is considered a physician under the Federal Employees' Compensation Act. The facts of the case are set forth in the Board's prior decision and are incorporated herein by reference.

By letter dated June 17, 1998, the Office requested detailed factual and medical information from appellant. Specifically, a detailed history of injury as given to his physician, and most importantly a physician's rationalized medical opinion addressing the issue of causal relationship between appellant's diagnosed condition and the August 18, 1995 employment-related incident. The Office also explained when a chiropractor is considered a physician under the Act.

By letter dated June 29, 1998, appellant responded to the Office's June 17, 1998 request for information. Submitted with his response were a September 14, 1995 attending physician's report from Dr. Sara Neil, a chiropractor, and August 22 and October 9, 1995 office notes from Dr. Neil.

By decision dated July 23, 1998, the Office denied appellant's claim finding that appellant failed to establish fact of injury.

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[1] Docket No. 96-419 (issued May 19, 1998).

The Board finds that appellant has failed to meet his burden of proof in establishing that he sustained an injury in the performance of duty on August 18, 1994, as alleged.

An employee seeking benefits under the Act[2] 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, and that the claim was filed within the applicable time limitations of the Act.[3] An individual seeking disability compensation must also establish that an injury was sustained at the time, place and in the manner alleged,[4] that the injury was sustained while in the performance of duty,[5] and that the disabling condition for which compensation is claimed was caused or aggravated by the individual's employment.[6] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.[7]

In support of his claim, appellant submitted a September 14, 1995 attending physician's report, Form CA-20, from Dr. Neil, a chiropractor. Also submitted were Dr. Neil's August 22 and October 9, 1995 office notes. Both documents were previously of record. However, the October 9, 1995 office note is new.

On the attending physician's report Dr. Neil diagnosed acute lumbar facet syndrome. Dr. Neil stated that during appellant's initial visit he did not indicate that his condition was work related; but the doctor received a letter from appellant later that stated that his chair at work was irritating his low back. As Dr. Neil, a chiropractor, failed to diagnose a subluxation as demonstrated to exist by x-ray, she is not considered a physician under the Act. As such, Dr. Neil's report and office notes do not constitute probative medical evidence.[8]

In this case, no medical evidence was submitted. Appellant was advised by letter dated June 17, 1998 what specific evidence was needed to establish his claim, but such evidence has not been submitted. As appellant has failed to establish a *prima facie* claim by the submission of medical evidence necessary to substantiate his claim, he has failed to meet his burden of proof.

The decision of the Office of Workers' Compensation Programs dated July 23, 1998 is affirmed.

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[2] 5 U.S.C. §§ 8101-8193.

[3] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[4] *Robert A. Gregory*, 40 ECAB 478 (1989).

[5] *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[6] *Steven R. Piper*, 39 ECAB 312 (1987).

[7] *David J. Overfield*, 42 ECAB 718 (1991); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[8] 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.

Dated, Washington, D.C.
August 16, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member