U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JANICE G. BRODERICK and U.S. POSTAL SERVICE,
POST OFFICE, Indianapolis, Ind.

Docket No. 96-1441; Submitted on the Record;
Issued May 4, 1998

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant met her burden of proof to establish that she sustained an injury to her back in the performance of duty.

On September 28, 1993 appellant, a 42-year-old rural mail carrier, filed a Form CA-1 claim for a traumatic injury and continuation of pay, alleging that on September 24, 1993 she experienced severe back pain while lifting a tray of mail to the front of her vehicle.

By letter dated November 2, 1993, the Office of Workers' Compensation Programs requested that appellant submit additional information in support of her claim. The Office stated that appellant had submitted two Form CA-17's from a chiropractor, Dr. Garry Fuller, on October 22 and October 25, 1993, but that Form CA-17's are merely work restriction forms and are not considered medical evidence for compensation purposes. In addition, the Office noted that under section 8101(2) of the Federal Employees' Compensation Act,[1] a medical report submitted by a chiropractor can only be considered a physician's opinion when the chiropractor renders treatment consisting of manual manipulation of the spine to correct subluxation of the spine as demonstrated to exist by x-ray.

The Office further requested a medical report from a physician, supported by medical reasons, as to how the reported work incident caused or aggravated the claimed injury. The Office also requested that appellant submit a detailed description of how her employment injury occurred. The Office noted that the employing establishment had informed it that appellant was on vacation from October 10 through October 16, 1993, and that she did not have any difficulty performing her usual job as a mail carrier prior to going on vacation. The Office stated that appellant had 30 days in which to submit the requested information.

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[1] 5 U.S.C. § 8101(2).

In response to the Office's November 2, 1993 letter, the employing establishment submitted a letter to the Office dated November 10, 1993 in which it contradicted the Office's assertion that appellant did not have any difficulty performing her route prior to going on vacation. The employing establishment stated that appellant was already on limited-duty status prior to going on vacation, and was not performing her route. The employing establishment reported that appellant was working eight hours per day pursuant to her doctor's restrictions, and that following her vacation her doctor revised her restrictions so that appellant would work no more than four hours per day. The employing establishment then stated that it needed to know why appellant could work eight hours per day prior to the vacation but only four hours per day after her vacation.

In response to the Office's November 1, 1993 letter, appellant submitted two progress notes from Dr. Barth T. Conard, a Board-certified orthopedic surgeon, dated October 20 and November 23, 1993, in which Dr. Conard stated that appellant probably had a torn muscle in the rhomboid area, which he characterized as a soft tissue problem. Appellant also submitted a November 1, 1993 Form CA-20 in which Dr. Conard diagnosed a thoracic strain which he believed was caused or aggravated by employment activity. Dr. Conard stated that he had referred appellant to Dr. Garry T. Fuller, a chiropractor.[2]

Appellant also submitted a November 23, 1993 report from Dr. Fuller. Dr. Fuller stated that he had treated appellant on September 27, 1993 for pain in the lower thoracic/upper lumbar region of her spine, which was aggravated by lifting and twisting of her body. Dr. Fuller disagreed with the employing establishment's November 2, 1993 letter stating that appellant did not have any trouble performing her mail route prior to returning from vacation, which lasted from October 10 through October 14, 1993. Dr. Fuller noted that he had limited appellant's lifting to a maximum of 10 pounds to avoid prolonging pain, and placed her off work from October 18 through October 24, 1993 because he saw no change in her symptomatology and thought that another week of rest would accelerate her recovery.

In a letter to the Office dated December 6, 1993, the employing establishment stated that there was a discrepancy between the diagnoses of Dr. Fuller and Dr. Conard. The employing establishment noted that Dr. Fuller had stated in his earlier Form CA-17's that appellant had sustained a lower thoracic subluxation, but had neglected to state this diagnosis in his November 23, 1993 report. The employing establishment then stated that Dr. Conard diagnosed thoracic strain in his November 1, 1993 Form CA-20, with no mention of subluxation, but had stated in his November 17, 1993 Form CA-17, that appellant had thoracic sprain/strain but had also neglected to indicate a subluxation. The employing establishment therefore advised that the case required to have a subluxation, if any, established by x-rays.

By decision finalized March 31, 1994, the Office denied appellant's claim on the grounds that the evidence of record failed to establish that she sustained the claimed injury in the performance of duty. The Office found that while the evidence of record supported the fact that the claimed event, incident or exposure occurred at the time, place and in the manner alleged, the

[2] Appellant also submitted a November 23, 1993 treatment note from Dr. Conard in which he stated that appellant needed to be placed on restrictions for two weeks.

medical condition that appellant claimed had resulted from the employment incident of September 24, 1993 was not supported by the medical evidence of record.

In a letter to the Office dated April 13, 1994, appellant requested a hearing.

By letter dated December 12, 1994, the Office scheduled a hearing for January 23, 1995.

