U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VICKIE L. PARTIN and DEPARTMENT OF DEFENSE, BAD NAUHEIM ELEMENTARY SCHOOL, Bad Nauheim, Germany

Docket No. 97-1821; Submitted on the Record;
Issued February 24, 1999

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT, A. PETER KANJORSKI

The issue is whether appellant has established that she sustained an injury in the performance of duty on February 14, 1996.

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing that he or she sustained an injury while in the performance of duty.[2] In order to determine whether an employee actually sustained an injury in the performance of duty, the Office of Workers' Compensation Programs begins with an analysis of whether "fact of injury" has been established. Generally "fact of injury" consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred. The second component is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.[3]

In the present case, appellant alleged that she injured her back in the performance of duty on February 14, 1996 when she slipped and fell on ice on the school playground. The Office accepted that the incident occurred as alleged. As noted above, appellant must submit medical evidence establishing that the incident caused an injury. In this case, appellant submitted reports from Dr. Peter R. Roeb, a chiropractor. 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."[4] The Office advised appellant of the definitions of chiropractor

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[1] 5 U.S.C. §§ 8101-8193.

[2] *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.110(a).

[3] *See John J. Carlone*, 41 ECAB 354, 357 (1989).

[4] 5 U.S.C. § 8101(2).

and subluxation in a letter dated January 28, 1997. Dr. Roeb, in a February 16, 1996 authorization for examination and/or treatment (Form CA-16), diagnosed dislocation of the spine and tightness of muscles. He diagnosed a subluxation but not by x-ray interpretation. By decision dated April 3, 1997, the Office denied the claim.

Since Dr. Roeb did not diagnose a subluxation as demonstrated by x-rays, he is not considered a physician under the Act and his report is of no probative medical value.[5] Appellant has therefore not met her burden of proof in establishing her claim.

The decision of the Office of Workers' Compensation Programs dated April 3, 1997 is affirmed.

Dated, Washington, D.C.
February 24, 1999

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

[5] *See Jack B. Wood*, 40 ECAB 95, 109 (1988).