U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JANICE ROSS and U.S. POSTAL SERVICE,
PALO ALTO VETERANS HOSPITAL, Coppell, TX

Docket No. 02-16; Submitted on the Record;
Issued May 13, 2002

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant sustained an injury in the performance of duty.

On March 22, 2001 appellant, then a 31-year-old computer rural mail carrier, filed a notice of occupational disease and claim for compensation (Form CA-2). She asserted that on March 10, 2001 she first became aware that she sustained a burning sensation and pain in the lower neck and shoulder due to her employment. Appellant alleged that this was a result of standing and casing for a long time to get her route ready for deliveries. She stopped work on March 27, 2001.

Appellant provided additional documentation concerning her job description and previous work history.

In a March 20, 2001 initial medical report, Dr. Gary D. Gentry, a chiropractor, found that, due to repetitive motion disorder, appellant was experiencing a burning sensation in the arm. Additionally, he noted that, due to stacking mail while standing, often for six hours at a time, appellant was experiencing upper and mid back pain and pulling mail and slotting it had caused a spinal disorder of the thoracic bone. Dr. Gentry stated that appellant had extreme myositis, pos shoulder depressor, ift, pos sotohall T1-T3, pos kemps T2-T6, pos trendelenberg and reversal of lordosis. Under laboratory test ordered, Dr. Gentry indicated, "none." In a March 20, 2001 disability certificate, he advised that appellant was to avoid all work duties until further notice and that her work was exacerbating her spinal condition.

In a March 21, 2001 note, J. Hishke of the Family Medicine Associates stated that appellant still had neck pain and burning and indicated forms were needed for appellant's repetitive motion disorder.

In an April 24, 2001 letter, the Office of Workers' Compensation Programs advised appellant that the information submitted in her claim was not sufficient to determine whether she was eligible for benefits under the Federal Employees' Compensation Act. The Office advised

appellant of the additional medical and factual evidence needed to support her claim. Specifically, she was asked to provide a physician's reasoned medical opinion, including a discussion by her physician as to the causal relationship between her claimed condition and specific employment factors.

By letter dated April 28, 2001, the Office received additional factual information concerning appellant's claim, including her job description.

In an April 17, 2001 report, Dr. Gentry checked the box "yes" indicating that appellant's condition was caused or aggravated by the employment activity. He advised that she could return to work on April 23, 2001. Dr. Gentry made findings indicating that, due to repetitive motion, appellant was experiencing a burning sensation in the arm due to stacking of mail and found that she had collectively acquired an upper back and neck problem consisting of a spinal disorder of the thoracic spine.

In an April 30, 2001 report, Dr. Gentry reiterated his findings that appellant had a repetitive motion disorder. He stated further that the constant, one-sided arm extension lent itself to causing the injury accompanied by lack of ergonomics at the employment.

By merit decision dated July 17, 2001, the Office accepted the occurrence of the claimed employment incident but found that there was no medical evidence to establish an injury resulting from the event. The Office explained the limitations under the Act with respect to chiropractic services and found that as Dr. Gentry was not a physician under the Act, his reports had no probative medical value.

The Board finds that appellant has not met her burden of proof to establish that she sustained an injury in the performance of duty.

An employee seeking benefits under the Act[1] has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an "employee of the United States" within the meaning of the Act and that the claim 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 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 an occupational disease.[3]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence

[1] 5 U.S.C. §§ 8101-8193.

[2] *Kathryn Haggerty*, 45 ECAB 383, 388 (1994); *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[3] *Victor J. Woodhams*, 41 ECAB 345 (1989).

or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.[4] The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized medical 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 upon a complete factual and medical background of the claimant[5], must be one of reasonable medical certainty[6] 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.

In the present case, the Office accepted that the claimed exposure occurred in the time, place and manner alleged. However, the Office denied appellant's claim based on her failure to prove that a medical condition existed for which compensation was claimed.

The evidence submitted in support of appellant's claim consisted of several reports from Dr. Gentry, who is a chiropractor. In assessing the probative value of chiropractic evidence, the initial question is whether the chiropractor is considered to be a physician under the Act. Section 8101(2) of the Act provides that the 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 as demonstrated by x-ray to exist…."[7] Therefore, a chiropractor cannot be considered a physician under the Act unless it is established that there is a subluxation as demonstrated by x-ray evidence.[8] In the instant case, there is no indication that x-rays were taken or a diagnosis of a spinal subluxation was made. Thus, the Office properly determined that Dr. Gentry could not be considered a physician under the Act. The record does not contain any probative medical evidence establishing that appellant sustained a medical condition related to her occupational disease.[9] Consequently, appellant has failed to establish that she sustained an injury in the performance of duty.

[4] *See Victor J. Woodhams, supra* note 3.

[5] *William Nimitz, Jr.* 30 ECAB 567, 570 (1979).

[6] *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

[7] 5 U.S.C. § 8101(2); *see also Linda Holbrook*, 38 ECAB 229 (1986).

[8] *Kathryn Haggerty*, 45 ECAB 383 (1994).

[9] Subsequent to the Office's decision, the chiropractor submitted additional evidence. However, the Board cannot consider new evidence on appeal. Appellant can submit the new evidence to the Office and request reconsideration pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. 10.606(b)(2)(1999); s*ee* 20 C.F. R. § 501.2(c).

The July 17, 2001 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
May 13, 2002

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member