U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KATHERINE CHISENHALL and U.S. POSTAL SERVICE,
POST OFFICE, St. Louis, MO

Docket No. 99-1635; Submitted on the Record;
Issued August 2, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has met her burden of proof to establish that she sustained an injury in the performance of duty

On January 20, 1998 appellant, then a 35-year-old letter carrier, filed a claim for an occupational disease (Form CA-2) alleging that she first became aware of her myofascial pain syndrome in the upper back and left shoulder on February 1, 1994. Appellant stated that her problem was recurring and that she experienced left shoulder, back and neck pain, which increased with lifting or carrying anything on the left shoulder. Appellant further stated that when she was not working the pain lessened to the point of not needing any medication. Appellant's claim was accompanied by factual and medical evidence.

By letter dated January 29, 1998, the Office of Workers' Compensation Programs advised appellant that the evidence submitted was insufficient to establish her claim. The Office then advised appellant to submit additional factual and medical evidence supportive of her claim

By letter of the same date, the Office advised Dr. J.A. Vellinga, an osteopath and appellant's treating physician, to submit a detailed medical report and to answer specific questions regarding appellant's condition.

In response to the Office's letter, appellant submitted factual and medical evidence.

By decision dated March 20, 1998, the Office found the evidence of record insufficient to establish that appellant sustained an injury as alleged. Specifically, the Office found that a condition had not been diagnosed in connection with an employment factor. In a September 21, 1998 letter, appellant requested reconsideration of the Office's decision accompanied by medical evidence. Subsequently, by an undated letter, appellant submitted additional medical evidence.

By decision dated January 21, 1999, the Office denied appellant's request for modification based on a merit review of the claim.

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.[1] The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant,[2] must be one of reasonable medical certainty,[3] and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[4]

In the present case, appellant has failed to submit rationalized medical evidence establishing that she sustained an injury caused by factors of her federal employment. In support of her claim, appellant submitted an undated duty status report (Form CA-17), indicating her physical restrictions and that limited-duty work would be provided excluding bed rest. This report is not signed by a physician and, therefore, cannot be considered competent medical evidence.[5]

In further support of her claim, appellant submitted a report, disability certificates and treatment notes of Dr. Daniel E. Silver, a chiropractor, regarding the treatment of appellant's soft tissue injury. Under section 8101(2) of the Federal Employees' Compensation Act,[6] '"[t]he 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 of the spine

as demonstrated by x-ray to exist and subject to regulation by the Secretary."[7] If a chiropractor's report is not based on a diagnosis of subluxation as demonstrated by x-ray to exist, they do not

[1] *See Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[2] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[3] *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

[4] *See James D. Carter*, 43 ECAB 113 (1991); *George A. Ross*, 43 ECAB 346 (1991); *William E. Enright*, 31 ECAB 426, 430 (1980).

[5] *Diane Williams*, 47 ECAB 613 (1996).

[6] 5 U.S.C. §§ 8101-8193.

[7] 5 U.S.C. § 8101(2); *see also* 20 C.F.R. § 10.400(a); *Robert J. McLennan*, 41 ECAB 599 (1990); *Robert F. Hamilton*, 41 ECAB 431 (1990).

constitute competent medical evidence to support a claim for compensation.[8] Inasmuch as Dr. Silver's report, disability certificates and treatment notes did not contain a diagnosis of subluxation by x-ray, they do not constitute competent medical evidence.

Additionally, appellant submitted a December 12, 1997 medical report of Dr. Vellinga's findings that appellant was initially evaluated on April 11, 1996 for left back and shoulder pain, which was associated with carrying a mailbag as a postal employee. He noted appellant's medical treatment and subsequent evaluation in September for similar complaints and physical findings associated with job-related lifting. Dr. Vellinga further noted appellant's medical treatment and that appellant's favorable response to therapy had been maintained only with the imposition of light duty or otherwise with time away from work, which she was currently doing. He stated that, based on the aforementioned reasons, appellant should be transferred to another job that required no heavy lifting and that she should be retrained for employment that will avoid repetitive heavy lifting motions as this had been the cause of her continued exacerbating painful episodes. Dr. Vellinga did not provide a diagnosis for appellant's condition and did not provide any medical rationale explaining why appellant's condition was caused by factors of her employment.

Further, appellant submitted medical treatment notes covering the period January 2, 1994 through May 6, 1996 from Dr. William Paris, a family practitioner, regarding the treatment of her back and left shoulder. Dr. Paris' treatment notes did not address whether appellant's problems were caused by factors of her employment.

