U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY J. PLEUSS and U.S. POSTAL SERVICE,
SHIOCTON POST OFFICE, Shiocton, WI

Docket No. 03-710; Submitted on the Record;
Issued April 14, 2003

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
DAVID S. GERSON

The issue is whether appellant has met her burden of proof of establishing that she was disabled from February 22 to March 16, 2001 due to her October 5, 2000 employment injury.

On October 5, 2000 appellant, then a 49-year-old auxiliary carrier, was lifting a small, heavy parcel to put in a mailbox when she felt a pop in her neck. She indicated that she developed considerable pain after the incident which sent shooting pains into her head.

In an undated report, received by the Office of Workers' Compensation Programs on March 5, 2001, Dr. Roy Ostenson, a chiropractor, stated that appellant had frequent mild to moderate pain in her neck with associated frequent headaches. He indicated that appellant had moderate restricted movement and shooting pain in the neck, forehead, clavicular region and upper shoulder. He commented that the injury occurred at work while appellant was doing the same task repetitively. He reported appellant had joint restriction at T6-8 with pain and a moderate amount of spinal joint fixation at C2 and C5-T3 with severe pain. He reported appellant's ranges of motion of the cervical spine and indicated that all motions were done with pain of varying degrees. Dr. Ostenson diagnosed cervicobrachial syndrome secondary to traumatic insult of an otherwise stable osteoarthritic cervical spine. He commented that lumbodorsal subluxations were present with some visible osteoporosis throughout the spinal column.

In a July 17, 2001 letter, the Office informed appellant that Dr. Ostenson's report did not show appellant had sustained a spinal subluxation. It indicated that his services were not reimbursable by the Office. It asked that if any x-rays taken of appellant after the injury, that the x-ray reports be submitted.

Dr. Ostenson submitted an October 11, 2000 x-ray analysis. He stated that appellant had a partial fusion of the cervical spine at C2-3 with facet overrides at C3-5 with osteophytes and disc loss in the cervical spine. Dr. Ostenson indicated that appellant at C2 and C3 had evidence of end plate fracture and had bone spurs at C3-4 and C4-5. He noted a severely decreased disc

space at C2-3, moderate facet sclerosis at C3-4, C4-5 and C5-6 and calcification of discs from C2 to C7. Dr. Ostenson stated that the C2 and C3 vertebrae were misaligned to the left and the C5 vertebra was misaligned to the right.

In an August 12, 2001 report, Dr. Thomas K. Van Sistine, a Board-certified physiatrist, stated that appellant injured her neck on October 5, 2000. He noted chiropractic treatment initially ameliorated her pain. However, due to persistent symptomatology, she was referred for further assessment. Dr. Van Sistine stated that he first saw appellant on March 20, 2001 and diagnosed probable cervical facet syndrome with secondary myofascial pain. He reported that x-rays showed degenerative changes at C4-5 and C5-6 with neuroforaminal narrowing and encroachment. He noted that a magnetic resonance imaging examination confirmed evidence of neuroforaminal narrowing. He concluded that appellant's injury was work related or aggravated by her occupation as a rural route mail carrier.

In a September 10, 2001 letter, the Office informed appellant that her injury had been accepted for aggravation of cervical spondylosis. It stated that appellant could seek compensation for wage loss by submitting a CA-7 claim form.

In a September 19, 2001 CA-7 form, appellant filed a claim for the period February 22 to March 16, 2001 when she was on leave without pay. She submitted an October 7, 2001 form report from Dr. Van Sistine who stated that appellant had cervical degenerative changes and diagnosed cervical spondylosis. He did not specify any period of total disability for appellant. In a November 5, 2001 letter, the Office stated that it could not pay compensation for the period claimed because the medical evidence did not indicate that she was totally disabled for the period she claimed. It stated that the diagnosis of subluxation was not given for the cervical area where appellant claimed a work-related injury. It indicated that it therefore could not recognize the opinion of the chiropractor as valid medical evidence. The Office requested evidence from a physician, not a chiropractor, to support total disability for the period claimed. The Office asked that the evidence be submitted within 30 days. Appellant submitted a copy of Dr. Van Sistine's August 12, 2001 report.

In a March 20, 2002 decision, the Office denied appellant's claim for compensation for the period February 22 to March 16, 2001 because appellant had not submitted medical evidence to establish work-related disability.[1]

The Board finds that appellant has not met her burden of proof in establishing that she was disabled from February 22 to March 16, 2001 due to her October 5, 2000 employment injury or other factors of her employment.

A person who claims benefits under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of her claim. Appellant has the burden of

[1] Appellant subsequently submitted an April 12, 2002 report from Dr. Van Sistine in support of her claim. However, the Board's scope of review is limited to the evidence that was before the Office at the time it made a final decision. 20 C.F.R. § 501.2(c). The Board therefore cannot consider Dr. Van Sistine's April 12, 2002 report.

[2] 5 U.S.C. §§ 8101-8193.

establishing by reliable, probative and substantial evidence that her medical condition was causally related to a specific employment incident or to specific conditions of employment.[3] As part of such burden of proof, rationalized medical opinion evidence showing causal relation must be submitted.[4] The mere fact that a condition manifests itself or worsens during a period of employment does not raise an inference of causal relationship between the condition and the employment.[5] Such a relationship must be shown by rationalized medical evidence of causal relation based upon a specific and accurate history of employment incidents or conditions which are alleged to have caused or exacerbated a disability.[6]

The reports of Dr. Ostenson were not sufficient to support appellant's claim. Section 8101(2) of the Act defines the term "physician" to include 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 and subject to regulation by the Secretary.[7] Subluxation is defined as an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae which must be demonstrated on any x-ray film.[8] Dr. Ostenson, in his October 11, 2000 report, stated that the x-rays taken of appellant showed a misalignment of C2 and C3 to the left and of C5 to the right. His report therefore fits the definition of a subluxation and his reports can be considered medical evidence. However, Dr. Ostenson did not specifically state in any of his reports that appellant was totally disabled from February 22 to March 16, 2001 as a result of her employment injury. His reports therefore are inadequate to satisfy appellant's burden of proof.

Dr. Van Sistine, in his August 12, 2001 report, diagnosed degenerative cervical changes at C4-5 and C5-6 with neuroforaminal narrowing and encroachment. However, Dr. Van Sistine did not give any statement in either the August 12, 2001 report or the October 7, 2001 form report that appellant was totally disabled for any specific time due to her employment injury. His reports therefore do not show that appellant was totally disabled for the period she claimed. Appellant therefore has not submitted substantial, probative and reliable medical evidence that she was totally disabled from February 22 to March 16, 2001 due to her employment injury.

[3] *Margaret A. Donnelly*, 15 ECAB 40, 43 (1963).

[4] *Daniel R. Hickman*, 34 ECAB 1220, 1223 (1983).

[5] *Juanita C. Rogers*, 34 ECAB 544, 546 (1983).

[6] *Edgar L. Colley*, 34 ECAB 1691, 1696 (1983).

[7] 5 U.S.C. § 8101(2); *see Jay K. Tomokiyo*, 51 ECAB 361 (2000).

[8] 20 C.F.R. § 10.5(bb).

The decision of the Office of Workers' Compensation Programs, dated March 20, 2002, is hereby affirmed.

Dated, Washington, DC
April 14, 2003

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member