

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KEITH JAMES GRAY and U.S. POSTAL SERVICE,
POST OFFICE, Manassas, VA

*Docket No. 99-1035; Submitted on the Record;
Issued July 25, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant met his burden of proof to establish that he sustained an injury in the performance of duty on September 2, 1997, causally related to his federal employment.

On September 17, 1997 appellant, then a 44-year-old letter carrier, filed a notice of traumatic injury and claim for continuation of pay (Form CA-1) alleging that on September 2, 1997 he sustained pain in his right hip while working his delivery route. On the claim form, appellant asserted that he experienced pain in his right hip shooting down his leg to his ankle when he stepped out of his "LLV." On the reverse side of the claim form, appellant's supervisor noted that appellant first received medical care on September 8, 1997 from Dr. Robert F. Lehman, a Board-certified orthopedic surgeon. Appellant stopped work on September 5, 1997 and returned to work on September 12, 1997.

In support of his claim, appellant submitted a duty status report (Form CA-17) from Dr. Lehman dated September 8, 1997. On the form, he diagnosed right sciatic syndrome and he checked a box indicating that the history of injury given to him by appellant corresponded to the September 2, 1997 alleged employment incident. Dr. Lehman noted that he advised appellant to return to work on September 12, 1997.

By two letters dated October 16, 1997, the Office of Workers' Compensation Programs informed appellant that the evidence submitted to support his claim was insufficient to establish fact of injury. The Office requested additional factual and medical evidence from appellant and allowed 30 days for him to respond.

In response, appellant submitted a September 4, 1997 Prince William Hospital emergency services department record by Dr. Thomas J. Ryan, a Board-certified emergency medicine physician. In the record, Dr. Thomas diagnosed back and hip pain and noted mild right-sided paravertebral tenderness without spasms and a slightly tender, nonswollen right posterior hip. He also noted that x-rays of appellant's lumbar spine and right hip were negative. Appellant also submitted progress notes from Dr. Lehman dated September 8, 1997. In his

notes, Dr. Lehman stated that appellant experienced sudden right hip pain on September 2, 1997 when he stepped from his truck. His clinical impression of appellant was mild right sciatic syndrome, early degenerative disc disease at L3-4 and lateral epicondylitis and early osteoarthritis of the right elbow. Dr. Lehman noted that his physical examination of appellant did not reveal definite localized tenderness, sensory deficit or motor weakness, but did reveal mildly restricted extension and lateral bending. Finally, he noted that x-rays revealed mild hypertropic spurring at L3-4 and possible L5 pars defect, but the L5 area was not well defined in the x-ray. Appellant further submitted an attending physician's report from Dr. Lehman dated September 25, 1997 in which he diagnosed mild right sciatic syndrome, early degenerative disc disease at L3-4 and lateral epicondylitis and early osteoarthritis of the right elbow. He noted that appellant was disabled for work September 2 to 12, 1997. Appellant also submitted an October 28, 1997 report from Dr. Marshall Crossman, a chiropractor,¹ who diagnosed sciatica due to a subluxation of L5 based on his examination of appellant and an analysis of x-rays taken at Prince William Hospital on September 4, 1997. Further, appellant submitted undated notes from Dr. Crossman, who diagnosed sciatica due to nerve root compression complicated by subluxation of L5. In his notes, he stated that appellant could expect relief in about 10 visits and resolution of his condition in 20 visits. Appellant also submitted magnetic resonance imaging (MRI) reports, dated October 17, 1997 from Dr. Toby L. Brown, a Board-certified radiologist. Dr. Crossman noted that appellant sustained right hip pain and occasional tingling and numbness in his right thigh when he stepped from his truck. Dr. Brown's findings stated: "Sagittal screening T1 and T2 weighted images show the individual discal signal at all levels to be normal. The individual neural vascular bundle in the exit foramina is normal. No bulges or disc herniations are seen. The distal cauda equina and signal in the distal cord area appears normal." He concluded that the MRI study was normal, and that no discal or other pathology was identified. Finally, appellant submitted a narrative statement, dated October 24, 1997, and an undated response to queries posed by the Office in its October 16, 1997 letter. In his narrative statement, he asserted that he experienced hip pain but not back pain. Appellant reiterated his belief that his condition was caused by repetitively exiting his mail delivery vehicle and he stated that he exits his vehicle 146 to 155 times daily. In his statement responding to the Office's queries, appellant reiterated his assertion that he sustained a sharp pain in his right hip radiating to his right leg and ankle when he stepped out of his LLV. He noted that the pain was initially intense, but it lessened after he briefly rested and resumed working. Appellant further noted that he did not sustain any injuries between the September 2, 1997 employment incident and the date he reported that incident, and that he did not experience symptoms prior to September 2, 1997. Finally, appellant stated that he did not initially report his injury to "the office" because he hoped that it would not require medical treatment, but he did report the incident to his supervisor on

¹ In assessing the probative value of chiropractic evidence, the initial question is whether the chiropractor is a physician under 5 U.S.C. § 8121(2). 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 an x-ray to exist. 20 C.F.R. § 10.400(a). The Office's regulations define subluxation as "an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae anatomically which must be demonstrable on any x-ray film to individuals trained in the reading of x-rays." 20 C.F.R. § 10.400(e). The Office's regulations further state that a chiropractor may interpret his or her x-rays to the same extent as any other physician. 20 C.F.R. § 10.400(e). Where a chiropractor diagnoses subluxation but fails to relate it to the employment incident by rationalized medical opinion evidence, chiropractic treatment is not reimbursable; see *Theresa M. Fitzgerald*, 47 ECAB 689, 690 (1996).

duty. He stated that he first received medical treatment on September 4, 1997 from Prince William Hospital.²

By decision dated December 18, 1997, the Office denied appellant's claim on the grounds that the medical evidence of file failed to address the issue of whether appellant's alleged injury was causally related to his federal employment. The Office noted that appellant may have had grounds to file an occupational disease claim.

