United States Department of Labor
Employees' Compensation Appeals Board

JENNIFER K. LEIGH, Appellant	)	
and	)	**Docket No. 04-1791**
	)	**Issued: November 22, 2004**
U.S. POSTAL SERVICE, POST OFFICE, Norwalk, OH, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On July 1, 2004 appellant, through her representative, filed a timely appeal from the June 4, 2004 merit decision of the Office of Workers' Compensation Programs, in which an Office hearing representative affirmed the denial of appellant's claim on the grounds that she failed to establish that she sustained an injury causally related to factors of her federal employment. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.

ISSUE

The issue is whether appellant has established that she sustained a back injury causally related to her federal employment.

FACTUAL HISTORY

On June 13, 2003 appellant, a 55-year-old rural carrier, filed an occupational disease claim alleging that on May 23, 2003 she first realized her neck, back and shoulder pain were due to the constant turning and twisting she does to grab mail and parcels and put them into boxes.

By letter dated June 26, 2003, the Office requested further medical and factual information and informed her to submit the information no later than July 26, 2003. No information was received.

By decision dated August 8, 2003, the Office denied appellant's claim on the grounds that she failed to establish that she sustained an injury as defined by the Federal Employees' Compensation Act. The Office found that the evidence supported the events occurred as claimed by appellant, but that she failed to submit any medical evidence establishing a condition due to the claimed events.

By letter dated August 13, 2003, appellant, through her representative, requested an oral hearing before an Office hearing representative on the rejection of her claim. A hearing was held on April 20, 2004 at which appellant was represented by counsel, submitted evidence and provided testimony. The evidence submitted consisted of treatment notes for the period May 23 to 30, 2003 by Dr. John P. Heilman, a chiropractor, and an August 22, 2003 report by Dr. Gregg D. Winnestaffer, a chiropractor.

Dr. Winnestaffer diagnosed brachial-cervical radiculitis and neuritis, cervical strain/sprain and lumbar strain/sprain in an August 22, 2003 report. Physical findings include diminished range of motion in the cervical spine and lumbar spines on extension, flexion, right rotation and right lateral flexion. He reported positive orthopedic and neurological tests, including "Jackson Compression, right, central and left; Shoulder Depression, right and left; Soto Hal; Kemp's right and left; Double leg raiser; Leg Lowering; Erichsen's Sign and Yeoman's, right." Palpitations revealed spasms of the eretor spinae and bilateral trapezius muscles "with fixations at the C5-C6 and L5 spinal levels."

In form reports dated May 23, 27, 28 and 30 2003, Dr. Heilman indicated that there were objective findings of tenderness at the cervical spine with a subluxation at C2 and 7, tenderness at the thoracic spine with a subluxation at T6 and tenderness at the lumbar spine with a subluxation at L5. Treatment consisted of cervical, thoracic and lumbar manipulation.

By decision dated June 4, 2004, the Office hearing representative affirmed the denial of her claim. He found that neither Dr. Heilman nor Dr. Winnestaffer could be considered a physician under the Act as neither chiropractor diagnosed a subluxation by x-ray.

LEGAL PRECEDENT

An employee seeking benefits under the Act[1] has the burden of establishing the essential elements of 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 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.[2]

[1] 5 U.S.C. §§ 8101 *et seq.*

[2] *Gary J. Watling*, 52 ECAB 278 (2001).

