U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHARON R. BANNON and U.S. POSTAL SERVICE,
POST OFFICE, Boise, ID

Docket No. 03-1649; Submitted on the Record;
Issued August 20, 2003

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

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

On January 25, 2002 appellant, then a 52-year-old letter carrier, filed an occupational disease claim for acute tendinitis of the left hip and leg. She also noted parenthetically that she had a problem with her right leg, which she characterized as minor. Appellant attributed her condition to repetitive mounting and dismounting from her postal vehicle.[1] Appellant explained that, because of her height, she must lift and extend her left leg over the seat while pivoting on her right leg. She identified June 20, 2000 as the date she first realized her condition was employment related.[2]

Appellant submitted disability statements dated August 30, 2000 and November 30, 2002 from Dr. J.V. Drost, an osteopath Board-certified in family practice, who excused appellant from work during the period August 30 to September 5, 2000 for "hip/leg pain." Appellant also submitted an undated report from Dr. Gregory E. Ferch, a chiropractor, who noted that appellant was initially seen on June 21, 2000 for an episode of hip/low back pain and subsequent left knee pain. Dr. Ferch diagnosed functional dyskinesia of the thoracic spine, left hip pain secondary to sacroiliac dysfunction, and recurrent strain/sprain of the left knee. He described the manner and frequency of appellant's entering and exiting from her postal vehicle, and stated that her clinical presentation was directly related to the described occupational distress.

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[1] The employing establishment confirmed that appellant's duties included frequent mounts and dismounts from her postal vehicle.

[2] The record reflects that appellant has an accepted claim (A14-0353386) for lumbar and sacroiliac subluxations sustained on June 20, 2000. Appellant attempted to have her claimed lower extremities condition associated with her previously accepted back claim; however, the Office of Workers' Compensation Programs advised her to file a separate claim.

The Office subsequently requested additional factual information and medical evidence. Additionally, the Office advised appellant of the limitations under the Federal Employees' Compensation Act with respect to chiropractic services. The Office did not receive any additional medical evidence in the allotted 30-day time frame.

By decision dated August 2, 2002, the Office denied appellant's claim on the basis that the medical evidence did not establish that a condition had been diagnosed in connection with her accepted employment exposure.

Appellant requested reconsideration on August 30, 2002 and she submitted additional medical evidence in support of her claim. The evidence included treatment notes from Dr. Drost encompassing the time frame August 24, 2000 through August 29, 2002.[3]

In a decision dated January 23, 2003, the Office granted modification but denied the claim. The Office noted that Dr. Drost's recent treatment records included a definitive diagnosis of left greater trochanteric insertional tendinitis. While appellant established the medical component of fact of injury, the Office denied her claim because causal relationship had not been established.

The Board finds that appellant failed to establish that she sustained an injury in the performance of duty.

In order to establish that an injury was sustained in the performance of duty, 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 or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.[4] Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.[5]

The medical evidence of record fails to demonstrate that appellant's claimed tendinitis of the left hip and leg is employment related. In this case, the evidence appellant submitted lacked a rationalized medical opinion explaining the causal relationship between specific factors of her employment and her diagnosed condition. Dr. Drost's August 24, 2000 chart notes reference a history of "repetitive motion -- mount & dismount vehicle pivoting and rotation to mount seat." Examination findings were noted and appellant was diagnosed with left lateral leg pain and left

[3] Appellant also submitted some medical reports dealing with her bilateral wrist condition. As appellant's current claim concerns left hip/leg and right leg difficulties, the evidence pertaining to her bilateral wrist condition is not relevant to her claim and will not be addressed.

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

[5] *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant. *Victor J. Woodhams*, *supra* note 4. Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and claimant's specific employment factors. *Id.*

trochanteritis. On January 30, 2001 Dr. Drost reported low back, bilateral hip and chest pain. Appellant advised, as part of her history, that she had experienced low back and bilateral hip pain on standing in excess of two hours. On November 9 and 26, 2001 Dr. Drost diagnosed left greater trochanteritis insertional tendinitis. On August 29, 2002 Dr. Drost diagnosed insertional tendinitis, left greater trochanteritis and fascitis left fascia lata. He further noted that appellant had recently experienced right-sided symptoms.

Appellant claimed that her left hip and leg condition was caused by her repetitive motions of mounting and dismounting the postal vehicle and having to extend her left leg over the driver's seat. However, no rationalized medical evidence was submitted that supported that these factors caused or aggravated her claimed left hip and leg condition. As previously noted, Dr. Drost diagnosed insertional tendinitis, left greater trochanteritis and fascitis left fascia lata. However, he failed to discuss how the diagnosed condition was causally related to factors of appellant's employment.[6] Therefore, Dr. Drost's reports are of diminished probative value and are insufficient to establish appellant's claim. Furthermore, as a chiropractor, Dr. Ferch is not considered a "physician" under the Act and, therefore, his opinion lacks probative value.[7]

As appellant has not provided rationalized medical evidence identifying the specific factors of employment implicated in causing her conditions of insertional tendinitis, left greater trochanteritis and fascitis left fascia lata, she has not established that she sustained an injury in the performance of duty.

[6] Dr. Drost previously reported symptoms of left lateral leg pain, low back pain, bilateral hip pain and chest pain. However, pain is considered a symptom, not a diagnosis. The Board has frequently explained that statements about an appellant's pain, not corroborated by objective findings of disability or a diagnosis of "pain," do not constitute a basis for payment of compensation. *See John L. Clark*, 32 ECAB 1618 (1981); *Huie Lee Goad*, 1 ECAB 180 (1948).

[7] In assessing the probative value of chiropractic evidence, the initial question is whether the chiropractor is considered 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…." 5 U.S.C. § 8101(2); *see also Linda Holbrook*, 38 ECAB 229 (1986). 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. *Kathryn Haggerty*, 45 ECAB 383 (1994). Dr. Ferch's undated report did not include a diagnosis of subluxation. Accordingly, Dr. Ferch's opinion is of no probative value as he is not considered a physician under the Act.

The January 23, 2003 decision of the Office of Workers' Compensation Programs is hereby affirmed.[8]

Dated, Washington, DC
August 20, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

[8] The record before the Board includes evidence submitted after the Office issued its January 23, 2003 decision. The Board, however, cannot consider evidence that was not before the Office at the time of the final decision. 20 C.F.R. § 501.2(c)(1).