U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANTHONY A. POLICH and, DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Des Moines, Iowa

Docket No. 96-419; Submitted on the Record;
Issued May 19, 1998

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has met his burden of proof in establishing that he sustained an injury in the performance of duty on August 18, 1995, as alleged.

The Board finds that this case is not in posture for decision on appeal and must be remanded for further development of the evidence.

An employee seeking benefits under the Federal Employees' Compensation Act[1] 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, and that the claim was filed within the applicable time limitations of the Act.[2] An individual seeking disability compensation, must also establish that an injury was sustained at the time, place and in the manner alleged,[3] that the injury was sustained, while in the performance of duty[4] and that the disabling condition for which compensation is claimed was caused or aggravated by the individual's employment.[5] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.[6]

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[1] 5 U.S.C. §§ 8101-8193.

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

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

[4] *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[5] *Steven R. Piper*, 39 ECAB 312 (1987).

[6] *David J. Overfield*, 42 ECAB 718 (1991); *Victor J. Woodhams*, 41 ECAB 345 (1989).

The Office of Workers' Compensation Programs found that appellant was a federal employee, that he timely filed his claim for compensation benefits, and that the incident occurred as alleged. Appellant, a taxpayer service specialist, claimed that on August 18, 1995, he suffered a severe strain to his lower back when he leaned back in his chair and almost flipped over backwards, because the back of his chair was loose. However, the Office also found that the evidence was insufficient to establish that appellant's diagnosed medical condition was causally related to the August 18, 1995 employment incident.

Appellant filed a traumatic injury claim (Form CA-1) with no accompanying evidence. By letter dated September 20, 1995, the Office requested additional information from appellant. The Office submitted a list of questions to appellant regarding the August 18, 1995 incident and his medical history. The Office also requested that appellant arrange for submission of a medical report on a Form CA-20 from a private physician who examined him as a result of this injury. The record indicated that on October 16, 1995, the Office received appellant's response to the its questions, a Form CA-20 dated September 14, 1995, completed by Dr. Sara L. Neil, a chiropractor and Dr. Neil's August 22, 1995 office notes.[7] The record indicated that all information requested by the Office was submitted.

By decision dated November 6, 1995, the Office denied appellant's claim finding that evidence of record failed to establish that appellant's claimed medical condition or disability was causally related to the August 18, 1995 incident. In the memorandum incorporated by reference, the Office stated that the medical evidence was insufficient to establish causal relationship because it did not contain a physician's opinion as to how and in what way the claimant's condition is connected to the incident of August 18, 1995. The Office went on to say that appellant was advised of this by letter dated September 20, 1995 and afforded the opportunity to provide supportive medical evidence. However, the record indicated that in its November 6, 1995 decision, was the first time appellant was notified by the Office that he needed to provide a physician's opinion as to how and in what way the claimant's condition is connected to the incident of August 18, 1995. The Board also notes that in the Office's November 6, 1995 decision, the Office for the first time notified appellant regarding the type of evidence from a chiropractor that is deemed acceptable medical evidence.

The Board finds that notification to appellant, through the November 6, 1995 decision, that he needed to submit a medical report containing a physician's opinion as to how and in what way his condition is connected to the August 18, 1995 incident is not consistent with a nonadversarial policy. The Board further notes that this nonadversarial policy is reflected in the Office's regulations at 20 C.F.R. § 10.110(b) which provides in pertinent part:

> "If a claimant initially submits supportive factual and/or medical evidence which is not sufficient to carry the burden of proof, the Office will inform the claimant

[7] Dr. Neil is a chiropractor, and the Act specifies that chiropractors are only considered physicians 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. Since Dr. Neil did not diagnose a subluxation based on x-rays, she may not be considered a physician and her report and office notes do not constitute competent medical evidence.

of the defects in proof and grant at least 30 calendar days for the claimant to submit the evidence required to meet the burden of proof."[8]

In accordance with the above regulatory section, the Office, upon receipt of the evidence, submitted by appellant in response to the Office's September 20, 1995 letter, should have notified appellant of the defects of such evidence and informed him of what additional evidence he must submit. The Office has a shared responsibility in the development of evidence and an obligation to see that justice is done. Therefore, the case will be remanded to the Office for further development.

On remand the Office should advise appellant of the defects of the initial evidence which he submitted, advise him of the necessity to submit a medical report and very specifically describe the information which should be contained in the report and explain when a chiropractor is considered a "physician" under the Act. Following this and such further development as it deems necessary, the Office shall then issue a *de novo* decision.

The decision of the Office of Workers' Compensation Programs dated November 6, 1995 is hereby set aside and the case is remanded for further action consistent with this decision.

Dated, Washington, D.C.
May 19, 1998

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

[8] 20 C.F.R. § 10.110(b)