U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LILLIAN LOPEZ and U.S. POSTAL SERVICE,
POST OFFICE, New York, NY

Docket No. 00-2737; Submitted on the Record;
Issued August 7, 2001

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issue is whether appellant has established that she sustained an injury on October 27, 1999 causally related to factors of her federal employment.

The Office of Workers' Compensation Programs accepted that on July 14, 1998 appellant, then a 35-year-old carrier, sustained a contusion of the low back and buttocks when a chair in which she was sitting "gave way." Appellant returned to limited-duty employment on August 24, 1998.

On December 29, 1999 appellant filed a claim alleging that she sustained a recurrence of disability on October 27, 1999 causally related to her July 13, 1998 employment injury. She described the circumstances of the recurrence of disability as follows:

> "On October 27, 1999 I was out delivering mail to one building [and] I got a sharp pain in my back [which] shot up into my neck. My neck became stiff and I [got a] very bad headache and felt like I was going to faint."

By decision dated January 28, 2000, the Office denied appellant's claim on the grounds that she failed to establish that she sustained a traumatic injury on October 27, 1999.

The Board finds that this case is not in posture for decision.

When an employee who is disabled from the job held when injured, on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable and probative evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this burden, the employee must show a

change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.[1]

In the present case, appellant alleged that she had sustained a recurrence of disability, that is a spontaneous material change in her accepted low back condition, on October 27, 1999 while working her mail route. Appellant did not allege that she sustained a new injury due to any specific injury or any specific employment factors such as lifting, bending, sorting or carrying mail. The Office did not, however, evaluate appellant's claim as a recurrence, but rather as a new claim for traumatic injury. Appellant's allegations and the medical evidence submitted in support thereof are in the nature of a claim for recurrence of disability and the Office should have developed the claim as such, rather than as a new claim for traumatic injury.

In support of her claim, appellant submitted an office visit note dated October 28, 1999 from Dr. Craig Metroka, a Board-certified internist and her attending physician. Dr. Metroka indicated that he was treating appellant for an employment injury and stated that her "injury has deteriorated to such an extent that it is imperative that she stay at home until further notice." In a note dated November 1, 1999, he again found that appellant's condition had worsened and that she should remain off work. In a note dated February 1, 2000, Dr. Metroka stated that appellant had a "recent flare-up" and should remain off of work.

The record contains a report dated November 1, 1999 from Dr. Errol Toran, a chiropractor. Chiropractors are defined as "physicians" under section 8101(2) of the Act[2] "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 and subject to regulation by the Secretary." 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.[3] Dr. Toran did not diagnose a subluxation as demonstrated by x-ray to exist. Therefore, he is not a "physician" under the Act and his reports are of no probative medical value to appellant's claim.[4]

In an office visit note dated December 14, 1999, Dr. Nathan Ionascu diagnosed lumbar myofascitis, sciatic radiculitis/neuritis and myospasm and related that "due to the chronic and degenerative nature of [appellant's] condition which has recently flared up, [she] has been restricted from working for the next four to six weeks." In a substantially similar report dated January 28, 2000, Dr. Ionascu found that appellant should not work for an additional four to six weeks.

By letter dated December 17, 1999, the Office requested a rationalized medical report from Dr. Metroka addressing the causal relationship between appellant's current condition and

[1] *Doris J. Wright*, 49 ECAB 230 (1997).

[2] 5 U.S.C. § 8101(2).

[3] *Cheryl L. Veale*, 47 ECAB 607 (1996).

[4] In a report dated November 25, 1998, Dr. Toran diagnosed, *inter alia*, a cervical subluxation; however, it does not appear that he based this diagnosis on an x-ray reading.

the claimed October 27, 1999 work incident. In response to the Office's request for information, a physician[5] noted on December 29, 1999 that appellant had experienced low back pain with radiculopathy since she fell off a chair on July 13, 1998. The physician found that appellant "has an obvious traumatic lumbar disc condition. The severity and presentation are consistent with the mechanism of onset." He further opined that the "reported injury of October 27, 1999 was simply a flare up of the original injury of July 13, 1998."

On remand, the Office shall evaluate appellant's claim as a claim for recurrence of disability. The Office shall determine whether appellant has established that she sustained a change in the nature and extent of the injury-related condition, such that she could not perform her light-duty position.

The decision of the Office of Workers' Compensation Programs dated January 28, 2000 is hereby set aside and the case is remanded to the Office for further development consistent with this opinion.

Dated, Washington, DC
August 7, 2001

David S. Gerson
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member

[5] The name of the physician is not legible.