U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VONTELLA BRANDON and DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Independence, OH

Docket No. 98-1595; Submitted on the Record;
Issued January 20, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof to establish that she sustained any disability due to her September 12, 1996 employment injury.

On September 12, 1996 appellant, then a 33-year-old secretary, filed a notice of traumatic injury (CA-1) alleging that on that day, she sustained an injury to her lower back and tail bone as a result of falling to the floor as she was about to sit on a chair. She stopped work on September 13, 1996 at 1:30 p.m. and returned to work on September 16, 1996.

Appellant submitted evidence from Dr. David M. Grunstein, a chiropractor. Dr. Grunstein examined appellant on September 17, 1996 and concluded that she could return to work on September 18, 1996 and perform her regular duties. On October 28, 1996 he noted that he had been treating appellant for approximately six weeks and had seen an overall increase in range of motion and a decrease in pain with increased ability. Appellant also provided statements from witnesses, who corroborated her account of the alleged incident.

On November 6, 1996 the Office advised appellant of the type of medical evidence needed to establish her claim and gave appellant an additional 30 days in which to submit new medical evidence. The Office also advised appellant of the circumstances under which a chiropractor could be considered a physician. In response, appellant provided additional medical reports from Dr. Grunstein, who, in a September 16, 1996 report, stated that approximately 9 to 10 years ago, appellant had injured her back in an automobile accident. He noted appellant's assertion that her back had healed and she had no ongoing problems. In that report, Dr. Grunstein diagnosed lumbar sprain, strain, contusion back and thoracic intercostal neuritis. In a November 16, 1996 treatment note, the physician stated that no x-rays were taken. In a November 25, 1996 opinion, Dr. Grunstein concluded that, based on his examination and appellant's history, there was a direct causal relationship between appellant's injuries and the incident of September 12, 1996. On December 24, 1996 he discussed appellant's treatment of manipulative therapy to reduce fixation/subluxation.

In a January 23, 1997 decision, the Office denied the claim, finding that fact of injury was not established. Although the Office found that the incident occurred as alleged, it found no evidence of a resulting medical condition or injury. In response, appellant requested a hearing before an Office hearing representative. On January 22, 1998 appellant appeared before an Office hearing representative.

On February 23, 1998 appellant submitted a September 13, 1996 report from Dr. Chris Marquart, a Board-certified family practitioner. Dr. Marquart diagnosed very mild paraspinous spasm in the lumbar area. He further noted tenderness over both buttock cheeks and onto the proximal hamstrings. Dr. Marquart prescribed ibuprofen and determined that appellant needed no time off from work. In a CA-16 report also dated September 13, 1996, Dr. Marquart noted no history of any preexisting injury and indicated that appellant fell on her buttocks when she was going to sit down. Dr. Marquart diagnosed traumatic myositis and indicated with a checkmark "yes" that appellant's condition was caused or aggravated by her work. He added, however, that appellant was not disabled. The physician indicated that appellant was discharged from treatment. In an October 7, 1996 report, Dr. Marquart also noted minimal muscle tenderness and indicated that the pain would take some time to go away.

By decision dated April 7, 1998, although the hearing representative found that appellant established that she sustained an injury in the performance of duty, the hearing representative found that she failed to present any medical evidence establishing that she sustained any disability due to the injury. Consequently, the hearing representative affirmed, as modified, the prior Office decision. The instant appeal follows.

The Board finds that appellant has not met her burden of proof to establish that she sustained any disability causally related to her September 12, 1996 injury.

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 filed within the applicable time limitations 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 is causally related to the employment injury."[2] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.[3]

In the instant case, the hearing representative's April 7, 1998 decision found that fact of injury was established but that appellant had not established that any disability resulted from that injury.[4] While Dr. Marquart diagnosed traumatic myositis caused or aggravated by appellant's work injury, the physician unequivocally stated that appellant was not disabled and could return to her regular work duties. Consequently, his opinion is insufficient to meet appellant's burden

[1] 5 U.S.C § 8101-8193.

[2] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[3] *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

[4] *Arthur Sims*, 46 ECAB 880, 887 (1995).

of proof. Appellant also provided several medical reports from Dr. Grunstein, a chiropractor. His opinion is also insufficient to meet appellant's burden of proof.

Section 8102(c) of the Act[5] 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."[6]

In a December 24, 1996 report, Dr. Grunstein noted treating appellant for a subluxation. However, the physician did not indicate that he had reviewed the x-rays. Without diagnosing a subluxation based on an x-ray, a chiropractor is not a "physician" under the Act and his opinion on causal relationship does not constitute competent medical evidence.[7] As Dr. Grunstein failed to diagnose a subluxation as demonstrated by x-ray to exist, his reports do not constitute competent medical evidence in support of appellant's claim. Consequently, appellant failed to establish that she sustained any disability causally related to the September 12, 1996 incident.[8]

Accordingly, the decision of the Office of Workers' Compensation Programs dated April 7, 1998 is hereby affirmed.

Dated, Washington, D.C.
January 20, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

[5] 5 U.S.C. § 8101(2).

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

[7] *Linda Mendenhall*, 41 ECAB 532 (1990); *Marjorie Geer*, 39 ECAB 1099 (1988).

[8] Appellant, of course, would be entitled to disability compensation for any loss of wages incurred while receiving medical treatment for her employment injury; *see Antonia Mestres*, 48 ECAB ___ (Docket No. 94-2247, issued October 21, 1996).