U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ARETHA COLEMAN and U.S. POSTAL SERVICE,
FRAYSER POST OFFICE, Memphis, Tenn.

Docket No. 96-1232; Submitted on the Record;
Issued February 25, 1998

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof to establish that she sustained an injury in the performance of duty on October 11, 1995.

On October 12, 1995 appellant, then a 33-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on October 11, 1995 she pulled a muscle in her back while trying to pick up a plastic tub of magazines. Appellant stopped work on October 12, 1995 and returned to work on October 13, 1995. The employing establishment received notice of the injury on October 12, 1995. Appellant's claim was accompanied by an October 12, 1995 authorization for absence from Dr. Xavier K. Haymer, a chiropractor, recommending that appellant be excused from work until October 13, 1995 and indicating that appellant could return to light-duty work which required no repetitive flexing or lifting more than 20 pounds. Appellant's claim was also accompanied by the employing establishment's October 12, 1995 letter granting appellant limited-duty work for the period October 12 through 16, 1995 based on Dr. Haymer's disability certificate.

By letter dated October 31, 1995, the Office of Workers' Compensation Programs noted that appellant was being treated by a chiropractor and advised appellant that a chiropractor is only recognized as a physician under the Federal Employees' Compensation Act when diagnosing subluxation of the spine by x-ray. The Office further advised appellant that the evidence submitted did not establish that she had a subluxation of the spine demonstrated by x-ray. The Office then advised appellant to submit medical evidence supportive of her claim.

Appellant submitted Dr. Haymer's October 12, 1995 authorization for absence, the employing establishment's October 12, 1995 letter and Dr. Haymer's October 16, 1995 authorization for absence recommending that appellant be excused from work until October 18, 1995 and indicating that appellant could return to light-duty work requiring no repetitive flexing and no lifting more than 20 pounds.

Appellant also submitted an undated medical report of Dr. Owen Britt Tabor, a Board-certified orthopedic surgeon, revealing that he saw appellant on October 18, 1995, and that appellant had chronic interspinous fibrositis thoracolumbar spine and possible mild facet arthritis in the thoracolumbar spine. Dr. Tabor indicated that appellant had reached maximum medical improvement on October 5, 1995 and that appellant could return to full duty on that date. Appellant submitted Dr. Tabor's September 29 and October 18, 1995 medical treatment notes regarding appellant's previous, as well as current back condition.[1]

Further, appellant submitted an October 20, 1995 letter from Dr. Rodney G. Olinger, a Board-certified neurosurgeon, revealing that appellant had recovered sufficiently to return to work on October 21, 1995 and that appellant should perform secretarial work requiring no lifting over 10 pounds, standing no longer than 1 hour at a time and sitting for 1 to 2 hours at a time. Additionally, appellant submitted the employing establishment's October 20, 1995 letter granting appellant limited-duty work for the period October 20 through November 20, 1995 based on Dr. Olinger's letter. Dr. Olinger's October 23, 1995 duty status report which provided that appellant could return to work and appellant's physical restrictions, and Dr. Olinger's November 28, 1995 letter which revealed that appellant had recovered sufficiently to return to work as of November 28, 1995 and that appellant should continue light-duty work with no lifting more than 10 pounds, standing 1 hour and sitting 1 to 2 hours at a time were submitted by appellant. Lastly, appellant submitted the Office's November 29, 1995 letter granting appellant light-duty work based on Dr. Olinger's November 28, 1995 letter.

By decision dated February 2, 1996, the Office found the evidence of record insufficient to establish that appellant sustained an injury as alleged.

The Board finds that appellant has failed to meet her burden of proof to establish that she sustained an injury in the performance of duty on October 11, 1995.

An employee seeking benefits under the Act[2] 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 limitations 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.[3] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[4]

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

[1] The Board notes that it appears from the record that appellant had a preexisting back condition. The record does not reveal that appellant filed a claim for this injury.

[2] 5 U.S.C. §§ 8101-8193.

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

[4] *Daniel J. Overfield*, 42 ECAB 718 (1991).

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 which is alleged to have occurred.[5] In this case, appellant stopped work on October 12, 1995, merely one day following the alleged October 11, 1995 incident. The employing establishment received notice of the injury on October 12, 1995. In addition, appellant sought medical treatment contemporaneous to the claimed date of injury based on the October 12, 1995 authorization for absence from Dr. Haymer, a chiropractor, which recommended that appellant be excused from work until October 13, 1995. Thus, the Board finds that the incident occurred at the time, place and in the manner alleged.

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.[6]

In the present case, appellant has submitted no medical evidence establishing that her back condition was causally related to the October 11, 1995 employment incident. Appellant submitted the October 12 and 16, 1995 authorizations for absence of Dr. Haymer, a chiropractor. Under section 8101(2) of the Act,[7] "[t]he 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 of the spine as demonstrated by x-ray to exist and subject to regulation by the Secretary."[8] 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.[9] Dr. Haymer's disability certificates do not diagnose subluxation of the spine as demonstrated by x-ray. Inasmuch as Dr. Haymer has failed to diagnose subluxation of the spine by x-ray, he does not qualify as a physician under section 8101(2).[10] Therefore, his disability certificates do not constitute competent medical evidence to support a claim for compensation.[11]

The undated medical report of Dr. Tabor, a Board-certified orthopedic surgeon, and his September 29 and October 18, 1995 medical treatment notes are insufficient to establish appellant's burden inasmuch as they failed to provide a detailed description of the history of

[5] *Elaine Pendleton*, *supra* note 3.

[6] *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

[7] 5 U.S.C. §§ 8101-8193.

[8] 5 U.S.C. § 8101(2); *see also* 20 C.F.R. § 10.400(a); *Robert J. McLennan*, 41 ECAB 599 (1990); *Robert F. Hamilton*, 41 ECAB 431 (1990).

[9] *Loras C. Dignann*, 34 ECAB 1049 (1983).

[10] *Milton E. Bentley*, 32 ECAB 1805 (1981).

[11] *Theresa K. McKenna*, 30 ECAB 702 (1979).

appellant's injury and to address a causal relationship between appellant's back condition and the October 11, 1995 employment incident.

Similarly, the October 20 and November 28, 1995 letters, and October 23, 1995 duty status report of Dr. Olinger, a Board-certified neurosurgeon, are insufficient to establish appellant's burden because they failed to provide a detailed description of the history of appellant's injury and to address a causal relationship between appellant's back condition and the October 11, 1995 employment incident.

Accordingly, the Board finds that appellant has failed to meet her burden of proof in establishing that she sustained an injury causally related to the October 11, 1995 employment incident.

The February 2, 1995 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
February 25, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member