U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LEE ANN WILLIAMS and U.S. POSTAL SERVICE,
POST OFFICE, Raleigh, N.C.

Docket No. 96-2304; Submitted on the Record;
Issued June 17, 1998

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant has established that she sustained an injury in the performance of duty on February 7, 1996.

The Board has reviewed the case record and finds that appellant has not met her burden of proof in establishing that she sustained an injury in the performance of duty on February 7, 1996.

On February 7, 1996 appellant, a 41-year-old city carrier, filed a claim alleging that on that day she sustained an arm and shoulder injury while in the performance of duty. The Office of Workers' Compensation Programs denied appellant's claim by decisions dated April 8 and June 26, 1996 on the grounds that appellant had failed to establish fact of injury.[1]

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of his or her claim by the weight of reliable, probative and substantial evidence, including the fact 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.[3]

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[1] The Board notes that the Office's April 8, 1996 decision indicates that the supervisory claims examiner signed the denial order on March 8, 1996, and that the June 26, 1996 order denying appellant's application for reconsideration indicates that the claims examiner signed the order on July 26, 1996. Given that appellant's initial request for appeal was dated July 10, 1996 concerning the Office's decision of "July 26, 1996," the correct date of the issuance of the Office's denial of appellant's application for reconsideration is June 26, 1996.

[2] 5 U.S.C. §§ 8101-8193.

[3] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

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 which is alleged to have occurred.[4] 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.[5]

In this case, the Office found that there was insufficient evidence to establish whether the incident giving rise to the claimed injury occurred as alleged. However, the Board notes that there is no evidence disputing that the incident, in which appellant allegedly injured her arm and shoulder, occurred as alleged. The record indicates that appellant filed a claim the same day of the alleged injury. As the Board has held, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[6] The Office has not specified what evidence is conflicting or absent with regard to this element of fact of injury. Consequently, the Board finds that the February 7, 1996 claimed incident occurred as alleged by appellant.

With regard to the second component of fact of injury, appellant did not submit medical evidence establishing that the February 7, 1996 incident resulted in an employment injury. The Office, on March 7, 1996, advised appellant of the type of medical evidence needed to establish this part of her claim but such evidence was not received by the Office before it issued its April 8 or June 26, 1996 decisions. For example, appellant did not submit a physician's report explaining the medical processes by which the February 7, 1996 incident would cause or aggravate a specific medical condition. Although appellant submitted reports from Dr. John Smith, a chiropractor, these reports are insufficient to establish that appellant sustained an employment injury on February 7, 1996 as alleged. 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."[7] In order for Dr. Smith 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. Dr. Smith did not diagnose a subluxation in any of his reports including his April 16, 1996 report in which he referred to x-rays taken on February 8, 1996.[8] Accordingly, the Board finds that Dr. Smith is not considered a "physician" under the

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

[5] *See John J. Carlone*, 41 ECAB 354 (1989). Section 10.5(a)(14) of Title 20 of the Code of Federal Regulations defines "injury" in relevant part as follows: "'Injury' means a wound or condition of the body induced by accident or trauma, and includes a disease or illness proximately caused by the employment for which benefits are provided under the Act."

[6] *See Robert A. Gregory*, 40 ECAB 478 (1989).

[7] 5 U.S.C. § 8101(2); *see also Linda Holbrook*, 38 ECAB 229 (1986).

[8] The Board notes that Dr. Smith stated that he had reviewed x-rays taken on February 8, 1996 although he did not diagnose appellant with subluxation as a result of his reading of these x-rays.

Act and his reports are of no probative value to appellant's claim. Since appellant did not submit supporting medical evidence, she has not established an injury in the performance of duty on February 7, 1996.

The decisions of the Office of Workers' Compensation Programs dated April 8 and June 26, 1996 are affirmed as modified.[9]

Dated, Washington, D.C.
June 17, 1998

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member

[9] The Board notes that the record contains information that was not before the Office at the time of its final decision. The Board cannot consider this evidence as its review of the case is limited to the evidence of record which was before the Office at the time of its final decision; *see* 20 C.F.R. § 501.2(c); *Harold L. Dunlap*, 45 ECAB 817 (1994);. *James C. Campbell*, 5 ECAB 35 (1952).