U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VALERIE J. LAFEVERS and U.S. POSTAL SERVICE,
POST OFFICE, Cincinnati, OH

Docket No. 98-843; Submitted on the Record;
Issued October 13, 1999

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant sustained an injury on May 15, 1997 in the performance of duty.

On August 18, 1997 appellant, then a 40-year-old custodial laborer, filed a claim for a traumatic injury occurring on May 15, 1997 in the performance of duty. In a statement accompanying her claim, appellant described her work requirements and stated that "duties that involved lifting or bending caused pain in my lower back to extend down my leg."

In support of her claim, appellant submitted reports from Dr. Craig M. Capovilla, a chiropractor.

By letter dated August 29, 1997, the Office of Workers' Compensation Programs requested additional factual and medical information from appellant. The Office further informed appellant of the definitions of an occupational disease and a traumatic injury and indicated the restrictions placed by the Federal Employees' Compensation Act on treatment by chiropractors.

In a statement dated September 25, 1997, appellant related that in view of her prior back injuries she felt that she had an occupational disease. She, however, specified that she "started having symptoms at work while dumping trash into the compactor from a large trash container when I felt the numbness in my foot and tingling in my calf. The symptoms were present whenever I was lifting or bending."

By decision dated October 6, 1997, the Office denied appellant's claim on the grounds that the evidence did not establish fact of injury. The Office found that appellant had alleged a traumatic injury rather than an occupational disease as the initial event occurred during the course of one workday. The Office further found that appellant had not submitted rationalized medical opinion evidence establishing that she sustained an injury in the performance of duty.

The Board has duly reviewed the case record and finds that appellant has not met her burden of proof to establish that she sustained an injury on May 15, 1997.

An employee seeking benefits under the 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[2] and that an injury was sustained in the performance of duty.[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]

There is no dispute that appellant is a federal employee; that she timely filed her claim for compensation benefits, and that the May 15, 1997 incident occurred at the time, place and in the manner alleged. However, the medical evidence is insufficient to establish that appellant sustained an injury in the performance of duty on May 15, 1997 because it does not include a rationalized medical opinion explaining how her diagnosed condition of a herniated disc was caused or aggravated on that date.

In support of her claim, appellant submitted reports from Dr. Capovilla, who diagnosed a herniated lumbar disc based on a magnetic resonance imaging (MRI) scan. Dr. Capovilla related the herniated disc to "work activities performed on May 15, 1997." However, under section 8101(2) of the Act, chiropractors are only considered physicians and their reports considered medical evidence, to the extent that they treat spinal subluxations as demonstrated by x-ray to exist.[5] As Dr. Capovilla did not diagnose a spinal subluxation, he is not considered a physician in this case and his reports have no probative value on the issue of whether appellant sustained an injury in the performance of duty.

In an office visit note dated September 2, 1997, Dr. Bret A. Ferree, an orthopedic surgeon, evaluated appellant at the request of Dr. Capovilla and diagnosed a herniated lumbar disc. Dr. Ferree stated, "Her symptoms began in May of 1997 and are related to her job which requires extensive bending and lifting." Dr. Capovilla recommended continued chiropractic treatment and possible surgery if her symptoms continued. Dr. Ferree, however, did not attribute appellant's condition to an injury on May 15, 1997 and did not provide any medical rationale explaining his conclusion that her diagnosed condition of a herniated disc was related to bending and lifting at work. Thus, his opinion is of little probative value and insufficient to establish appellant's claim.[6] Accordingly, the Board finds that appellant has not met her burden of proof to establish an injury on May 15, 1997 as alleged.[7]

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[1] 5 U.S.C. §§ 8101-8193.

[2] *Joe D. Cameron*, 41 ECAB 153 (1989).

[3] *James E. Chadden Sr.*, 40 ECAB 312 (1988).

[4] *Delores C. Ellyet*, 41 ECAB 992 (1990).

[5] 5 U.S.C. § 8107(a); *see Jack B. Wood*, 40 ECAB 95 (1988).

[6] Medical reports not containing rationale on causal relation are entitled to little probative value and are generally

The decision of the Office of Workers' Compensation Programs dated October 6, 1997 is hereby affirmed.[8]

Dated, Washington, D.C.
October 13, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

insufficient to meet appellant's burden of proof. *Lourdes Davila*, 45 ECAB 139 (1993).

[7] If appellant believes that she has sustained an occupational disease causally related to her work duties, she may file a notice of occupational disease and claim for compensation (Form CA-2). 20 C.F.R. § 10.5(a)(16) defines an occupational disease or illness as "a condition produced in the work environment over a period longer than a single workday or work shift by such factors as systemic infection; continued or repeated stress or strain; or exposure to hazardous elements."

[8] The Board notes that subsequent to the Office's October 6, 1997 decision, appellant submitted additional evidence. The Board has no jurisdiction to review this evidence for the first time on appeal. 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).