U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RONALD G. FOSTER and DEPARTMENT OF HEALTH & HUMAN SERVICES, CENTER FOR DISEASE CONTROL, Atlanta, Ga.

Docket No. 96-2660; Submitted on the Record;
Issued August 27, 1998

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant sustained a neck and back injury in the performance of duty on June 16, 1995.

On July 10, 1995 appellant, then a 49-year-old public health adviser, filed a notice or traumatic injury and claim for continuation of pay/compensation alleging that on June 16, 1995 he was struck from behind while driving a vehicle in the course of his employment and injured his neck and back. Appellant did not stop work.

Appellant subsequently submitted a report from Dr. Mark S. Harris, a chiropractor. Dr. Harris treated appellant for pain in his head, neck, low back and left shoulder. He noted the history of the injury and conducted a physical examination. He reviewed x-rays and found that there was a narrowed disc spacing and right foraminal encroachment at the C5-6 level. He also found moderate scoliosis in the thoracic spine to the left with the apex level at T8 apparent and in the lumbosacral/pelic area to the right with the apex level at T8 apparent. Dr. Harris diagnosed cervical spine pain, cervicocranial syndrome, thoracic spine pain and lumbar pain. He stated that the prognosis was favorable.

On August 2, 1995 the Office of Workers' Compensation Programs informed appellant that it could not recognize the opinion of a chiropractor as valid medical evidence absent x-ray evidence revealing a subluxation of the spine.

By decision dated October 6, 1995, the Office rejected appellant's claim for compensation because fact of injury was not established. In an accompanying memorandum, the Office found that the claimed event, incident or exposure occurred at the time, place and in the manner alleged. The Office, found, however, that the medical evidence failed to establish an injury resulting from the accepted trauma. The Office noted that the only evidence of record was the opinion of Dr. Harris, a chiropractor. It found that because the record contained no evidence of subluxation of the spine by x-ray, Dr. Harris' opinion did not constitute valid medical

evidence. The Office indicated that appellant was advised of this deficiency, but that he failed to submit additional evidence. The Office, therefore, denied the claim.

An employee seeking benefits under the Federal Employees' Compensation 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] 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

[1] 5 U.S.C. §§ 8101-8193.

[2] *See Daniel R. Hickman*, 34 ECAB 1220 (1983); *see also* 20 C.F.R. § 10.110.

[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*. For a definition of the term "injury," *see* 20 C.F.R. § 10.5(a)(14).

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

question of whether an employment incident caused a personal injury generally can be established only by medical evidence.[11]

In this case, there is no dispute that appellant was an "employee" within the meaning of the Act, nor that appellant timely filed his claim for compensation. Moreover, the Office accepted that the June 16, 1995 work incident occurred as alleged.

Appellant, however, has not submitted sufficient medical evidence to establish that he incurred an employment-related injury. The only evidence submitted by appellant was the June 16, 1995 report of Dr. Harris, a chiropractor. The Board has held that medical opinion, in general, can only be given by a qualified physician.[12] Pursuant to sections 8101(2) and (3) of the Act,[13] the Board has recognized chiropractors as physicians, to the extent of diagnosing spinal subluxations according to the Office's definition[14] and treating such subluxations by manual manipulation. Consequently, because Dr. Harris' opinion is not supported by x-ray evidence of a spinal subluxation, his opinion does not constitute valid medical evidence and has no probative medical value.[15] Appellant, therefore, failed to meet his burden of proof in establishing that he sustained an injury in the performance of duty on June 16, 1995.

The decision of the Office of Workers' Compensation Programs dated October 6, 1995 is affirmed.

Dated, Washington, D.C.
August 27, 1998

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

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

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

[13] 5 U.S.C. §§ 8101(2) and (3).

[14] 20 C.F.R. § 10.400(e).

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