U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CAROLYN MOWAN-HORTON and U.S. POSTAL SERVICE, POST OFFICE, Coppell, TX

Docket No. 00-295; Submitted on the Record;
Issued November 9, 2000

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has established that she sustained an injury in the performance of duty on October 19, 1998.

On November 2, 1998 appellant filed a notice of traumatic injury alleging that, on October 19, 1998, she injured the right side of her lower back after slipping from a chair in the course of her employment.

Of record is an October 20, 1998 report from Dr. Asghar Baharanchi, a chiropractor, which indicated that he treated appellant for her October 19, 1998 injury. He assessed limited range of motion, tension signs and muscle spasms, and noted that x-rays of appellant's lumbar area had been scheduled. Also of record are unsigned treatment notes which indicated that appellant was treated for low back and leg pain from October 26, 1998 through May 14, 1999.

On June 1, 1999 the Office of Workers' Compensation Programs 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. The Office stated that appellant's medical evidence consisted of reports from her treating chiropractor, Dr. Baharanchi, and 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 informed appellant that unless x-rays were submitted which revealed a subluxation of the spine, it could not recognize Dr. Baharanchi's opinion as valid medical evidence in this case.

Appellant subsequently submitted unsigned treatment notes dated May through June 5, 1999, similar to the treatment notes previously of record.

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[1] 5 U.S.C. §§ 8101-8193.

By decision dated July 26, 1999, the Office denied appellant's claim for compensation. The Office found that appellant established that she actually experienced the claimed employment incident, but that the evidence failed to establish that a condition was diagnosed in connection with the employment incident. The Office further stated that the reports from appellant's chiropractor failed to constitute medical evidence, because the record did not contain any evidence establishing a subluxation of the spine as diagnosed by x-ray.

The Board finds that appellant failed to establish that she sustained an injury in the performance of duty on October 19, 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. 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.[8]

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.[9] The

[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] 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).

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

question of whether an employment incident caused a personal injury generally can be established only by medical evidence.[10]

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 October 19, 1998 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 was unsigned treatment notes and the October 20, 1998 report of Dr. Baharanchi, a chiropractor.[11] The unsigned medical notes of record did not constitute a complete, rationalized medical opinion, as unsigned notes of treatment cannot be considered probative evidence.[12] With regard to Dr. Baharanchi's October 20, 1998 report, the Board has held that medical opinion, in general, can only be given by a qualified physician.[13] Pursuant to sections 8101(2) and (3) of the Act,[14] and implementing regulations 20 C.F.R. § 10.311(a) through (c) the Office has set forth its requirements for a chiropractor to be recognized as a physician. Dr. Baharanchi's report is not supported by x-ray evidence of a spinal subluxation. Therefore, his report does not constitute valid medical evidence from a physician and has no probative medical value.[15] Appellant, therefore, failed to meet her burden of proof in establishing that she sustained an injury in the performance of duty on October 19, 1998.

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

[11] Appellant asserts on appeal that Dr. Baharanchi is not only a chiropractor but also a medical doctor. The Board notes, however, that the record is devoid of Dr. Baharanchi's medical credentials, as the October 20, 1998 report was not on letterhead and Dr. Baharanchi's credentials were not identified in the report. Further, there is no listing for Dr. Baharanchi in the American Medical Association, Directory of Physicians in the United States (35th ed. 1996).

[12] *Merton J. Sills*, 39 ECAB 572, 575 (1988).

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

[14] 5 U.S.C. §§ 8101(2) and (3).

[15] *See George E. Williams*, *supra* note 13.

The decision of the Office of Workers' Compensation Programs dated July 26, 1999 is affirmed.

Dated, Washington, DC
November 9, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member