U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GEORGE J. BROUCHARD and U.S. POSTAL SERVICE,
POST OFFICE, West Palm Beach, FL

Docket No. 98-2500; Submitted on the Record;
Issued March 21, 2000

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant established that he sustained a cervical sprain or lumbar strain/sprain in the performance of duty on February 27, 1998.

On February 27, 1998 appellant, then a 50-year-old mechanic, filed a notice of traumatic injury alleging that he injured his lower back, rib cage and upper shoulder blades when he tried to keep his toolbox from falling over on that same date in the course of his federal employment.

On February 27, 1998 Dr. Marc A. Weinberg, a chiropractor, indicated that he treated appellant for a lower back condition.

On March 24, 1998 the Office of Workers' Compensation Programs requested additional information including a physician's opinion supported by medical explanation as to how the reported work incident caused or aggravated the claimed injury.

Subsequently, appellant submitted a March 4, 1998 report from Dr. Weinberg who diagnosed a cervical sprain and a lumbar sprain/strain and stated that both conditions were complicated by disc degeneration. Dr. Weinberg stated that his original assessment remained unchanged in reports dated March 5, March 16, March 18, March 19, March 23, March 24 and March 26, 1998.

On April 29, 1998 the Office informed appellant that a chiropractor is only considered a physician under the Federal Employees' Compensation Act[1] when diagnosing and treating through manual manipulation of the spine, a subluxation of the spine as diagnosed by x-ray. The Office further stated that because the medical evidence in this case failed to establish that appellant sustained a subluxation of the spine, that appellant's treating chiropractor,

[1] 5 U.S.C. §§ 8101-8193.

Dr. Weinberg, was not considered a physician under the Act and, therefore, his opinion lacked probative value. Appellant was allowed 30 days to submit a medical report.

Appellant subsequently submitted additional reports from Dr. Weinberg dated March 9, March 11, March 13, March 30, April 3 and April 6, 1998; and resubmitted reports from Dr. Weinberg dated March 16 and March 18, 1998.

By decision dated June 8, 1998, the Office denied appellant's claim for compensation. The Office found that appellant established that he actually experienced the claimed employment factor, but that the evidence failed to establish that a condition was diagnosed in connection with the employment factor. In this regard, the Office indicated that the record lacked a narrative medical opinion discussing the relationship between the incident on February 27, 1998 and the claimed condition or disability. The Office further stated that the reports from appellant's chiropractor failed to constitute medical evidence because the record failed to contain any evidence establishing a subluxation of the spine as diagnosed by x-ray.

The Board finds that appellant failed to establish a cervical sprain or lumbar sprain/strain in the performance of duty on February 27, 1998.

An employee seeking benefits under the Act has the burden of establishing the essential elements of his or her claim[2] including the fact that the individual is an "employee of the United States" within the meaning of the Act,[3] that the claim was timely filed within the applicable time limitation period of the Act,[4] 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] These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[6]

To determine whether an 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.[7] Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.[8] An employee may establish that an injury occurred in the performance of duty as alleged, but fail

[2] *See Daniel R. Hickman*, 34 ECAB 1220 (1983); *see also* 20 C.F.R. § 10.110.

[3] *See James A. Lynch*, 32 ECAB 216 (1980); *see also* 5 U.S.C. § 8101(1).

[4] 5 U.S.C. § 8122.

[5] *See Melinda C. Epperly*, 45 ECAB 196 (1993).

[6] *See Delores C. Ellyett*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

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

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

to establish that his or her disability and/or specific condition for which compensation is claimed are causally related to the injury.[9]

To accept fact of injury in a traumatic injury case, the Office, in addition to finding that the employment incident occurred in the performance of duty as alleged, must also find that the employment incident resulted in an "injury." The term "injury" as defined by the Act, as commonly used, refers to some physical or mental condition caused either by trauma or by continued or repeated exposure to, or contact with, certain factors, elements or conditions.[10] The question of whether an employment incident caused a personal injury generally can be established only by medical evidence.[11]

In this case, there is no dispute that appellant was an "employee" within the meaning of the Act, nor that appellant timely filed his claim for compensation. Moreover, the Office accepted that the February 27, 1998 work incident occurred as alleged.

Appellant, however, has not submitted sufficient medical evidence to establish that he incurred an employment-related injury. The only evidence submitted by appellant were the reports of Dr. Weinberg, a chiropractor. The Board has held that medical opinion, in general, can only be given by a qualified physician.[12] Pursuant to sections 8101(2) and (3) of the Act,[13] the Board has recognized chiropractors as physicians to the extent of diagnosing spinal subluxations according to the Office's definition[14] and treating such subluxations by manual manipulation. Consequently, because Dr. Weinberg's reports are not supported by x-ray evidence of a spinal subluxation, they do not constitute valid medical evidence and have no probative medical value.[15] Appellant, therefore, failed to meet his burden of proof in establishing that he sustained an injury in the performance of duty on February 27, 1998.

[9] As used in the Act, the term "disability" means incapacity because of an injury in employment to earn the wages the employee was receiving at the time of injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity; *see Frazier V. Nichol*, 37 ECAB 528 (1986).

[10] *See Elaine Pendleton*, 40 ECAB 1143 (1989).

[11] *See Carlone*, *supra* note 7.

[12] *George E. Williams*, 44 ECAB 530 (1993).

[13] 5 U.S.C. §§ 8101(2) and (3).

[14] 20 C.F.R. §§ 10.400(e).

[15] *See George E. Williams*, *supra* note 12.

The decision of the Office of Workers' Compensation Programs dated June 8, 1998 is affirmed.

Dated, Washington, D.C.
March 21, 2000

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member