Establishing whether an injury, traumatic or occupational, was sustained in the performance of duty as alleged, *i.e.*, "fact of injury," and establishing whether there is a causal relationship between the injury and any disability and/or specific condition for which compensation is claimed, *i.e.*, "causal relationship," are distinct elements of a compensation claim. While the issue of "causal relationship" cannot be established until "fact of injury" is established, acceptance of fact of injury is not contingent upon an employee proving a causal relationship between the injury and any disability and/or specific condition for which compensation is claimed. An employee may establish that an injury occurred in the performance of duty as alleged but fail to establish that her disability and/or a specific condition for which compensation is claimed are causally related to the injury.[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 the 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 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 causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized 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 on a complete factual and medical background of the claimant, must be one of reasonable medical certainty 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.[5] Medical opinions which are based on an incomplete or inaccurate factual background are entitled to little probative value in establishing a claim.[6] Neither the fact that the disease became apparent during a period of employment, nor the belief of appellant that the disease was caused or aggravated by employment conditions, is sufficient to establish causal relation.[7]

To be of probative value to an employee's claim, the physician must provide rationale for the opinion reached. Where no such rationale is present, the medical opinion is of diminished probative value.[8] The weight of medical opinion evidence is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of

[3] As used in the Act, the term "disability" means incapacity because of an injury in employment to earn wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity. *See Prince E. Wallace*, 52 ECAB 357 (2001).

[4] *Solomen Polen*, 51 ECAB 341 (2000).

[5] *Calvin E. King*, 51 ECAB 394 (2000).

[6] *Frank Luis Rembisz*, 52 ECAB 147 (2000).

[7] *Michael E. Smith*, 50 ECAB 313 (1999).

[8] *Annie L. Billingsley*, 50 ECAB 210 (1998).

the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the opinion.[9] The opinion of a physician supporting causal relation must be one of reasonable medical certainty, supported with affirmative evidence, explained by medical rationale and based on a complete and accurate factual and medical background.[10]

Further, section 8101(2) of the Act[11] provides that the term "physician," as used therein, "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 and subject to regulation by the Secretary."[12] Without diagnosing a subluxation from x-ray, a chiropractor is not a "physician" under the Act and his opinion on causal relationship does not constitute competent medical evidence.[13] Chiropractors constitute "physicians" under the Act only when providing treatment and opinions *within the scope of their practice as defined by State law*.[14] (Emphasis added.)

ANALYSIS

In the instant case, appellant has established that she is an employee of the United States and that her claim was timely filed. However, she has not established that she sustained an injury in the performance of duty as alleged. Appellant alleged and the Office has accepted as factual that she constantly turned due to grabbing mail and parcels and putting them into boxes. Appellant contends that these employment activities caused her neck, back and shoulder pain. In support of her claim, appellant submitted reports from her chiropractors, Drs. Heilman and Winnestaffer. Dr. Winnestaffer offered diagnoses of brachial-cervical radiculitis and neuritis, cervical strain/sprain and lumbar strain/sprain but made no mention of x-rays or diagnosed a subluxation as demonstrated by x-ray to exist, in his August 22, 2003 report. Since Dr. Winnestaffer has not diagnosed a subluxation by use of an x-ray, he is not deemed a "physician." Therefore, his report has no probative value in establishing appellant's claim. Further, a chiropractor providing opinions as to conditions other than subluxations of the spine is not considered to be a physician under the Act.[15]

In form reports dated May 23, 27, 28 and 30 2003, Dr. Heilman indicated that there were objective findings of tenderness at the cervical spine with a subluxation at C2 and 7, tenderness at the thoracic spine with a subluxation at T6 and tenderness at the lumbar spine with a subluxation at L5, but made no mention of an x-ray or a diagnosis of a subluxation as demonstrated by an x-ray. The Board finds that as Dr. Heilman did not diagnose a subluxation

[9] *Anna C. Leanza*, 48 ECAB 115 (1996).

[10] *See Manuel Gill*, 52 ECAB 282 (2001).

[11] 5 U.S.C. § 8101(2).

[12] 20 C.F.R. § 10.311.

[13] *Jay K. Tomokiyo*, 51 ECAB 361 (2000).

[14] *Cheryl L. Veale*, 47 ECAB 607 (1996).

[15] *Jay K. Tomokiyo*, *supra* note 13.

by x-ray he is not a "physician" and, accordingly, his reports have no probative value in establishing appellant's claim.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs' hearing representative dated June 4, 2004 is affirmed.

Issued: November 22, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member