The March 19, 1996 x-ray reports of Dr. Anthony A. Berni, a Board-certified radiologist, indicated negative results of the cervical spine, thoracic spine, chest and left elbow.

Dr. Vellinga's April 11, 1996 medical report provided a history of appellant's injury, medical treatment and family background and his findings on physical examination. He diagnosed myofascial pain syndrome with readily identifiable trigger zones in the trapezius and rhomboid major and minor on the left at the level of T3-7 with radiating pain and rotoscoliosis of the thoracic spine particularly the upper thoracic vertebral bodies, T3-7. Dr. Vellinga's treatment notes covering the period April 18, 1996 through August 11, 1998 reveal appellant's treatment for the above diagnosed conditions. His report and treatment notes, however, did not address whether appellant's conditions were caused by factors of her employment.

In his October 7, 14 and 23, 1996 treatment notes, Dr. Vellinga failed to explain why or how work-related activities exacerbated appellant's myofascial pain syndrome.

The August 30, 1997 x-ray reports of Dr. Carlos Aquino, a radiologist, revealed no acute cardiopulmonary disease and a normal rib study.

Dr. Vellinga's treatment notes covering the period September 29, 1997 through January 12, 1998 regarding the treatment of appellant's rib condition failed to address whether it was caused by factors of appellant's employment.

[8] *Loras C. Dignann*, 34 ECAB 1049 (1983).

A March 23, 1998 magnetic resonance imaging (MRI) report of Dr. Linda Proctor, a radiologist, of appellant's thoracic spine, revealed an abnormal lesion in the central portion of the thoracic spinal cord from level T4-5 and a differential diagnosis included demyelinating process versus neoplasm and a small central disc protrusion at C6-7. Dr. Proctor's MRI report dated March 31, 1998 indicated right mastoiditis and an otherwise normal MRI of the brain. Dr. Proctor's MRI report of the same date regarding appellant's thoracic spine provided a normal thoracic spinal cord and a very small central disc protrusion at C6-7. Dr. Proctor's reports failed to address whether the diagnosed conditions were caused by factors of appellant's employment.

In a May 26, 1998 medical report to Dr. Vellinga, Dr. Robert J. Bernardi, a neurosurgeon, provided a history of appellant's medical treatment, his findings on physical examination and a review of medical records. Dr. Bernardi stated that an MRI scan of the cervical spine was necessary due to the combination of appellant's left-sided medial scapular pain, radiating arm pain and weakness in the left triceps, which made him suspicious of a problem at the C6-7 level. In a June 9, 1998 medical report, Dr. Bernardi indicated that the MRI was unremarkable. He stated that he believed appellant's symptoms represented myofascial periscapular pain. Dr. Bernardi failed to address whether appellant's condition was caused by factors of her employment.

The August 10, 1998 treatment notes of Russell Eaves, a physical therapist, revealed appellant's medical treatment. Mr. Eaves' treatment notes are of no probative value inasmuch as a physical therapist is not a physician under the Act and, therefore, is not competent to give a medical opinion.[9] Similarly, the treatment notes of a registered nurse whose signature is illegible do not constitute competent medical evidence because a registered nurse is not considered a physician under the Act.[10]

Dr. Vellinga's August 14, 1998 medical report indicated that appellant had been treated for myofascial pain syndrome. He stated that appellant had been advised to refrain from working as it was his medical opinion that this had been, if not the cause, an aggravating factor in appellant's condition. Dr. Vellinga, however, failed to provide any medical rationale to support his opinion.

Dr. Vellinga's October 7, 1998 medical report revealed that appellant had returned to work and that after approximately three weeks her condition, which was markedly improved, had returned with exacerbated symptoms. He recommended that appellant seek a new position within the employing establishment as he believed that this exacerbated pain was caused by her current job. Dr. Vellinga did not provide any medical rationale to support his opinion regarding the causal relationship of appellant's employment factors and the exacerbation of her condition.

Because appellant has failed to submit sufficient rationalized medical evidence establishing that she sustained an injury in the performance of duty, the Board finds that she has failed to satisfy her burden of proof in this case.

[9] 5 U.S.C. § 8101(2); *see also Jerre R. Rinehart*, 45 ECAB 518 (1994); *Barbara J. Williams*, 40 ECAB 649 (1989); *Jane A. White*, 34 ECAB 515 (1983).

[10] 5 U.S.C. § 8101(2); *see also Joseph N. Fassi*, 42 ECAB 677 (1991).

The January 21, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
August 2, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member