United States Department of Labor
Employees' Compensation Appeals Board

DAVID A. FINNERAN, Appellant	)	
and	)	**Docket No. 04-2157**
	)	**Issued: January 25, 2005**
U.S. POSTAL SERVICE, POST OFFICE, Athol, MA, Employer	)	

Appearances:
David A. Finneran, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On August 30, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated June 7, 2004 denying that he sustained an employment-related injury on April 30, 2003. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained a back injury in the performance of duty on April 30, 2003.

FACTUAL HISTORY

On May 6, 2003 appellant, then a 53-year-old postal clerk, filed a traumatic injury claim alleging that he sustained a back injury when he lifted a mail parcel at work on April 30, 2003. He stopped work on April 30, 2003 and returned to work on May 5, 2003.

Appellant submitted medical notes, dated between April and May 2003, of Dr. Doreen Frost, an attending chiropractor. On April 30, 2003 Dr. Frost stated that appellant reported

having acute low back pain since lifting a box at work the prior day. She diagnosed "acute lumbosacral joint dysfunction with assoc[iated] myalgia/myofascitis." In an undated note, Dr. Frost stated that appellant had been examined for acute lumbosacral joint dysfunction, that he could not work from May 5 to 8, 2003, and that he could return to limited-duty work on May 9, 2003.

By letter dated May 19, 2003, the Office advised appellant that chiropractors are only considered physicians, and their reports considered medical evidence, to the extent that they treat spinal subluxations as demonstrated by x-ray to exist. The Office requested that appellant submit additional medical evidence in support of his claim.

By decision dated June 20, 2003, the Office denied appellant's claim on the grounds that he did not submit sufficient medical evidence to establish that he sustained a back injury in the performance of duty on April 30, 2003. The Office noted that the reports of Dr. Frost did not constitute medical evidence because she did not diagnose a spinal subluxation as demonstrated by x-ray to exist.

Appellant requested a hearing before an Office hearing representative and submitted a March 22, 2004 report in which Dr. Frost stated:

> "This letter is to discuss the question of the presence of a subluxation in the case of my patient [appellant].
>
> "The ACA Procedure Manual discusses a subluxation as part of a **complex**. The Mercy Guidelines describes it as a subluxation **syndrome** as opposed to a simple joint misalignment. It is described as consisting of clinical signs and symptoms at a specific dysfunctional joint. These signs and symptoms may include soft tissue changes (*i.e.,* tenderness or hypertonicity to palpation), asymmetric muscle (*i.e.,* postural antalgia) with interruption of the neurological integrity to specific muscles or organs, and pain or swelling of soft tissues (*i.e.*, sprain/strain injuries). That is to say that a subluxation is measured in ways other than solely on a radiograph. Therefore, to say there is no evidence of subluxation on [appellant's] radiograph is inaccurate as a joint misalignment is only part of the subluxation complex. As demonstrated in my notes, [appellant] clearly demonstrated such symptoms."[1] (Emphasis in the original.)

Appellant also submitted the findings of lumbar spine x-ray testing obtained at Athol Memorial Hospital on May 7, 2003. The findings revealed that the vertebral body heights and disc spaces appeared intact, that there were no pars defects and that the sacroiliac joints were unremarkable.[2]

[1] Appellant also submitted several additional medical notes of Dr. Frost from May and June 2003, but the notes that not contain any mention of x-ray testing.

[2] The findings also showed that there was some pelvic tilting, higher of the right, with minimal lumbar levoscoliosis.

A hearing was held on March 24, 2004. By decision dated and finalized June 7, 2004, the Office hearing representative affirmed the June 20, 2003 decision. The hearing representative determined that Dr. Frost's apparent diagnosis of lumbar subluxation was not based on the findings of x-ray testing.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[3] 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, that the claim was timely filed within the applicable time limitation period of the Act, 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.[4] These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[5]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the "fact of injury" has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged.[6] Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[7] The term "injury" as defined by the Act, refers to some physical or mental condition caused by either trauma or by continued or repeated exposure to, or contact with, certain factors, elements or conditions.[8]

ANALYSIS

In support of his claim that he sustained an employment-related back injury on April 30, 2003, appellant submitted several reports of Dr. Frost, an attending chiropractor. The opinion of Dr. Frost, however, is of no probative value on the issue of whether appellant sustained an employment-related injury because her reports do not constitute medical evidence within the meaning of the Act. Under section 8101(2) of the Act, chiropractors are only considered physicians, and their reports considered medical evidence, to the extent that they treat spinal

[3] 5 U.S.C. § 8101 *et seq.*

[4] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[5] *Delores C. Ellyett*, 41 ECAB 992, 998-99 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-27 (1990).

[6] *Julie B. Hawkins*, 38 ECAB 393, 396 (1987); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

[7] *John J. Carlone*, 41 ECAB 354, 356-57 (1989); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

[8] *Elaine Pendleton*, *supra* note 4; 20 C.F.R. § 10.5(a)(14).

subluxations as demonstrated by x-ray to exist.[9] The Office's regulations at 20 C.F.R. § 10.5(bb) have defined subluxation as an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae which must be demonstrable on any x-ray film to an individual trained in the reading of x-rays.[10]

Appellant submitted a March 22, 2004 report in which Dr. Frost suggested that appellant had a subluxation syndrome. However, Dr. Frost stated that this diagnosis could be based on clinical signs and symptoms exhibited by appellant on examination rather than a reading of the findings of x-ray testing. She stated that such signs and symptoms as soft tissue changes, asymmetric muscle with interruption of neurological integrity to specific muscles or organs, and pain or swelling of soft tissues (such as sprain/strain injuries) could demonstrate a subluxation complex. However, the existence of such signs or symptoms is not determinative of the existence of a lumbar subluxation under the Act as the relevant regulations define a subluxation as being an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae.

The record contains the findings of lumbar spine x-ray testing obtained at Athol Memorial Hospital on May 7, 2003, *i.e.*, at a time shortly after the alleged employment injury. The findings revealed that the vertebral body heights and disc spaces appeared intact, that there were no pars defects, and that the sacroiliac joints were unremarkable. Therefore, the findings provide no indication that appellant had an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the lumbar vertebrae.

As Dr. Frost did not diagnose and treat a subluxation, within the definition of the Act, as demonstrated by x-ray testing to exist, her reports cannot be considered as medical evidence. Appellant submitted no medical evidence relating his claimed back condition to the April 30, 2003 employment incident and therefore the Office properly denied his claim.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained a back injury in the performance of duty on April 30, 2003.

[9] 5 U.S.C. § 8107(a). *See Jack B. Wood*, 40 ECAB 95, 109 (1988).

[10] 20 C.F.R. § 10.5(bb); *see also Bruce Chameroy*, 42 ECAB 121, 126 (1990).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 7, 2004 is affirmed.

Issued: January 25, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member