U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATRICIA DUKE and U.S. POSTAL SERVICE,
POST OFFICE, Waxahachie, TX

Docket No. 99-1279; Submitted on the Record;
Issued July 6, 2000

DECISION and ORDER

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

The issue is whether appellant has established a back injury in the performance of duty on August 18, 1998.

On August 21, 1998 appellant filed a claim alleging that on August 18, 1998 she injured her back in the performance of duty while lifting a load of coins. By decision dated November 18, 1998, the Office of Workers' Compensation Programs denied the claim on the grounds that the medical evidence was insufficient to establish fact of injury.

The Board has reviewed the record and finds that appellant has not established an injury in the performance of duty on August 18, 1998.

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 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 this case, the Office accepted that the employment incident occurred as alleged. The deficiency in the claim is the lack of medical evidence establishing an injury causally related to

[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).

the employment incident. In this case, appellant submitted two form reports (Form CA-16 and CA-17) dated August 24, 1998 from Dr. Linda Cosgrove, a chiropractor. As the Office explained in an October 6, 1998 letter, under the Act 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] In this case, Dr. Cosgrove diagnosed a lumbar strain/sprain injury. Since Dr. Cosgrove did not diagnose a subluxation as demonstrated by x-ray, she is not considered a physician under the Act and her reports are of no probative medical value.[5] Accordingly, the Board finds that appellant has not met her burden of proof to establish an injury causally related to the August 18, 1998 employment incident.

The Board notes that the record contains a properly completed Form CA-16 (authorization for examination and/or treatment) authorizing necessary medical treatment from Dr. Cosgrove. The issuance of an Office Form CA-16 creates a contractual obligation to pay the cost for the authorized medical examination regardless of the action taken on the claim.[6] Appellant is therefore entitled to payment for medical treatment authorized by the Form CA-16.

The decision of the Office of Workers' Compensation Programs dated November 18, 1998 is affirmed

Dated, Washington, D.C.
July 6, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

[4] 5 U.S.C. § 8101(2).

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

[6] *See Danita E. Lindsey*, 40 ECAB 450 (1989).