U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of SONYA GONZALES and U.S. POSTAL SERVICE,
PROCESSING & DISTRIBUTION CENTER, Dallas, TX

*Docket No. 02-2322; Submitted on the Record;*
*Issued March 11, 2003*

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DECISION and ORDER

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

The issue is whether appellant sustained an injury in the performance of duty on April 2, 2002.

On April 2, 2002 appellant, then a 33-year-old clerk, filed a notice of traumatic injury (Form CA-1) alleging that on that day, while performing her duties, her left hand was injured when it was sucked into a flat sorter machine.

By letter dated May 13, 2002, the Office of Workers Compensation Programs requested that appellant provide additional information. Specifically, dates of examination and treatment, a history of injury given by her to the physician, a description of findings, the results of all x-rays and laboratory test, a diagnosis and clinical course of treatment followed and a physician's opinion supported by a medical explanation as to how the reported work incident caused or aggravated the claimed injury. The Office explained that the physician's opinion was crucial to her claim. By letter dated June 17, 2002, the Office again requested the same factual and medical information from appellant.

By another letter dated June 17, 2002, the Office advised appellant that her case showed that she was being treated by a chiropractor.[1] Appellant was also advised that if her chiropractor diagnosed a subluxation she must provide x-ray evidence to support his diagnosis and, if he diagnosed a condition other than a subluxation, his diagnosis cannot be recognized as valid medical evidence in this case.

[1] Under section 8101(2) of the Federal Employees' Compensation Act the term "physician" is defined to include "chiropractors," within the scope of their practice, 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; *see Christine L. Kielb*, 35 ECAB 1060 (1984).

On May 20, 2002 the record was supplemented with an April 2, 2002 duty status report by Dr. Carl Piel, Jr., an osteopath, who specializes in emergency medicine at St. Paul Medical Center. Dr. Piel described the incident as reported by appellant, diagnosed a contusion of the left hand due to the April 2, 2002 employment incident and recommended no work with the left hand for two days; an April 26, 2002 duty status report by Dr. Kenneth Peterson, a chiropractor, who diagnosed with numbers only; an April 4, 2002 initial medical report by Dr. Peterson again diagnosing with numbers and reporting his findings of decreased motion of the left wrist, swelling left wrist, pain cervical spine and a reversed cervical curve revealed by x-ray; and an April 4, 2002 extremity evaluation, carpal tunnel examination and orthopedic, neurological and physical examination by Dr. Peterson.

By decision dated June 21, 2002, the Office denied appellant's claim for failure to establish fact of injury. The Office found that appellant, a federal employee, filed a timely claim for compensation and that the claimed incident occurred at the time, place and in the manner alleged. However, the Office found that the medical evidence of record failed to demonstrate that appellant sustained an injury as a result of the incident.[2] Therefore, fact of injury was not established.[3]

The Board finds that appellant has met her burden of proof in establishing that she sustained an injury in the form of a contusion of the left hand in the performance of duty on April 2, 2002 but that she did not meet her burden of proof to establish that she sustained disability due to this injury.

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 limitations 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 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, which must be considered in conjunction with one another. The first component to be established is that the employee

[2] The Office stated that the medical evidence was submitted by a chiropractor and appellant's claim is for a left hand injury.

[3] In its decision, the Office stated that any previously paid continuation of pay would be charged to appellant's sick and/or annual leave, or if she does not have a leave balance, the money already paid as continuation of pay would be deemed an overpayment within the meaning of 5 U.S.C. § 5584.

[4] *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

[5] *David J. Overfield*, 42 ECAB 718, 721 (1991).

actually experienced the employment incident, which is alleged to have occurred.[6] In the instant case, there is no dispute that the claimed incident occurred at the time, place and in the manner alleged.

The second component of fact of injury 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 incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.[7] The Office found that the medical evidence was insufficient to support that appellant sustained an injury as a result of the incident.

In support of her claim, appellant submitted an April 2, 2002 duty status report by Dr. Piel. He described the April 2, 2002 incident as reported by appellant, diagnosed a contusion of the left hand due to the April 2, 2002 incident and stated that appellant could work with restrictions of no use of the left hand for two days. The Board notes that appellant reported the incident on the day it happened and that appellant received medical treatment the same day from Dr. Piel who diagnosed an injury. The Board finds that Dr. Piel's April 2, 2002 report is sufficient to establish that appellant sustained an injury in the form of a contusion to her left hand causally related to the April 2, 2002 employment-related incident. However, the Board also finds that the evidence of record is insufficient to establish that appellant suffered a disability due to the injury.

Appellant also submitted an April 26, 2002 duty status report, completed by Dr. Peterson, a chiropractor, who saw appellant on April 4, 2002 and provided a numerically coded diagnosis; an April 4, 2002 initial medical report by Dr. Peterson who again provided a numerically coded diagnosis and reported his findings of decreased motion of the left wrist, swelling left wrist, pain cervical spine and a reversed cervical curve revealed by x-ray; and an April 4, 2002 extremity evaluation, carpal tunnel examination and orthopedic, neurological and physical examination by Dr. Peterson.[8] Dr. Peterson's April 26, 2002 duty status report and April 4, 2002 medical reports are insufficient to establish appellant's claim. Dr. Peterson is a chiropractor and since he did not diagnose a subluxation of the spine based on x-rays, he may not be considered a physician in this case and his reports do not constitute competent medical evidence.[9]

The decision of the Office of Workers' Compensation Programs dated June 21, 2002 is hereby affirmed as modified to reflect that appellant sustained an injury in the performance of duty on April 2, 2002 but did not show that she sustained disability due to this injury.[10]

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[6] *Elaine Pendleton*, *supra* note 4.

[7] *Kathryn Haggerty*, 45 ECAB 383 (1994); *see* 20 C.F.R. § 10.110(a).

[8] The Board notes that the Office, in its June 21, 2002 decision, stated that the medical evidence submitted was from chiropractors. However, Dr. Piel is an osteopath who specializes in emergency medicine.

[9] *Christine L Kielb*, *supra* note 1.

[10] The Board notes that on appeal appellant submitted new medical evidence. The Board has no jurisdiction to

Dated, Washington, DC
March 11, 2003

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

review evidence that was not before the Office at the time of its decision. 20 C.F.R. § 501.2(c). Appellant may submit this evidence to the Office with a request for reconsideration pursuant to 20 C.F.R. § 10.606(b).