U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DARRELL L. SCHNEIBEL and U.S. POSTAL SERVICE,
POST OFFICE, Bismarck, ND

Docket No. 01-1644; Submitted on the Record;
Issued July 8, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant sustained an injury in the performance of duty on January 19, 2001.

On January 23, 2001 appellant, then a 47-year-old letter carrier, filed a claim for a traumatic injury to his low back sustained on January 19, 2001 by loading parcels onto a cart. Appellant did not stop work, but was given limited duty based on reports of his work tolerance limitations from Dr. Sheri TenBroek, a chiropractor. These reports indicated that appellant had diagnoses due to his January 19, 2001 injury, but listed the diagnoses by code number rather than by name. In a report dated February 2, 2001, Dr. TenBroek indicated that appellant could perform his regular duties.

By letter dated March 22, 2001, the Office of Workers' Compensation Programs advised appellant that it needed a medical report including his physician's opinion on the current status of his alleged low back injury. The Office also advised appellant that "under the Federal Employees' Compensation Act 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. X-rays must be taken within a reasonable time following the injury and within a few days of the initial examination."

Appellant submitted additional reports from Dr. TenBroek, including a January 23, 2001 report signed by this physician and by Dr. Amanda L. Keller, a chiropractor, noting that appellant was seen that date as a new patient with low back pain and left hip pain that began "after twisting and carrying a heavy load during work shift on January 19, 2001. … Patient states he has not had low back pain like this before…." This report described appellant's findings on physical examination and stated: "X-ray findings reveal segmental subluxation at L5 positioned LLF and LR. Left ilium positioned posterior and inferior. Spinal imbrication revealed at L5-S1 with loss of disc height at that level." Drs. TenBroek and Keller diagnosed "Lumbar segmental dysfunction and lumbar sprain strain with fascitis and facet syndrome," and stated that the areas of spinal restriction were adjusted manually.

By decision dated May 2, 2001, the Office found:

> "Evidence received consisted of chiropractic treatment notes showing treatment to the cervical and thoracic spine as well as the lumbar area (the only area claimed) and CA-17s. This was not sufficient because there is no evidence that x-rays were taken shortly after your injury or that x-rays demonstrated the existence of any lumbar subluxations. Therefore, there is no medical evidence from a qualified physician to show that any condition exists related to the incident of January 19, 2001.
>
> "Therefore, based on these findings, your claim is denied as you have not met the requirements for establishing that you sustained an injury as alleged. Medical treatment at [the Office's] expense is not authorized and prior authorization, if any, is hereby terminated."

The Board finds that the case is not in posture for a decision.

An employee seeking benefits under the Act[1] 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]

Establishing whether an injury, traumatic or occupational, was sustained in the performance of duty as alleged, *i.e.*, "fact of injury," and establishing whether there is a causal relationship between the injury and any disability and/or specific condition for which compensation is claimed, *i.e.*, "causal relationship," are distinct elements of a compensation claim. While the issue of "causal relationship" cannot be established until "fact of injury" is established, acceptance of fact of injury is not contingent upon an employee proving a causal relationship between the injury and any disability and/or specific condition for which compensation is claimed. 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 a specific condition for which compensation is claimed are causally related to the injury.[6]

---

[1] 5 U.S.C. §§ 8101-8193.

[2] *See Daniel R. Hickman*, 34 ECAB 1220 (1983); 20 C.F.R. § 10.115.

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

[4] 5 U.S.C. § 8122.

[5] *See Daniel R. Hickman, supra* note 2.

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

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.[7] The question of whether an employment incident caused a personal injury generally can be established only by medical evidence.[8] Chiropractors are defined as "physicians" under the Act "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."[9] If a chiropractor's reports are not based on a diagnosis of subluxation as demonstrated by x-ray to exist, they do not constitute competent medical evidence to support a claim for compensation.[10]

The Office found that the evidence supported that the January 19, 2001 incident occurred, but that there was no medical evidence establishing that this incident resulted in a personal injury, as the reports from appellant's chiropractors were not based on a diagnosis of subluxation as demonstrated by x-ray to exist. However, as noted above, the January 23, 2001 report from appellant's chiropractor did in fact indicate that x-rays were taken on that date and that they demonstrated a subluxation. The reports from appellant's chiropractors thus constitute competent medical evidence to support appellant's claim. The case will therefore be remanded to the Office for consideration of this medical evidence, further development as it deems necessary, and a decision of whether appellant sustained an injury on January 19, 2001 and, if so, whether he is entitled to reimbursement of medical expenses.

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

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

[9] 5 U.S.C. § 8101(2).

[10] *Cheryl L. Veale*, 47 ECAB 607 (1996).

The May 2, 2001 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to the Office for action consistent with this decision of the Board.

Dated, Washington, DC
July 8, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member