

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FLOYD KINCHENS and SMITHSONIAN INSTITUTION,
OFFICE OF PERSONNEL ADMINISTRATION, Washington, DC

*Docket No. 00-2597; Submitted on the Record;
Issued April 19, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant met his burden of proof in establishing that he sustained an injury in the performance of duty on February 2, 1999.

On January 19, 2000 appellant, then a 50-year-old security officer, filed a claim for compensation¹ alleging that he injured his right leg on February 2, 1999 when he tripped over a weapons cabinet drawer.²

In support of his claim, appellant submitted an examination note dated February 8, 1999 and a disability certificate. The examination note indicated that appellant was being treated for a right knee injury. The disability certificate noted that appellant was treated on February 8, 1999 and diagnosed with a contusion of the right knee.

By letter February 15, 2000, the Office requested additional medical evidence from appellant stating that the initial information submitted was insufficient to establish an injury. The Office particularly advised appellant of the type of medical evidence needed to establish his claim.

Appellant submitted a report from Dr. Ashkan Aazami, a chiropractor, dated January 28, 2000, who indicated that appellant was being treated for injuries sustained on May 17, 1986. He noted appellant's complaints of headaches and low back pain radiating to the lower extremities.

¹ On May 17, 1984 appellant filed a claim alleging that he sustained a back injury in the performance of duty. The claim No. A25-0254575, was accepted for a low back strain and low back muscle spasm and appropriate compensation was paid. On January 11, 2001 appellant's compensation benefits under this claim were terminated. This claim is not before the Board in the present appeal.

² On August 22, 2000 appellant filed an application for review of the March 21, 2000 decision of the Office of Workers' Compensation Programs and requested an oral argument. The hearing was scheduled for March 21, 2002. However, appellant failed to appear for the hearing. Therefore, the Board proceeded with a review of the written record.

Dr. Aazami indicated that appellant's symptoms were exacerbated by his repetitive activities. He noted that appellant had full range of motion of the cervical spine; lumbar range of motion was restricted upon flexion, extension and lateral flexion; straight leg raises were positive at 70 degrees bilaterally for lower back pain; and digital palpation revealed tenderness along the lower cervical and lumbar musculature.

In a decision dated March 21, 2000, the Office denied appellant's claim as the medical evidence was not sufficient to establish that the condition was caused by the employment factor as required by the Federal Employees' Compensation Act.³

The Board finds that appellant has failed to establish that he sustained an injury in the performance of duty on February 2, 1999 as alleged.

An employee seeking benefits under the Act 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 are causally related to the employment injury."⁴ 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.⁵

In order to determine whether an employee 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.⁶ In some traumatic injury cases this component can be established by an employee's uncontroverted statement on the Form CA-1.⁷ 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.⁸

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

³ 5 U.S.C. §§ 8101-8193.

⁴ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

⁶ *Elaine Pendleton*, *supra* note 4.

⁷ *John J. Carlone*, 41 ECAB 354 (1989).

⁸ *Rex A. Lenk*, 35 ECAB 253, 255 (1983).

incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.⁹

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 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.¹⁰

In this case, it is not disputed that appellant tripped over a weapons drawer on February 2, 1999. However, the medical evidence is insufficient to establish that this incident caused or aggravated a medical condition. In support of his claim, appellant submitted a report from Dr. Aazami, a chiropractor, dated January 28, 2000. The Board has held that medical opinion, in general, can only be given by a qualified physician.¹¹ Pursuant to sections 8101(2) and (3) of the Act¹² the Board has recognized chiropractors as physicians to the extent of diagnosing spinal subluxations according to the Office's definition¹³ and treating such subluxations by manual manipulation.¹⁴ The Board has held chiropractic opinions to be of no probative medical value on conditions beyond the spine.¹⁵ As a chiropractor may only qualify as a physician in the diagnosis and treatment of spinal subluxation, his opinion is of probative medical value only with regard to the spine.¹⁶

In the present case, Dr. Aazami did not diagnose a subluxation as demonstrated by x-ray to exist, and therefore his reports are not those of a physician. Additionally, as noted above, his

⁹ See 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

¹⁰ *James Mack*, 43 ECAB 321 (1991).

¹¹ See *George E. Williams*, (44 ECAB 530) (1993); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949); *Donald J. Mileta*, 34 ECAB 1822 (1983) (medical evidence must be in the form of a reasoned opinion by a qualified physician based on a complete and accurate factual and medical history of the employee whose claim is being considered).

¹² 5 U.S.C. §§ 8101(2) and (3).

¹³ 20 C.F.R. § 10.400(e).

¹⁴ See, e.g., *Christine L. Kielb*, 35 ECAB 1060, 1061 (1984).

¹⁵ *Raymond F. Young*, 33 ECAB 1234 (1982) (radiculitis affecting knee and leg).

¹⁶ 5 U.S.C. § 8101(2) provides: 'The term 'physician' includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine.'

opinion is of no probative medical value on conditions beyond the spine.¹⁷ Therefore, Dr. Aazami's report is insufficient to establish appellant's burden of proof.

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 not sufficient to meet appellant's burden of proof.

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

Dated, Washington, DC
April 19, 2002

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

¹⁷ *Id.*