U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LAURA P. URIBE and DEPARTMENT OF HOUSING & URBAN DEVELOPMENT, REGIONAL OFFICE, San Francisco, CA

Docket No. 00-1809; Submitted on the Record;
Issued April 5, 2001

DECISION and ORDER

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

The issue is whether appellant sustained forearm tendinitis and carpal tunnel syndrome of the right arm while in the performance of duty.

On January 19, 2000 appellant, then a 29-year-old program analyst, filed a notice of occupational disease (Form CA-2) alleging that she first became aware that her forearm tendinitis and carpal tunnel syndrome of the right arm were caused by her federal employment on February 20, 1995.

In support of her claim, appellant submitted an April 15, 1998 report from Dr. Abigail A. Irwin, a chiropractor, who diagnosed forearm tendinitis and nerve irritation. In an undated report received by the Office of Workers' Compensation Programs on January 28, 2000, Dr. Debra R. Maurer, a chiropractor, stated that because of appellant's improper workstation ergonomics her physical condition would not improve.

On February 11, 2000 the Office informed appellant that a chiropractor is only considered a physician under the Federal Employees' Compensation Act[1] when diagnosing and treating through manual manipulation of the spine, a subluxation of the spine as diagnosed by x-ray. The Office noted that, because the medical evidence in this case failed to establish that appellant sustained a subluxation of the spine, the treating chiropractors were not considered physicians under the Act. Therefore, their opinions lacked probative value. Appellant was allowed 30 days to submit a medical report.

By decision dated March 15, 2000, the Office denied appellant's claim for compensation. The Office found that the evidence failed to establish that a condition was diagnosed in connection with the employment factor. The Office further stated that the reports from

[1] 5 U.S.C. §§ 8101-8193.

appellant's chiropractor failed to constitute medical evidence because the record failed to contain any evidence establishing a subluxation of the spine as diagnosed by x-ray.

The Board finds that appellant failed to establish that her right forearm tendinitis and carpal tunnel syndrome arose in the performance of duty.

An employee seeking benefits under the Act has the burden of establishing the essential elements of his or her claim[2] including the fact that the individual is an "employee of the United States" within the meaning of the Act,[3] that the claim was timely filed within the applicable time limitation period of the Act,[4] 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.[5] These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[6]

To determine whether an 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.[7] Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.[8] An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that his or her disability and/or specific condition for which compensation is claimed are causally related to the injury.[9] To accept fact of injury in a traumatic injury case, the Office, in addition to finding that the employment incident occurred in the performance of duty as alleged, must also find that the employment incident resulted in an "injury." The term "injury" as defined by the Act, as commonly used, refers to some physical or mental condition caused either by trauma or by continued or repeated exposure to, or contact with, certain factors, elements or conditions.[10] The question of whether an employment incident caused a personal injury generally can be established only by medical evidence.[11]

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[2] *See Daniel R. Hickman*, 34 ECAB 1220 (1983).

[3] *See James A. Lynch*, 32 ECAB 216 (1980); *see also* 5 U.S.C. § 8101(1).

[4] 5 U.S.C. § 8122.

[5] *See Melinda C. Epperly*, 45 ECAB 196 (1993).

[6] *See Delores C. Ellyett*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

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

[8] *Id.*

[9] As used in the Act, the term "disability" means incapacity because of an injury in employment to earn the wages the employee was receiving at the time of injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity; *see Frazier V. Nichol*, 37 ECAB 528 (1986).

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

[11] *See Carlone*, *supra* note 7.

In this case, appellant has not submitted medical evidence to establish that she incurred an employment-related injury. The only evidence submitted by appellant were reports from Dr. Irwin and Dr. Maurer, both chiropractors. The Board has held that medical opinion, in general, can only be given by a qualified physician.[12] Pursuant to sections 8101(2) of the Act,[13] a chiropractor is a "physician" to the extent of diagnosing spinal subluxations according to the Office's definition[14] and treating such subluxations by manual manipulation of the spine. Consequently, because the chiropractors' reports were not supported by x-ray evidence of a spinal subluxation, they do not constitute probative medical evidence.[15] Appellant, therefore, failed to meet her burden of proof in establishing that she sustained an injury in the performance of duty.

The decision of the Office of Workers' Compensation Programs dated March 15, 2000 is affirmed.

Dated, Washington, DC
April 5, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

[12] *George E. Williams*, 44 ECAB 530 (1993).

[13] 5 U.S.C. § 8101(2).

[14] 20 C.F.R. § 10.311.

[15] *See George E. Williams*, *supra* note 12.