U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LOAH J. GRECO and DEPARTMENT OF THE ARMY, HEALTH SERVICES COMMAND, FORT BENNING, Ga.

Docket No. 98-14; Submitted on the Record;
Issued June 10, 1999

DECISION and ORDER

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

The issue is whether appellant has established that she sustained an injury on April 21, 1997 in the performance of duty, causally related to factors of her federal employment.

On April 22, 1997 appellant, then a 62-year-old file clerk, had her chair knocked out from under her as she was sitting down. She claimed that she landed hard upon the tile floor, sustaining bruised buttocks and a dislocated sacroiliac vertebra. Appellant sought medical treatment on the date of injury with Dr. George F. Stephenson, a chiropractor.

By report dated April 24, 1997, Dr. Stephenson diagnosed sacroiliac sprain/strain, lumbar sprain/strain and low back pain. The report contained no evidence that x-rays were taken. Treatment was noted to include spinal manipulation and ultrasound.

By letter dated May 15, 1997, the Office of Workers' Compensation Programs requested that appellant submit further medical information including a physician's rationalized opinion on causal relation within 30 days. The Office also advised that a chiropractor was only considered to be a physician under the Federal Employees' Compensation Act[1] if he diagnosed a subluxation of the spine as demonstrated by x-ray to exist, and it noted that Dr. Stephenson did not diagnose a subluxation or support that diagnosis with x-ray evidence, such that his report did not constitute probative medical evidence.

Nothing further was received by the Office within the 30-day period.

By decision dated June 18, 1997, the Office rejected appellant's claim finding that she had failed to establish fact of injury. The Office found that appellant had failed to submit medical evidence sufficient to establish that she sustained an injury, as Dr. Stephenson had not

[1] 5 U.S.C. §§ 8101-8193.

diagnosed a subluxation as demonstrated by x-ray to exist, such that he was not considered to be a physician under the Act.

The Board finds that appellant has failed to establish her claim.

An employee seeking benefits under the Act[2] 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.[3] These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[4]

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.[5] 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.[6]

In this case the Office accepts that appellant experienced the employment incident at the time, place and in the manner alleged. However, appellant has submitted insufficient medical evidence to establish that the employment incident caused a personal injury.

Section 8101(2) of the Act[7] provides that the term "physician," as used therein, "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, and subject to regulation by the Secretary."[8]

Without diagnosing a subluxation from x-ray, a chiropractor is not a "physician" under the Act and his opinion on causal relationship does not constitute competent medical evidence.[9] The Board notes that the only evidence of record that discusses appellant's injury is the April 24, 1997 chiropractic report which diagnosed sacroiliac sprain/strain. lumbar sprain/strain and low

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[2] *Id.*

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

[4] *Victor J. Woodhams*, 41 ECAB 345 (1989); *Delores C. Ellyet*, 41 ECAB 992 (1990).

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

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

[7] 5 U.S.C. § 8101(2).

[8] *See* 20 C.F.R. § 10.400(e) (defining reimbursable chiropractic services).

[9] *See generally Theresa K. McKenna*, 30 ECAB 702 (1979).

back pain. As Dr. Stephenson failed to diagnose a subluxation as demonstrated by x-ray to exist, his report does not constitute competent medical evidence in support of appellant's claim.[10]

Accordingly, the decision of the Office of Workers' Compensation Programs dated June 18, 1997 is hereby affirmed.

Dated, Washington, D.C.
June 10, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

[10] The Board notes that evidence received by the Office subsequent to its June 18, 1997 decision, as well as evidence submitted to the Board upon appeal, may now be considered by the Board; *see* 20 C.F.R. § 501.2(c) (The Board has jurisdiction to review only the evidence that was before the Office at the time of its most recent merit decision.)