U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LINDA G. BUNCH and U. S. POSTAL SERVICE,
POST OFFICE, Elberton, Ga.

Docket No. 96-615; Submitted on the Record;
Issued May 7, 1998

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant had continuing disability after February 12, 1994.

The Board has duly reviewed the case record and concludes that the accepted condition ceased by February 12, 1994.[1]

In the present case, the Office of Workers' Compensation Programs has accepted that appellant sustained a subluxation of L5, on January 15, 1993. Appellant received appropriate compensation for wage loss through February 11, 1994. The Board notes that appellant worked intermittently during this time period.[2]

To determine whether appellant had residuals of the accepted employment injury, the Office obtained a second opinion consultation from Dr. James L. Becton, Board-certified in orthopedic surgery, in February 1994. In a medical report dated February 8, 1994 Dr. Becton stated that the results of an orthopedic examination taken that day were within normal limits. He also noted that x-rays taken that day of her lumbar spine were read as normal, and that a recent magnetic resonance imaging scan had been read as normal. Dr. Becton noted that appellant had full range of motion of her back "to a point where she lacks approximately 4 inches from touching her toes." Hyperextension and right and left lateral bending were within normal limits. On the basis of the examination and appellant's medical record, Dr. Becton found "no cause to prevent her from returning to work." He concluded that appellant had reached maximum medical improvement and that she could perform normal activities without restrictions.

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[1] The Board's scope of review is limited to those final decisions issued within one year prior to the filing of the appeal. 20 C.F.R. § 501.2(c). Because appellant filed her notice of appeal on December 5, 1995 the Board has jurisdiction only of the Office's decision dated February 16, 1995.

[2] The employing establishment stated in an absence analysis report that appellant worked an average of about 30 hours a week from the pay period beginning January 9, 1993 through the pay period beginning June 25, 1993.

On March 14, 1994 the Office, in a decision, denied appellant's claim on the grounds that the medical evidence failed to establish that she had medical residuals from her January 15, 1993 employment-related injury causing disability on and after February 12, 1994.

On February 2, 1995 appellant requested reconsideration of the Office's March 14, 1994 decision denying benefits. On February 16, 1995 the Office, in a merit decision, denied appellant's claim for reconsideration on the grounds that she failed to establish that her medical condition was causally related to her employment-related injury.

The Board finds that appellant has not met her burden of proof to establish that she had any disability causally related to her employment injury after February 12, 1994.

If the Office accepts that an employee has sustained an employment-related injury and advises the employee that she must file Form CA-8 with supporting medical evidence to establish a period of disability, the employee retains the burden of proof to establish continuing disability until the employee is advised by the Office that the claim has been placed on the periodic rolls and Forms CA-8 with supporting evidence no longer need to be submitted.[3]

In this regard, the implementing regulations[4] of the Federal Employees' Compensation Act[5] provide as follows:

> "Form CA-8 is provided to claim compensation for additional periods of time after Form CA-7 is submitted to the Office. It is the responsibility of the employee to submit Form CA-8. Without receipt of such claim, the Office has no knowledge of continuing wage loss.... The employee is responsible for submitting, or arranging for this submission of, medical evidence in support of the claim. Form CA-20a is attached to Form CA-8 for this purpose...."

The evidence submitted by appellant in support of her requests for continuing compensation consisted of medical reports from Dr. Kathryn A. Webb, her treating chiropractor, Dr. John L. Williams, Board-certified in neurology, and Dr. John P. Carr, Board-certified in family practice.

In a number of reports submitted during 1993 and 1994, Dr. Webb listed appellant's work restrictions and noted a diagnosis of lumbar facet, paresthesia, sciatic neuralgia and migraine headaches but did not note that appellant continued treatment specifically for the accepted lumbar subluxation. Dr. Webb, appellant's treating chiropractor, did not indicate that further x-ray evaluation revealed continued subluxation at L5, the accepted condition. The only x-ray examination performed in early 1994 evidenced a normal lumbar spine. Furthermore, as a chiropractic physician, Dr. Webb was precluded from offering treatment for any condition other than a subluxation. Therefore, her opinion regarding other conditions is of no probative medical

[3] *See Donald L. Ballard*, 43 ECAB 876 (1992).

[4] 20 C.F.R. § 10.122.

[5] 5 U.S.C. § 8101 *et seq.*

value.[6] Dr. Williams' medical report dated June 20, 1994 diagnosed lumbar strain but did not relate appellant's condition to her employment-related injury. Similarly, Dr. Carr's medical reports dated August 23 and December 20, 1994, diagnosed lumbar spine, spasm and pain, but failed to establish a causal relationship between the claimed condition and the employment-related injury, which was only accepted for lumbar subluxation.

As Dr. Becton's report was based upon a proper factual background, was well rationalized, and was the only medical evidence of record which addressed the issue of whether appellant had continued residuals from her employment injury, his report constituted the weight of the medical evidence.[7] Dr. Becton's report substantiated that appellant had no disability due to an accepted injury, and had no residuals of the accepted subluxation regarding further medical treatment. Therefore, as there is no medical evidence of record that appellant was disabled after February 12, 1994, the Office properly denied payment of compensation benefits for this period.

The decision of the Office of Workers' Compensation Programs dated February 16, 1995 is affirmed.

Dated, Washington, D.C.
May 7, 1998

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[6] 5 U.S.C. § 8101(2) 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." A chiropractor is considered a physician under the Act if it is established that there is a subluxation as demonstrated by x-ray evidence. *Kathryn Haggerty*, 45 ECAB 383 (1994).

[7] *See Melvina Jackson*, 38 ECAB 443 (1987).