U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LEANA M. McLEOD and DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Richmond, Va

Docket No. 97-962; Submitted on the Record;
Issued November 3, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof to establish that she was disabled during the period September 11 to November 16, 1995.

In the present case, the Office of Workers' Compensation Programs has accepted that appellant, a tax examiner, sustained lumbosacral sprain, contusion to the head and occipital scalp, as well as herniated discs at L4-5, C5-7 as a result of a fall from a chair on September 11, 1995. By decision dated November 1, 1996, the Office determined that appellant had not met her burden of proof to establish that she was disabled prior to November 16, 1995.

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, 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.[2]

Although the Office has accepted that appellant sustained a number of medical conditions resulting from her fall from a chair on September 11, 1995, it remains appellant's burden to establish any disability resulting from the employment injury.[3]

In the present case, the evidence of record establishes that following the September 11, 1995 injury, appellant was treated by a Joanne Wingate, a chiropractor, at the Nelson Medical Group. As Ms. Wingate did not perform x-ray examination to substantiate a diagnosis of

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[1] 5 U.S.C. §§ 8101-8193.

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

[3] *See Mary A. Howard*, 45 ECAB 646 (1994).

subluxation, the Office determined that Ms. Wingate was not a "physician" pursuant to the terms of the Act.[4] 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. While Ms. Wingate submitted a number of form reports to the record indicating that appellant was disabled from September 11, 1995 and continuing, as she is not established as a "physician" pursuant to the Act, her opinions do not constitute medical evidence and are of no probative medical value.[5]

The Office requested on multiple occasions that appellant obtain a medical report to support that she was disabled from work from September 11, 1995 and continuing.[6] The Office initially received a report dated February 6, 1996 from Dr. Gregory A. Nelson, an internist, wherein he indicated that both he and Ms. Wingate were associates with the Nelson Medical Group, and that they had both been simultaneously providing medical and chiropractic treatment to appellant since September 14, 1995. In a report dated April 18, 1996, Dr. Nelson clarified that, while appellant was initially evaluated on September 11, 1995 by Ms. Wingate, he had personally initially evaluated appellant on November 16, 1995. Regarding the issue of whether appellant was disabled from September 11, 1995 and continuing, Dr. Nelson in his reports indicated that appellant was currently disabled and would continue to be disabled; however, he did not address the issue at hand, that is, whether appellant was disabled from September 11 to November 16, 1995. Likewise, while appellant was subsequently examined by several other physicians to fully diagnose her condition, including Dr. Frederick S. Lieberman, a Board-certified orthopedic surgeon, and Dr. Bruce Bonier, an osteopath, these physicians did not address whether appellant was in fact disabled from September 11 to November 16, 1995.

While the Office has accepted that appellant sustained a number of medical conditions due to the September 11, 1995 injury, appellant bears the burden of proof to establish that she was disabled as a result thereof. There is insufficient medical evidence of record to establish that appellant was disabled from September 11 to November 16, 1995. While speculation or inference might suggest that appellant was disabled during this time period, entitlement to disability wage-loss benefits must be established by medical evidence, not inference or speculation. The Office properly determined that appellant had not established that she was disabled during the period September 11 to November 16, 1995.

[4] 5 U.S.C. § 8101(2).

[5] *See Sheila A. Johnson,* 46 ECAB 323 (1994).

[6] See memorandum of telephone conversation with appellant dated January 31, 1996, two letters dated January 31, 1996 and a memorandum of telephone conversation dated February 8, 1996.

The decision of the Office of Workers' Compensation Programs dated November 1, 1996 is hereby affirmed.

Dated, Washington, D.C.
November 3, 1998

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member