U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PETER J. CRABBS and U.S. POSTAL SERVICE,
POST OFFICE, Urbandale, IA

Docket No. 03-299; Submitted on the Record;
Issued April 23, 2003

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant established that he sustained an injury in the performance of duty as alleged.

On August 28, 2002 appellant, then a 46-year-old letter carrier, filed a claim for a traumatic injury alleging that on August 26, 2002 he stepped in a hole and sustained an acute lumbar strain to his back. Appellant did not recall the location of the hole. He stopped working on August 28, 2002 and returned on August 31, 2002. In a disability note dated August 28, 2002, appellant's treating physician, Dr. Rodney J. Bjerke, a chiropractor, diagnosed acute lumbar sprain and opined that appellant could not work for three days.

By letter dated September 4, 2002, the Office of Workers' Compensation Programs requested additional medical evidence from appellant and instructed appellant to have his examining physician complete the enclosed attending physician's CA-20 form. The Office informed appellant that chiropractors do not qualify as physicians within the meaning of the Federal Employees' Compensation Act unless they show subluxations as demonstrated by x-ray to exist.

In an attending physician's report dated September 9, 2002, Form CA-20, Dr. Bjerke stated that appellant sustained a low back sprain from stepping into a hole while carrying mail on August 26, 2002 and he checked the "yes" box that the injury was work related. He stated that he provided four chiropractic treatments consisting of lumbar flexion -- distraction and ultrasound.

By decision dated October 7, 2002, the Office denied appellant's claim, stating that the evidence was not sufficient to establish that he sustained an injury due to the claimed event.

The Board finds that appellant did not establish that he sustained an injury in the performance of duty as alleged.

To determine whether a federal 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.[1] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[2]

The medical evidence required to establish a causal relationship, generally, is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical 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, must be one of reasonable medical certainty 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.[3]

In this case, the only medical evidence appellant submitted was Dr. Bjerke's September 9, 2002 attending physician's report in which Dr. Bjerke diagnosed lumbar sprain with disc inflammation due to appellant's stepping into a hole while carrying mail on August 26, 2002 and his disability note dated August 28, 2002 in which Dr. Bjerke diagnosed an acute lumbar sprain and opined that appellant could not work for three days. Dr. Bjerke's report and note, however, are of no probative medical value because Dr. Bjerke is not a physician within the meaning of the Act. 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."[4] In order for Dr. Bjerke, appellant's treating chiropractor, to be considered a "physician" under the Act and therefore establish his reports as probative medical evidence, he must diagnose a subluxation as demonstrated by x-ray. He, however, did not diagnose a subluxation as demonstrated by x-ray to exist. Although the Office advised appellant of the evidence necessary to establish his claim, appellant did not submit the requisite evidence. He has therefore failed to establish his claim.

[1] *Robert J. Krstyen*, 44 ECAB 227, 229 (1992); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

[2] *Id*.

[3] *Ern Reynolds*, 45 ECAB 690, 695 (1994); *Gary L. Fowler*, 45 ECAB 365, 371 (1994).

[4] 5 U.S.C. § 8101(2); *see Carmen Gould*, 50 ECAB 504, 507 (1999).

The October 7, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
April 23, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member