U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANNIE D. RASBERRY and U.S. POSTAL SERVICE,
POST OFFICE, Raleigh, NC

Docket No. 99-1361; Submitted on the Record;
Issued May 24, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
A. PETER KANJORSKI

The issue is whether appellant sustained a back injury in the performance of duty on December 18, 1997.

On January 21, 1998 appellant, then a 56-year-old clerk, filed a notice of traumatic injury, alleging that she suffered acute lower back pain on the left side on December 18, 1997 when she attempted to catch a heavy tray and felt her back pull in the course of her federal employment.

On February 17, 1998 the Office of Workers' Compensation Programs requested that appellant submit additional medical evidence, including a physician's rationalized medical opinion addressing the causal relationship between the alleged work injury and the condition being treated.

Appellant subsequently submitted a report from Dr. Colin G. Kurtz, a chiropractor, who stated that appellant was reinjured at her job on December 18, 1997 when she pulled a heavy tray from a rack and it caused her to drop. Dr. Kurtz indicated that he reexamined appellant on December 22, 1997 and put her off work until December 25, 1997. He stated that appellant complained of sharp, severe low back pain that radiated down into her left hip. Dr. Kurtz also noted that she suffered from spasms, pain and tenderness in the sacrum area. He noted that his orthopedic tests were all positive on the left. Dr. Kurtz diagnosed acute traumatic lumbar sprain/strain with attendant segmental dysfunction and myofascitis. On January 26, 1998 he diagnosed altered spinal mechanics, spasm, pain and a decreased range of motion. Dr. Kurtz indicated that appellant should be on light duty.

Appellant also submitted reports from Dr. Tom Rand, a Board-certified orthopedic surgeon. On January 8, 1998 he indicated that appellant had a complicated history of back pain. Dr. Rand noted that appellant's back pain began three or four weeks prior when she started her job with the employing establishment. On examination, he found minimally positive straight leg

raising, bilaterally, with pain only radiating to her knees. Dr. Rand found no numbness, weakness, paresthesias or other evidence of neurological problems. He found significant back spasm and noted that appellant held her back with a list. Dr. Rand interpreted x-rays of the back as benign, but provided a note for appellant to remain off work. On January 13, 1998 he noted that appellant had improved and he approved light work. On February 2, 1998 Dr. Rand diagnosed a lumbosacral strain and recommended light duty.

By decision dated March 27, 1998, the Office denied appellant's claim because the medical evidence failed to establish that she sustained an injury due to the claimed event. The Office found that the claimed event occurred at the time, place and in the manner alleged. The Office found, however, that the medical evidence failed to establish an injury resulting from the accepted trauma. In this regard, the Office found that because the record contained no evidence of subluxation of the spine by x-ray, Dr. Kurtz's opinion did not constitute valid medical evidence. It also found that Dr. Rand failed to provide any explanation as to the relationship, if any, between appellant's lower back condition and the incident of December 18, 1997.

On October 1, 1998 appellant requested reconsideration. In support, she submitted an August 25, 1998 letter from Dr. Rand, who related appellant's low back pain to her work because appellant stated to him that the pain began three to four weeks prior to their January 8, 1998 Office visit, when appellant started working at the employing establishment.

By decision dated January 11, 1999, the Office reviewed the merits of the claim and denied modification of the prior decision. In an accompanying memorandum, the Office indicated that the weight of the evidence did not support appellant's contention that she sustained an injury on December 18, 1998. In particular, the Office noted that neither Dr. Kurtz nor Dr. Rand submitted office notes supporting an injury occurring on December 18, 1997.

The Board finds that appellant failed to establish that she sustained a back injury in the performance of duty on December 18, 1997.

An employee seeking benefits under the Federal Employees' Compensation Act[1] 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

[1] 5 U.S.C. §§ 8101-8193.

[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).

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 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 her claim for compensation. Moreover, the Office accepted that the December 18, 1997 work incident occurred as alleged.

Appellant, however, has not submitted sufficient medical evidence to establish that she incurred an employment-related injury. The only evidence submitted by appellant were the reports of Dr. Kurtz, a chiropractor, and the reports of Dr. Rand, a Board-certified orthopedic surgeon. 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

[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).

[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).

Office's definition[14] and treating such subluxations by manual manipulation. Consequently, because Dr. Kurtz's opinion is not supported by x-ray evidence of a spinal subluxation, his opinion does not constitute valid medical evidence and has no probative medical value.[15] Moreover, in his reports dated January 8 and 13, February 2 and August 25, 1998, Dr. Rand does not relate appellant's back condition to the December 18, 1997 work incident. In fact, on January 8 and August 25, 1998 Dr. Rand related appellant's back condition to her starting work at the employing establishment three to four weeks prior to the January 8, 1998 office visit. A time which clearly precedes the December 18, 1997 work incident. Appellant, therefore, failed to meet her burden of proof in establishing that she sustained an injury in the performance of duty on December 18, 1997.

The decisions of the Office of Workers' Compensation Programs dated January 11, 1999 and March 27, 1998 are affirmed.

Dated, Washington, D.C.
May 24, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

A. Peter Kanjorski
Alternate Member

[14] 20 C.F.R. §§ 10.400(e).

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