U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RAUL D. VILLAGRAN and DEPARTMENT OF AGRICULTURE, FOREST SERVICE, Silver City, N.M.

Docket No. 97-302; Submitted on the Record;
Issued October 21, 1998

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained an injury on July 24, 1995 in the performance of duty, causally related to factors of his federal employment.

On July 28, 1995 appellant, then a 47-year-old forestry technician, filed a notice of traumatic injury and claim for continuation of pay/compensation, Form CA-1, alleging that on July 24, 1995 he sustained an injury to his lower back and shoulder area when the horse he was riding took a spill and fell on him while he was working.[1]

By letter dated August 7, 1996, the Office of Workers' Compensation Programs advised appellant to submit medical evidence in support of his claim. Appellant was given 20 days in which to submit the evidence.

Appellant submitted a November 3, 1995 medical report from Dr. Luther D. Morris, a chiropractor, which indicated that appellant suffered an exacerbation of previous injuries to his neck, shoulder, upper and lower back and that the treatment to reduce subluxation configurations would continue.

By decision dated August 29, 1996, the Office rejected appellant's claim finding that the medical evidence of file failed to establish that an injury was sustained as alleged. The Office noted that the evidence of file supported the fact that the claimed event, incident or exposure occurred at the time, place and in the manner alleged, but that the medical evidence did not support that a medical condition resulted, and therefore an injury within the meaning of the Federal Employees' Compensation Act was not demonstrated.

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[1] The Board notes that the case record contains a form CA-16 medical report dated June 17, 1996 that should be in claim No. A16-281747.

The Board finds that appellant has not established that he sustained an injury on July 24, 1995 in the performance of duty, causally related to factors of his federal employment.

An employee seeking benefits under the Act 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 or specific condition for which compensation is claimed is causally related to the employment injury.[2] These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[3]

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. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[4]

In the present case, the Office accepted that an employment incident occurred on July 24, 1996. Thereafter, it was up to appellant to submit sufficient evidence to establish that the incident caused a personal injury.

Appellant submitted only the August 7, 1996 report from Dr. Morris, a chiropractor, which indicated that he was continuing treatment to reduce subluxation configurations. This report, however, did not diagnose a subluxation as demonstrated by x-ray to exist. The Board notes that section 8101(2) of the Act [5] explains 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.[6] Inasmuch as Dr. Morris failed to diagnose a subluxation based on x-ray evidence, he, therefore, does not qualify as a physician under the Act. Consequently, his opinion does not constitute competent medical evidence, and does not support appellant's claim.[7] Moreover, appellant was advised of the deficiency in his claim and afforded the opportunity to provide supportive evidence.

Consequently, appellant has not met his burden of proof in establishing his claim as he has not submitted medical evidence explaining how the July 24, 1996 incident caused or aggravated a medical condition.

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[2] *Jack Hopkins, Jr.*, 42 ECAB 818 (1991); *Ernest J. LeBreux*, 42 ECAB 736 (1991).

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

[4] *John J. Carlone*, 41 ECAB 354 (1989). For a definition of the term "injury," see 20 C.F.R. § 10.5(a)(14).

[5] 5 U.S.C. § 8101(2).

[6] *Bruce Chameroy*, 42 ECAB 121 (1990).

[7] *Kathryn Haggerty*, 45 ECAB 383 (1994).

The decision of the Office of Workers' Compensation Programs dated August 29, 1996 is affirmed.[8]

Dated, Washington, D.C.
October 21, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

[8] The Board notes that appellant with his appeal has submitted new evidence. The Board cannot consider this evidence, as the Board's review of the case is limited to the evidence of record which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).