U. S. DEPARTMENT OF LABOR

# Employees' Compensation Appeals Board

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In the Matter of MICHAEL J. ZIEMER and U.S. POSTAL SERVICE,
POST OFFICE, Chanhassen, MN

*Docket No. 00-2022; Submitted on the Record;*
*Issued April 26, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof to establish that he sustained an injury while in the performance of duty.

On February 3, 2000 appellant, then a 43-year-old rural carrier, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that he injured his back on January 17, 2000 while lifting a tube of mail.

In a January 19, 2000 report, Dr. Sharon R. Schroeder, an attending chiropractor, indicated that on January 17, 2000 appellant sought treatment and diagnosed disc displacement. She stated that appellant "would further aggravate his low back if returned to work." In reports dated January 19 and February 2, 2000, Dr. Schroeder restricted appellant to light duty.

In a February 16, 2000 letter, the Office of Workers' Compensation Programs advised appellant to answer specific questions and to submit medical evidence supportive of his claim. He did not submit any additional evidence.

By decision dated March 24, 2000, the Office found the evidence of record insufficient to establish that appellant sustained an injury due to the claimed incident. Specifically, the Office found the evidence of record sufficient to establish that appellant experienced the claimed incident, but insufficient to establish that a condition had been diagnosed due to the incident.

The Board finds that appellant has failed to meet his burden of proof to establish that he sustained an injury while in the performance of the duty.

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim

[1] 5 U.S.C. §§ 8101-8193.

was timely filed within the applicable time limitation period of the Act, 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.[2] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[3]

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. In this case, the Office accepted that appellant actually experienced the claimed event. The Board finds that the evidence of record supports this incident.

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.[4] In the instant case, appellant has submitted no rationalized medical evidence establishing that he sustained a medical condition causally related to the January 17, 2000 employment incident.

The only medical evidence of record are reports dated February 2 and January 2000 by Dr. Schroeder, a chiropractor, revealing that she treated appellant on January 17, 2000, that he should be placed on light duty and diagnosing disc displacement. She indicated that appellant's low back would be aggravated if he returned to work. Under section 8101(2) of the Act,[5] "[t]he 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 of the spine as demonstrated by x-ray to exist and subject to regulation by the Secretary."[6] If a chiropractor's reports are not based on a diagnosis of subluxation as demonstrated by x-ray to exist, they do not constitute competent medical evidence to support a claim for compensation.[7] Dr. Schroeder failed to diagnose a subluxation as demonstrated by x-ray; therefore, her report does not constitute competent medical evidence under the Act. Thus, appellant has failed to satisfy his burden of proof in this case.

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

[3] *Gabe Brooks*, 51 ECAB ____ (Docket No. 98-1022, issued November 30, 1999); *Daniel J. Overfield*, 42 ECAB 718 (1991).

[4] *Gloria J. McPherson*, 51 ECAB ___ (Docket No. 98-805, issued April 3, 2000); *see John J. Carlone*, 41 ECAB 354, 357 (1989).

[5] 5 U.S.C. §§ 8101-8193.

[6] 5 U.S.C. § 8101(2); *see also* 20 C.F.R. § 10.311; *Jay K. Tomokiyo*, 51 ECAB ___ (Docket No, 98-447, issued March 10, 2000); *Robert J. McLennan*, 41 ECAB 599 (1990); *Robert F. Hamilton*, 41 ECAB 431 (1990).

[7] *Loras C. Dignann*, 34 ECAB 1049 (1983).

The March 24, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
April 26, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member