By letter dated January 8, 1998, appellant requested an oral hearing.

Duplicate copies of Dr. Lehman's September 8, 1997 progress notes and September 25, 1997 attending physician's report were received by the Office on February 19, 1998.

On August 3, 1998 an oral hearing was held before an Office hearing representative. Appellant testified that, in order to alleviate his hip pain, he took pain medication daily. He stated that his hip pain radiated to his foot, and that neither the exercises nor the "Warren corset" prescribed by Dr. Lehman alleviated his pain. Appellant discussed the evidence of file and the hearing examiner advised him of the evidence necessary to establish that he sustained an injury in the performance of duty causally related to his federal employment. No exhibits were offered. The record was left open for 30 days.

A letter from Dr. Crossman dated August 18, 1998, noted that appellant's sciatica was caused by a subluxation of L5, and that his condition was aggravated by twisting and turning when exiting his vehicle. Dr. Crossman opined that "repeatedly jumping in and out of a vehicle, such as [appellant] described, could have resulted in the problem for which [appellant] sought my care."

By decision dated August 16, 1998, the Office accepted that the September 2, 1997 employment incident occurred as alleged, but denied appellant's claim on the grounds that the medical evidence of record failed to establish that appellant sustained an injury causally related to the September 2, 1997 employment incident. The hearing representative found that the medical evidence by Dr. Lehman did not provide a history of injury, or address the issue of whether appellant's injury was causally related to the September 2, 1997 employment incident. The hearing representative further found that the evidence from Dr. Crossman did not discuss x-ray findings and that his history of injury differed from that provided by Dr. Lehman.

² The Board notes that appellant's supervisor stated that appellant first received medical treatment on September 8, 1997 from Dr. Lehman.

The Board finds that appellant did not meet his burden of proof to establish that he sustained an injury in the performance of duty on September 2, 1997, causally related to his federal employment.³

An employee seeking benefits under the Federal Employees' Compensation Act⁴ 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.⁵ Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.⁶

To determine whether an employee sustained a traumatic injury in the performance of duty, the Office must determine whether "fact of injury" is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place, and in the manner alleged, by a preponderance of the reliable, probative, and substantial evidence.⁷ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed.⁸ An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident. As the Office accepted that the September 2, 1997 employment incident occurred at the time, place and in the manner alleged by its decision dated August 16, 1998, the remaining issue is whether the alleged injury was caused by the accepted employment incident.

In order to satisfy his or her burden of proof, an employee must submit a physician's rationalized medical opinion on the issue of whether the alleged injury was caused by the employment incident.⁹ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the employee's alleged injury and the employment incident. The physician's opinion must be based on a complete factual and medical history of the employee, must be of reasonable

³ The Board's jurisdiction to consider and decide appeals from final Office decisions extends only to those decisions issued within one year of the filing of the appeal. Therefore, the Board lacks jurisdiction to review the Office's December 18, 1997 decision, as more than one year past between that decision and January 13, 1999, the date appellant's appeal was filed with the Board. 20 C.F.R. §§ 501.2(c), 501.3(d)(2); *see also Donald J. Miletta*, 34 ECAB 1822 (1983); *Jeanette Butler*, 47 ECAB 128 (1995).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁶ *See Ronald K. White*, 37 ECAB 176, 178 (1985).

⁷ *See John J. Carlone*, 41 ECAB 354 (1989).

⁸ *Shirley A. Temple*, 48 ECAB 404, 407 (1997); *Elaine Pendleton*, *supra* note 5 at 1145.

⁹ *Gary L. Fowler*, 45 ECAB 365, 371 (1994).

certainty, and must rationally explain the relationship between the diagnosed injury and the employment incident as alleged by the employee.¹⁰

In this case, it is not disputed that appellant experienced the September 2, 1997 incident but the medical evidence of record fails to establish that his hip condition is causally related to the September 2, 1997 employment incident. The duty status report, health insurance claim form, Dr. Thomas' report, Dr. Lehman's attending physician's report and Dr. Brown's report do not contain rationalized medical opinion evidence concerning the nature of the relationship between appellant's hip condition and the September 2, 1997 employment incident. Similarly, Dr. Lehman's September 8, 1997 progress notes did not address whether appellant's condition related to the employment incident. In his notes, Dr. Lehman stated that his clinical findings were right sciatic syndrome and early degenerative disc disease at L3-4, and he noted that appellant experienced sudden right hip pain on September 2, 1997 when he stepped from his truck. However, he did not explain the relationship between appellant's diagnosed conditions and the September 2, 1997 employment incident. Dr. Crossman's October 28, 1997 report diagnosed sciatica due to subluxation of L5, but he did not relate that diagnosis to appellant's September 2, 1997 employment incident. Dr. Brown's October 17, 1997 report noted that appellant sustained right hip pain, occasional tingling, and numbness in his right thigh when he stepped from his truck, but she concluded that appellant's MRI study was normal. Additionally, appellant's belief of a causal relationship between his hip condition and the September 2, 1997 employment incident is not a sufficient basis to make an award of compensation.¹¹ The medical evidence of record fails to establish that appellant's hip condition is causally related to the September 2, 1997 employment incident.

The decision of the Office of Workers' Compensation Programs dated August 16, 1998 is affirmed.

Dated, Washington, D.C.
July 25, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

¹⁰ See *Shirley R. Haywood*, 48 ECAB 404, 407 (1997).

¹¹ See *William S. Wright*, 45 ECAB 498 (1994).