U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of STEWART L. BOYKIN and U.S. POSTAL SERVICE,
MORGAN PARK POST OFFICE, Chicago, IL

Docket No. 00-1748; Submitted on the Record;
Issued July 2, 2001

DECISION and ORDER

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

The issue is whether appellant met his burden of proof in establishing that he sustained an injury while in the performance of duty on September 7, 1999.

On October 12, 1999 appellant, then a 47-year-old letter carrier, filed a claim for compensation alleging that he injured his back, right leg and foot on September 7, 1999 while lifting and carrying a mailbag up and down stairs.

In support of his claim, appellant submitted two reports from Dr. James T. Elias, a chiropractor; a narrative statement dated October 14, 1999, an October 15, 1999 x-ray of his lumbar spine and a report from Dr. Forrest Robinson, an osteopath. Dr. Elias indicated in his initial report dated October 12, 1999, that appellant sustained a lumbosacral sprain/strain on September 7, 1999. Dr. Elias's October 25, 1999, report noted that appellant was initially treated on September 22, 1999 with complaints of back pain, over the previous six days, which he attributed to a work-related injury on September 7, 1999.

Appellant stated that on September 7, 1999 his back was sore and that the injury may have resulted from repetitive loading of mail onto his back. The x-ray indicated a considerable L5-S1 disc space narrowing with sclerosis and degenerative changes and bilateral sacroiliac joint sclerosis with the suggestion of narrowing. Dr. Robinson's October 25, 1999 report diagnosed displacement of the lumbar intervertebral disc without myelopathy. He did not indicate that this was an employment-related injury.

By letter dated November 19, 1999, the Office of Workers' Compensation Programs requested additional medical evidence from appellant, stating that the initial information submitted was insufficient to establish an injury. The Office advised appellant of the type of medical evidence needed to establish his claim. Appellant submitted duplicates of documents already in the record.

In a decision dated January 21, 2000, the Office denied appellant's claim as on the grounds that the medical evidence was insufficient to establish that the condition was caused by employment factors.

The Board finds that appellant has failed to establish that he sustained an injury in the performance of duty on September 7, 1999.

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 was filed within the applicable time limitation 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 is 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 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.[4] In some traumatic injury cases this component can be established by an employee's uncontroverted statement on the Form CA-1.[5] An alleged work incident does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statement must be consistent with the surrounding facts and circumstances and his subsequent course of action.[6]

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.[7]

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[1] 5 U.S.C. §§ 8101-8193.

[2] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[3] *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

[4] *Elaine Pendleton*, *supra* note 2.

[5] *John J. Carlone*, 41 ECAB 354 (1989).

[6] *Rex A. Lenk*, 35 ECAB 253, 255 (1983).

[7] *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[8]

In this case, it is not disputed that appellant was lifting and carrying a mailbag on September 7, 1999. However, the medical evidence is insufficient to establish that this activity caused or aggravated a medical condition. In support of his claim, appellant submitted two reports from Dr. Elias, a chiropractor.

Section 8101(2) of the Act provides that chiropractors are considered physicians "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."[9] Section 10.400(e) of the implementing federal regulations provides:

> "The term 'subluxation' means an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae anatomically which must be demonstrable on any x-ray film to individuals trained in the reading of x-rays. A chiropractor may interpret his or her x-rays to the same extent as any other physician defined in this section."

Thus, where x-rays do not demonstrate a subluxation, a chiropractor is not considered a "physician," and his or her reports cannot be considered as competent medical evidence under the Act.[10]

In this case, Dr. Elias did not diagnose a subluxation as demonstrated by x-ray to exist. Therefore, his reports cannot be considered as those of a physician.

Appellant also submitted a report from Dr. Robinson who, diagnosed a displacement of appellant's lumbar intervertebral disc without myelopathy. However, he did not provide a description of the employment incident of September 7, 1999 or an opinion on whether this incident was causally related to employment factors. Without any explanation or rationale for the conclusion reached, his report is insufficient to establish causal relationship.[11] Further, Dr. Robinson did not treat appellant until more than a month after the claimed injury occurred

[8] *James Mack*, 43 ECAB 321 (1991).

[9] 5 U.S.C. § 8101(2).

[10] *See Susan M. Herman*, 35 ECAB 669 (1984).

[11] *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

and his report did not indicate that he was familiar with the history of the injury.[12] Therefore, his opinion is insufficient to meet appellant's burden of proof.[13]

The remainder of the medical evidence fails to provide an opinion on the causal relationship between this incident and appellant's diagnosed condition. For this reason, this evidence is insufficient to meet appellant's burden of proof.

The January 21, 2000 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
July 2, 2001

David S. Gerson
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member

[12] *See Cowan Mullins*, 8 ECAB 155, 158 (1955) (where the Board held that a medical opinion based on an incomplete history was insufficient to establish causal relationship).

[13] Appellant submitted additional evidence on appeal. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c).