United States Department of Labor
Employees' Compensation Appeals Board

STEPHEN S. RICCARDI, Appellant	)	
and	)	**Docket No. 05-1037**
	)	**Issued: July 14, 2005**
DEPARTMENT OF HOMELAND SECURITY, FEDERAL AIR MARSHAL SERVICE, Washington, DC, Employer	)	

Appearances:
Stephen S. Riccardi, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On April 5, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated February 28, 2005, denying modification of a June 14, 2004 decision. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established an injury in the performance of duty on March 9, 2004.

FACTUAL HISTORY

On March 15, 2004 appellant, then a 36-year-old air marshal, filed a traumatic injury claim (Form CA-1) alleging that he sustained low back and right hip pain while sitting for an extended period in an airplane on March 9, 2004. Appellant submitted a Form CA-16 (authorization for examination and/or treatment) dated March 15, 2004 from Dr. Matthew

Hargreaves, a chiropractor,[1] who diagnosed lumbar radiculopathy with associated piriformis syndrome and checked a box "yes" that the condition was employment related. In a narrative report dated April 12, 2004, Dr. Hargreaves provided results on examination and diagnosed chronic, severe lumbar radiculitis with associated piriformis syndrome and myalgia/myofascitis complicated by postural defaults due to prolonged sitting. By report dated April 20, 2004, Dr. Hargreaves provided results of an April 16, 2004 examination and provided the same diagnosis.

In a letter dated May 6, 2004, the Office requested that appellant submit additional medical evidence. The Office noted that a chiropractor is not considered a physician unless a spinal subluxation is diagnosed as demonstrated by x-rays.

By decision dated June 14, 2004, the Office denied appellant's claim for compensation. The Office found that an incident was established, but Dr. Hargreaves was not a physician under the Federal Employees' Compensation Act and the medical evidence was insufficient to establish an injury in the performance of duty.

Appellant requested reconsideration and submitted a December 8, 2004 report from Dr. Hargreaves, who stated that it was "clearly documented in my exam[ination] and treatment notes that the patient's work-related injury is directly correlated to subluxations in the lumbar spine and sacroiliac joints." Dr. Hargreaves did not indicate that x-rays had been taken; he stated, "conservative chiropractic care, without the over utilization of diagnostic imaging (x-rays, MRI [magnetic resonance imaging]), has been proven to be successful" in treating subluxations injuries.

In a decision dated February 28, 2005, the Office denied modification of the June 14, 2004 decision. The Office found that Dr. Hargreaves was not a physician under the Act as x-rays had not been taken.

LEGAL PRECEDENT

An employee seeking benefits under the Act[2] has the burden of establishing that he or she sustained an injury while in the performance of duty.[3] In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether "fact of injury" has been established. Generally "fact of injury" consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident

[1] A properly executed Form CA-16 creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *Elaine M. Kreymborg*, 41 ECAB 256, 259 (1989); *Pamela A. Harmon*, 37 ECAB 263, 264-65 (1986).

[2] 5 U.S.C. §§ 8101-8193.

[3] *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

which is alleged to have occurred. The second component is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.[4]

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."[5]

ANALYSIS

The medical evidence submitted in this case was from a chiropractor, Dr. Hargreaves. Before the medical evidence can be considered of probative value, Dr. Hargreaves must be established as a physician under the Act. As noted above, a chiropractor is a physician only if he diagnoses a spinal subluxation as demonstrated by x-ray to exist. Although Dr. Hargreaves stated in his December 8, 2004 report that his prior examinations had clearly documented subluxations, he did not diagnose subluxations in any prior report. To the extent that he diagnosed subluxations in the December 8, 2004 report, he did not base the diagnosis on x-rays. Dr. Hargreaves did not indicate that x-rays were taken; he discussed the benefits of conservative care without diagnostic imaging.

Since Dr. Hargreaves did not diagnose a spinal subluxation as demonstrated by x-rays, he is not a "physician" as defined under the Act and his medical reports are of no probative value.[6] Appellant has not submitted probative medical evidence on causal relationship between a diagnosed condition and the employment incident. He therefore did not meet his burden of proof to establish an injury causally related to the March 9, 2004 employment incident.

CONCLUSION

The Board finds that appellant did not submit probative medical evidence establishing an injury in the performance of duty on March 9, 2004.

[4] *See John J. Carlone*, 41 ECAB 354, 357 (1989).

[5] 5 U.S.C. § 8101(2).

[6] *See Jack B. Wood*, 40 ECAB 95, 109 (1988).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated February 28, 2005 and June 14, 2004 are affirmed.

Issued: July 14, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board