In response to a January 11, 1995 letter from appellant's representative, Dr. Fuller submitted a January 17, 1995 report in which he stated that it was possible that the injuries appellant presented were in fact caused by her job as a rural route carrier. Dr. Fuller stated that her condition was not unusual for the job description she provided at her initial examination. Dr. Fuller stated that subluxations of the thoracic vertebra with rib involvement were very difficult to treat and stabilize, and that he believed it necessary to refer her to another chiropractor, Dr. Vicki Knapke, for a different type of adjusting technique.

In a report dated May 18, 1994, Dr. Knapke stated that appellant had lower thoracic subluxation along with rib involvement causing aberrant motion and irritation of spinal nerve roots and intercostal nerves. Dr. Knapke stated that there was thoracic muscle splinting/spasm and thoracic spine pain which was a part of the subluxation complex consistent with her September 24, 1993 employment injury, and that it was common for this type of condition to be aggravated by twisting and lifting movements. Dr. Knapke concluded that "it appears that Dr. Fuller, Dr. Conard and I all agree that [appellant] did sustain an injury to lower thoracic spine while on the job and that conservative chiropractic treatment was the treatment of choice for her resulting condition. This fact, coupled with the fact that [appellant] has returned to work as a mail carrier indicates that her injury was genuine and that she did indeed require a temporary change in job status in order to prevent permanent injury from repetitive simultaneous twisting and lifting."

In a report dated April 15, 1994, Dr. Fuller related that appellant injured her lower thoracic spine while lifting a basket of magazines from the back seat of her jeep while performing her duties as a mail carrier. Dr. Fuller stated that appellant presented to his office on September 27, 1993 complaining of sharp, stabbing pain in the lower thoracic region. Dr. Fuller stated that appellant had several objective findings which could not be faked by a malingerer, including palpable muscle splinting of the lower thoracic and upper lumbar paravertebral muscles, and point tenderness on digital palpation of the spinous processes of the lower thoracic region.

Dr. Fuller stated that appellant was in fact not pain-free prior to going on vacation on October 10, 1993, but that upon returning home she aggravated her condition while unpacking and unloading her dishwasher at home, which indicated to Dr. Fuller that her condition was still unstable and that going to work would do nothing but aggravate and prolong the long-term effects of her injury. Dr. Fuller reiterated that appellant sustained a lower thoracic subluxation along with rib involvement causing an irritation of the intercostal nerves, that there was thoracic myositis and thoracic spinal pain associated with this injury, and that her condition was due to the twisting and lifting she did on September 24, 1993 while at work. Dr. Fuller further stated that, with regard to the discrepancy noted by the employing establishment in its December 6,

1993 letter, Dr. Conard was not a chiropractor and was not trained in detecting vertebral subluxations.

In response to the request made by appellant's representative in his January 23, 1995 letter, Dr. Fuller indicated in a letter dated January 24, 1995 that his impressions of the x-rays he took on September 27 and October 18, 1993 of the lumbar and thoracic spine were of a pelvic tilt, low on the right with compensating vertebral wedging at L4-5, high on the right side and L1-T12, high on the left. Dr. Fuller further stated that the A/P thoracic view also revealed the disc wedging at T12-L1. Dr. Fuller stated that according to federal guidelines pertaining to Medicare, vertebral subluxation can be documented on x-ray by demonstrating posterior slippage of one vertebra in relation to another, showing rotation of the vertebral body or spinous process and/or showing lateral wedging of the intervertebral disc. Dr. Fuller concluded that appellant had the latter condition, or lateral disc wedging at T12-L1, and reiterated that the condition she presented with on September 27, 1993 was due to a work-related injury.

By decision dated March 13, 1995, the Office denied appellant's claim on the grounds that the medical evidence of record failed to establish that appellant sustained the claimed injury in the performance of duty on September 24, 1993. An Office hearing representative stated that Dr. Conard's opinion was not based on a complete and accurate history, lacked probative value and was insufficient to meet appellant's burden to establish causal relationship between appellant's claimed condition and her September 24, 1993 employment injury. The hearing representative noted that Dr. Knapke diagnosed thoracic subluxations but did not state that they were based on specific x-ray findings; therefore, she could not be considered a physician under section 8101(2).

With regard to Dr. Fuller, the hearing representative stated that his January 24, 1995 report, wherein he stated that he took x-rays of appellant's spine on September 27, 1993 and October 18, 1993 and identified the subluxation as a lateral disc wedging at T12-L1, was in conflict with his previous finding that appellant had sustained an employment-related subluxation of the spine at T10-11. The hearing representative found that the probative value of Dr. Fuller's reports was greatly diminished by these inconsistencies. Further, the hearing representative stated that it was unclear what Dr. Fuller meant by a lateral disc wedging, or whether such a finding constituted a subluxation under the Office's definition. For these reasons, the hearing representative concluded that Dr. Fuller's reports were insufficient to establish that appellant sustained a subluxation of the thoracic spine in the performance of duty on September 24, 1993.

