U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES W. BROWN, III and ENVIRONMENTAL PROTECTION AGENCY, Annapolis, MD

Docket No. 99-2297; Submitted on the Record;
Issued October 3, 2000

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant sustained an injury while in the performance of duty on September 2, 1998.

On October 5, 1998 appellant, a 37-year-old special agent, filed a claim for compensation alleging that on September 2, 1998 he strained his neck muscles while loading furniture onto a truck. Appellant explained that he turned suddenly and struck his head on the truck's roll-up door. He did not stop working at the time of his injury. While appellant indicated that he sought medical attention for his injury on September 30, 1998, he did not submit any supporting medical evidence at the time he filed his claim.

By letter dated November 10, 1998, the Office of Workers' Compensation Programs advised appellant of the need for medical evidence in order to substantiate his clam for an employment-related neck injury on September 2, 1998. He was afforded an additional 30 days within which to submit the requested information. Appellant, however, did not submit the requested information within the allotted time frame.

The Office denied compensation in a decision dated January 12, 1999. The Office found that while appellant experienced the claimed employment incident on September 2, 1998, he failed to establish that a medical condition had been diagnosed in connection with the September 2, 1998 incident.

Appellant subsequently filed a request for reconsideration accompanied by treatment notes and a February 9, 1999 report from his chiropractor, Dr. John L. Greensfelder, who reported a history of injury on September 2, 1998 and diagnosed appellant as suffering from cervical sprain and strain and myofascitis in the thoracic area of the spine.

In a decision dated April 14, 1999, the Office denied modification of its January 12, 1999 decision. The Office found that the evidence provided by appellant's chiropractor was insufficient to establish that he sustained an injury due to the incident of September 2, 1998.

The Board finds that appellant has failed to establish that he sustained an injury in the performance of duty on September 2, 1998.

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 that must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident that is alleged to have occurred.[1] The second component is whether the employment incident caused a personal injury. This latter component generally can be established only by medical evidence.[2] In the instant case, the Office denied appellant's claim because he failed to establish that the accepted employment incident of September 2, 1998 caused a personal injury.

Section 8101(2) of the Act provides that 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."[3] Therefore, a chiropractor is considered a physician under the Act unless it is established that there is a spinal subluxation as demonstrated by x-ray evidence.[4] In addition to diagnosing cervical sprain and strain and myofascitis in the thoracic area of the spine, Dr. Greensfelder indicated that "chiropractic palpation" showed subluxations at T3, T6, T8, T10, C3 and C6. However, Dr. Greensfelder's diagnosis of subluxations at various levels in both the thoracic and cervical spine was not demonstrated by x-ray evidence as required under the Act. He specifically noted that an October 5, 1998 x-ray displayed "no fractures, pathologies or sever dislocations" and that the "boney (sic) structures of the cervical spine were essentially normal." In the absence of x-ray evidence demonstrating the presence of subluxations, Dr. Greensfelder is not considered a physician under the Act, and therefore, his opinion does not constitute probative medical evidence.[5] As the record is devoid of any probative medical evidence establishing that appellant sustained a medical condition related to his September 2, 1998 employment incident, the Office properly determined that appellant failed to establish that he sustained an injury in the performance of duty.

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

[2] *See* 20 C.F.R. §§ 10.115 and 10.330; *John M. Tornello*, 35 ECAB 234 (1983).

[3] 5 U.S.C. § 8101(2); *see also Linda Holbrook*, 38 ECAB 229 (1986).

[4] 20 C.F.R. § 10.311; *see Kathryn Haggerty*, 45 ECAB 383 (1994).

[5] It is further noted that Dr. Greensfelder did not specifically attribute the noted subluxations to appellant's September 2, 1998 employment injury.

The April 14, 1999 decision of the Office of Workers' Compensation Programs is, hereby, affirmed.

Dated, Washington, DC
October 3, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member