

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BONNIE RAE ROBBINS and U.S. POSTAL SERVICE,
ZONE 4 ANNEX, Spokane, Wash.

*Docket No. 97-628; Submitted on the Record;
Issued November 24, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant established that she sustained an injury in the performance of duty.

On December 12, 1995 appellant, then a 46-year-old letter carrier, filed a notice of occupational disease, claiming that after carrying extra-heavy pouch mail for six days, she felt pain in her arms, shoulders, and neck area, and could not lift her arms above her head without pain. Appellant went to Dr. Vince L. Fitzpatrick, a chiropractor, and had her right arm adjusted several times. She lost no time from work.

In a report dated December 12, 1995, Dr. Fitzpatrick diagnosed a bilateral cervical sprain/strain with an associated Type IV atlas sublaxation complex caused by carrying mail satchels weighing 30 to 40 pounds. The Office of Workers' Compensation Programs asked that Dr. Fitzpatrick to provide the x-rays he had used to determine the existence of a sublaxation. The Office informed appellant that she needed to submit a comprehensive medical report explaining how those work factors caused her injury. The Office added that appellant should provide a report from a medical doctor on her arm and shoulder condition.

After receiving a November 11, 1995 x-ray and a May 14, 1996 report from Dr. Fitzpatrick, the Office found that a conflict of opinion existed between an Office medical adviser and Dr. Fitzpatrick and thus referred the medical records, a statement of accepted facts, and a list of questions, to Dr. Arthur Castagno, a Board-certified radiologist, to determine whether appellant had sustained a sublaxation of her spine.

On July 10, 1996 Dr. Castagno reported that by "standard medical radiographic criteria" the five x-ray films he reviewed demonstrated minor degenerative changes at the C5-7 disc levels but no evidence of a sublaxation. Dr. Castagno added that he had been unable to find any medical literature describing the terms, Type I and Type IV, used by Dr. Fitzpatrick in

diagnosing an axial subluxation and that the relationship of the atlas and axis at C1-2 was normal.

On July 18, 1996 the Office denied the claim on the grounds that the evidence failed to establish that appellant had sustained an injury. The Office relied on the opinion of Dr. Castagno that there was no subluxation and concluded that Dr. Fitzpatrick's reports could not be considered as medical evidence.

Appellant timely requested reconsideration and submitted an August 7, 1996 report from Dr. Fitzpatrick, who explained that the subluxation he found was described in the enclosed literature from the National Upper Cervical Chiropractic Association. He added that appellant "definitely" had a Type IV atlas subluxation complex, which was related to the symptoms she presented initially on November 20, 1995.

On August 20, 1996 the Office denied appellant's request on the grounds that the evidence submitted in support of reconsideration was insufficient to warrant modification of its prior decision.

The Board finds that appellant has failed to establish that she sustained an injury in the performance of duty.

An employee seeking benefits under Federal Employees' Compensation Act¹ 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 filed within the applicable time limitation of the Act, that an injury was sustained in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.² 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.³

In an occupational disease claim such as this, the claimant must submit: (1) medical evidence establishing the existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the disease; and (3) medical evidence establishing that the employment factors were the proximate cause of the disease or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁴

The medical evidence required is generally rationalized medical opinion evidence which includes a physician's opinion of reasonable medical certainty based on a complete factual and medical background of the claimant and supported by medical rationale explaining the nature of

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

⁴ *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁵ Section 8101(2) of the Act provides that chiropractors are considered physicians under the Act only in claims involving treatment for a subluxation as demonstrated by x-ray.⁶

The Office's regulations⁷ define subluxation as: "an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae anatomically which must be demonstrable on any x-ray film to individuals trained in the reading of x-rays." Dr. Fitzpatrick, a chiropractor, diagnosed a subluxation based on x-rays he obtained. On February 6, 1996 an Office medical adviser reviewed the x-ray films and opined they did not show a subluxation of the cervical spine. When a conflict on whether an x-ray demonstrates a subluxation arises between a chiropractor and a medical doctor, the Office will refer the matter to a Board-certified radiologist for resolution.⁸

In this case, appellant has established the existence of work factors that caused pain in her neck, arms and shoulders. However, she has failed to submit medical evidence establishing that she sustained any injury. As the Office informed appellant, chiropractors are not considered to be physicians under the Act unless a spinal subluxation is demonstrated by x-ray. In this case, a conflict of medical opinion was created as to whether the x-ray films obtained by Dr. Fitzpatrick demonstrated a subluxation of the cervical spine.

Dr. Castagno, a Board-certified specialist, resolved the conflict in opinion between Dr. Fitzpatrick and the Office medical adviser who reviewed the x-rays. He submitted a July 10, 1996 report in which he reviewed the x-ray films, finding mild degenerative changes at C6-7 and C5-6 but no spinal subluxation. The weight of the medical opinion evidence is that appellant does not have a spinal subluxation. Therefore, appellant has failed to submit medical evidence establishing that she injured her arm and shoulder in the performance of duty, and the Office properly denied her claim.⁹

⁵ *Id.*

⁶ 5 U.S.C. § 8101(2); *George E. Williams*, 44 ECAB 530, 533 (1993); *see* cases cited therein.

⁷ 20 C.F.R. § 10.400(e).

⁸ *Robert F. Hamilton*, 41 ECAB 524, 536 (1990).

⁹ Every injury does not necessarily cause disability for employment. *Donald Johnson*, 44 ECAB 540, 551 (1993). Whether a particular injury causes disability for employment is a medical issue which must be resolved by competent medical evidence. *Debra A. Kirk-Littleton*, 41 ECAB 703, 706 (1990).

The August 20 and July 18, 1996 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
November 24, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member