By letter dated March 7, 1996, appellant's representative requested reconsideration of the Office's March 13, 1995 decision. Appellant also submitted an April 10, 1995 report from Dr. Fuller, in which Dr. Fuller attempted to explain and clarify his earlier findings. Dr. Fuller essentially stated that "lateral wedging" is a term used in conjunction with "misalignment" in his Medicare practice, and that one form of "misalignment" is "lateral wedging" of one vertebra upon another, which defines appellant's employment-related condition. With regard to the "inconsistencies" cited in the hearing representative's March 13, 1995 decision, Dr. Fuller stated that appellant's radiographs showed a lateral wedging at T12-L1 with the high side of the wedge on the left, and retrolithesis of T11 in relation to T10 and T12. Dr. Fuller also noted a minor

amount of right posterior body rotation of T11 on the A/P lumbar radiograph. Dr. Fuller reiterated that appellant's history of lifting mail containers while twisting and turning in her truck seat was consistent with his objective findings.

Appellant also submitted a follow-up report from Dr. Knapke dated April 14, 1995 in which she essentially reiterated her earlier findings, and a April 20, 1995 letter from Dr. Conard in which he merely stated that he believed appellant's injury could have been caused by the facts alleged.

By decision dated March 21, 1996, the Office denied appellant's claim on the grounds that medical evidence appellant submitted was insufficient to establish that appellant had sustained an injury in the performance of duty on September 24, 1993. In a memorandum to the Director, the claims examiner found that Dr. Conard's April 20, 1995 letter was equivocal and speculative, and had no probative value. The claims examiner conceded, contrary to the finding of the hearing representative, that both Dr. Knapke and Dr. Fuller took x-rays which they believed to show subluxations of the spine. However, he found their opinions contradicted by that of Dr. Conard's office note of October 20, 1993, which stated that appellant probably had a torn rhomboid muscle which was producing her pain, the most logical thing in light of Dr. Fuller's September 27, 1993 x-rays of the thoracic and lumbar spine.[3] The claims examiner concluded that the fact Dr. Conrad diagnosed a soft tissue injury rather than the subluxations diagnosed by the chiropractors diminished the probative value of all three opinions.

The Board finds that appellant met her burden of establishing that she suffered an injury to her back in the performance of duty on September 24, 1993.

An employee seeking benefits under the Act[4] 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 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.[5] 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.[6]

To determine whether a federal 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

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[3] The claims examiner noted that Dr. Conard essentially reiterated this opinion in his November 23, 1993 office note.

[4] 5 U.S.C. §§ 8101-8193.

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

[6] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[7] *John J. Carlone,* 41 ECAB 354 (1989).

employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[8] The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[9]

The Board finds that the Office erred, in its March 21, 1996 decision, in finding that appellant did not establish that she sustained a back injury on September 24, 1993. The claims examiner's finding is based on the purported contradiction between Dr. Conard, the treating orthopedist who diagnosed a soft tissue injury, and the chiropractors, who diagnosed a subluxation based on x-ray. Dr. Conard performed the initial, preliminary examinations of appellant, but it was he who referred her to Dr. Fuller for a more complete examination and treatment based on x-ray, and stated in his Form CA-20 that appellant should "do well" under Dr. Fuller's care. Although Dr. Conrad's diagnosis of a soft tissue injury does contrast with the subluxation injury diagnosed by the chiropractors, there is nothing to suggest that the two diagnoses are mutually exclusive and/or contradictory, or that Dr. Conard's diagnosis undermines the probative value of the opinions of Drs. Fuller and Knapke. Dr. Fuller's January 24 and April 10, 1995 opinions, in particular, constitute thoroughly well-reasoned, probative medical evidence wherein Dr. Fuller fully and clearly explains the process by which appellant suffered a thoracic strain on September 24, 1993 while twisting and lifting mail, which resulted in lateral wedging of the thoracic vertebral spine, or subluxation. In addition, Dr. Fuller indicated that appellant's pain symptoms corresponded with the history of injury appellant provided him. Dr. Fuller placed restrictions on some of appellant's physical activities prior to her vacation, restricted her to work no more than four hours per day as of October 16, 1993, when she returned from her vacation, and placed her off work from October 18 through October 24, 1993.

Taken together, this medical evidence, which is unrefuted, is sufficient to establish fact of injury; *i.e.,* that the specific event or incident occurred at the time, place and in the manner alleged, and that the employment incident caused a personal injury. In addition, the medical evidence from Dr. Fuller is also sufficient to establish that appellant suffered partial disability attributable to the employment incident from October 22 to October 24, 1993, and total disability from October 18 through at least October 24, 1993. Therefore, the Office's decision of March 21, 1996 is reversed regarding the finding appellant did not sustain a traumatic injury and, remanded for the Office to determine the duration and extent of appellant's back strain, residuals, and the date her disability ceased. The Office should also consider, on remand, the extent to which appellant is entitled to reimbursement for medical treatment related to her work-related injury.

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

[9] *Id.*

The decision of the Office of Workers' Compensation Programs dated March 21, 1996 is hereby reversed and the case is remanded for further action consistent with this opinion.

Dated, Washington, D.C.
May 4, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member