U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TERESA M. NEWTON and DEPARTMENT OF AGRICULTURE, FOOD SAFETY & INSPECTION SERVICE, Cornelia, GA

Docket No. 01-1750; Submitted on the Record;
Issued April 24, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS, DAVID S. GERSON

The issue is whether appellant has established that she sustained an injury in the performance of duty on November 30, 2000.

On November 30, 2000 appellant, then a 43-year-old food inspector, filed a traumatic injury claim (Form CA-1) alleging that she injured her neck when she hit her head while going under a drip pan. Appellant lost no time from work.

In a report dated December 1, 2000, Dr. Todd Hardison, a chiropractor, diagnosed moderate acute traumatic cervical sprain/strain, moderate acute traumatic lumbar sprain/strain and subluxation of the thoracic vertebra. Under the x-ray section, Dr. Hardison noted:

> "In order to rule out post-traumatic bony pathologies, x-rays of the [c]ervical spine was taken. X-ray findings reveal the presence of a sprain/strain soft tissue injury. There are not apparent fractures, osseous pathology or congenital bony abnormalities noted. Examination of the lateral cervical films indicates a loss of the normal lordotic curve. A loss of lordotic curve is seen as a typical sequel of cervical acceleration/deceleration (CAD) injuries."

Appellant also submitted treatment notes for the period December 1, 2000 through April 19, 2001 which noted strains/sprains in the cervical and lumbar spine and a subluxation of the thoracic vertebra.

By letter dated April 2, 2001, the Office of Workers' Compensation Programs advised appellant as to when a chiropractor can be considered a physician pursuant to 5 U.S.C. § 8101(2).

By decision dated May 10, 2001, the Office found that, while appellant experienced the claimed employment incident on November 30, 2000, she failed to establish that a medical condition had been diagnosed in connection with the November 30, 2000 incident. The Office

further found that the evidence provided by appellant's chiropractor was insufficient to establish that she sustained an injury due to the incident of November 30, 2000.

The Board finds that appellant has not established that she sustained an injury due to the November 30, 2002 incident.

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.[1] The first component to be established is that the employee actually experienced the employment incident that is alleged to have occurred.[2] The second component is whether the employment incident caused a personal injury.[3] This latter component generally can be established only by medical evidence.[4] In the instant case, the Office denied appellant's claim because she failed to establish that the accepted employment incident of November 30, 2000 caused a personal injury.

Appellant has not submitted sufficient medical evidence to establish that she incurred an employment-related injury. The only evidence submitted by appellant were the reports of Dr. Hardison, a chiropractor. The Board has held that a medical opinion, in general, can only be given by a qualified physician.[5] Pursuant to sections 8101(2) and (3) of the Federal Employees' Compensation Act,[6] the Board has recognized chiropractors as physicians only to the extent of diagnosing spinal subluxations by x-ray according to the Office's definition[7] and treating such subluxations by manual manipulation. A review of the record does not indicate or support that any x-rays were made of the thoracic spine, which was the only area in which Dr. Haridson diagnosed a subluxation. Consequently, because Dr. Hardison's opinion is not supported by x-ray evidence of a diagnosed spinal subluxation, his opinion does not constitute valid medical evidence and has no probative medical value.[8] Appellant, therefore, has submitted no medical evidence to support her claim and therefore has failed to meet her burden of proof in establishing that she sustained an injury in the performance of duty on November 30, 2000.

---

[1] *Caroline Thomas*, 51 ECAB ____ (Docket No. 98-2353, issued April 6, 2000).

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

[3] *Leon Thomas*, 52 ECAB ____ (Docket No. 00-671, issued January 4, 2001).

[4] *Ernest St. Pierre,* 51 ECAB ____ (Docket No. 99-467, issued August 14, 2000); *Elaine Pendleton*, *supra* note 2.

[5] *George E. Williams*, 44 ECAB 530 (1993).

[6] 5 U.S.C. §§ 8101(2) and (3).

[7] 20 C.F.R. § 10.400(e); *see also Linda Thompson*, 51 ECAB ___ (Docket No. 99-1164, issued September 26, 2000).

[8] *See George E. Williams*, *supra* note 5.

The decision of the Office of Workers’ Compensation Programs dated May 10, 2001 is affirmed.

Dated, Washington, DC
April 24, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

David S. Gerson
Alternate Member