U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICHARD J. ZEYZUS and U.S. POSTAL SERVICE,
POST OFFICE, Export, PA

Docket No. 03-2068; Submitted on the Record;
Issued October 15, 2003

DECISION and ORDER

Before COLLEEN DUFFY KIKO, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant established that he sustained injuries causally related to factors of his federal employment.

On December 13, 2002 appellant, then a 56-year-old rural letter carrier, filed a traumatic injury claim alleging that on December 4, 2002 he was injured when the vehicle he was loading in the performance of his duties rolled backwards, striking him in the right leg and hip area. Appellant did not submit any factual or medical evidence in support of his claim.

By letter dated February 27, 2003, the Office of Workers' Compensation Programs informed appellant of the type of evidence needed to support his claim. The Office explained to appellant that his claim form alone was insufficient to establish his claim, as neither a diagnosis of any condition resulting from the December 4, 2002 incident, nor a physician's opinion as to how the employment injury resulted in the condition diagnosed, was provided. The Office left the record open for 30 days for the submission of such evidence. In response to the Office's request, appellant submitted a narrative statement responding to questions posed by the Office, together with narrative reports and treatment notes from Dr. Dale A. Scott, his treating chiropractor.

In a decision dated July 15, 2003, the Office denied appellant's claim finding that, while he established that the claimed employment incident occurred, he did not provide supportive medical evidence.

The Board finds that appellant has not established that he sustained an employment-related injury.

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his or her claim including the fact that the

[1] 5 U.S.C. §§ 8101-8193.

individual is an "employee of the United States" within the meaning of the Act, 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 and/or specific condition for which compensation is claimed are causally related to the employment injury. These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[2]

In accordance with the Federal (FECA) Procedure Manual, in order to determine whether an employee actually sustained an injury in the performance of his duty, the Office begins with the analysis of whether "fact of injury" has been established. Generally, "fact of injury" consists of two components which must be considered in conjunction with the other. The first component to be established is that the employee actually experienced the employment incident or exposure which is alleged to have occurred.[3] In order to meet his burden of proof to establish the fact that he sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he actually experienced the employment injury or exposure at the time, place and in the manner alleged.

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[4] The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.[5] Moreover, neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief of claimant that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[6] In assessing the probative value of chiropractic evidence, the initial question is whether the chiropractor is considered a physician under section 8101(2) of the Act.[7] A chiropractor cannot be considered a physician under the Act unless it is established that there is a subluxation as demonstrated by x-ray to exist.[8]

In this case, it is undisputed that on December 4, 2002 while appellant was loading his vehicle in the performance of his duties, the vehicle rolled backwards and struck him in the right leg and hip area. Therefore, the issue is whether appellant established that he sustained injuries

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[2] *Kathryn A. Tuel-Gillam*, 52 ECAB 451 (2001); *Charles E. Evans*, 48 ECAB 692 (1997).

[3] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

[4] *Gary J. Watling*, 52 ECAB 278 (2001); *John J. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. §§ 10.5(q), 10.5(ee) ("occupational disease" and "traumatic injury" defined).

[5] *Manuel Gill*, 52 ECAB 282 (2001); *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

[6] *Charles E. Evans*, *supra* note 2; *Minnie L. Bryson*, 44 ECAB 713 (1993); *Froilan Negron Marrero*, 33 ECAB 796 (1982).

[7] 5 U.S.C. § 8101(2).

[8] *Jay K. Tomokiyo*, 51 ECAB 361 (2000)*; Thomas R. Horsfall*, 48 ECAB 180 (1996).

as a result of the employment incident. As noted above, this component generally can be established only by probative medical evidence.

The medical evidence in the instant case consists of reports and treatment notes from Dr. Scott, a chiropractor, dating from December 6, 2002 through May 9, 2003. In his reports, Dr. Scott discussed appellant's history of injury, reported his physical examination results, diagnosed sacroiliac strain and sprain, lumbalgia, restricted range of lumbar motion and myospasm, and discussed his course of treatment. However, Dr. Scott did not diagnose a spinal subluxation as demonstrated by x-ray to exist, nor is there any indication in the record that x-rays were performed.

The Board finds that appellant did not establish that he sustained an employment-related injury as the record contains no rationalized medical evidence containing a diagnosis and relating that diagnosed condition to employment factors. While appellant submitted evidence from his treating chiropractor, under section 8101(2) of the Act, chiropractors are considered physicians and their reports considered medical evidence only to the extent that they treat spinal subluxations as demonstrated by x-ray to exist. As Dr. Scott did not diagnose a lumbar subluxation as shown by x-rays to exist, he is not considered a physician as defined under the Act, and his reports are of no probative medical value.[9] As there is no other medical evidence contained in the record, appellant did not provide the necessary medical evidence to establish that employment factors caused any injuries, and the Office properly denied his claim.

[9] In assessing the probative value of chiropractic evidence, the initial question is whether the chiropractor is a physician under 5 U.S.C. § 8101(2). A chiropractor cannot be considered a physician under the Act unless it is established that there is a subluxation as demonstrated by x-ray to exist. *Jay K. Tomokiyo*, *supra* note 8; *Thomas R. Horsfall*, *supra* note 8.

The decision of the Office of Workers' Compensation Programs dated July 15, 2003 is hereby affirmed.

Dated, Washington, DC
October 15, 2003

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member