United States Department of Labor
Employees' Compensation Appeals Board

DUDLEY A. COMANS, Appellant	)	
and	)	**Docket No. 04-2138**
	)	**Issued: February 2, 2005**
DEPARTMENT OF HOMELAND SECURITY, HARTSFIELD-JACKSON AIRPORT, Atlanta, GA, Employer	)	

Appearances:
Dudley A. Comans, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member

JURISDICTION

On September 1, 2004 appellant filed a timely appeal from the June 23, 2004 merit decision of the Office of Workers' Compensation Programs, which denied his claim for compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review this decision.

ISSUE

The issue is whether appellant's left leg pain on April 11, 2004 was causally related to his federal employment.

FACTUAL HISTORY

On April 11, 2004 appellant, then a 26-year-old security screener, filed a claim alleging that he felt a sharp pain in his left leg that day while performing his duties, which included bag

searches and lifting. On May 27, 2004 his chiropractor, Dr. John R. Dull, reported the history of injury, the results of his April 14, 2004 examination and his diagnosis of appellant's condition:

> "[Appellant] stated that the reported low back and left lower extremity pain resulted from prolonged lifting of suitcases on April 11, 2004.
>
> "Upon entering this office the patient underwent a focused Neurological/ Orthopedic spinal examination, a copy of which is attached. These exam[ination] findings indicated the need to take x-rays on April 14, 2004. X-ray findings related to the claimed work injury were [as] follows: (1) Flexion Malposition L5, (2) External Rotation Left Ilium 12.5 mm. The x-ray examination also revealed a partial Lumbarization of S1, which represents a complicating factor to [his] recovery.
>
> "The patient's diagnosis is as follows: Flexion Malposition L5 (739.3 Segmental Dysfunction L5) with resultant ICD-9-CM 724.3 Sciatic Neuralgia and associated 847.2 Lumbar Sprain -- Mild. [Appellant] has not reported similar left leg pains in the past. The patient was ordered to limit his work duties, during the period April 14, 2004 to May14, 2004. A copy of the Employees' Work Limitation Report is attached."

On a work limitation report dated April 14, 2004, Dr. Dull noted that appellant was under active treatment "for a lifting related injury."

In a June 23, 2004 decision, the Office denied appellant's claim for compensation. The Office found that the medical evidence was not sufficient to demonstrate that the claimed medical condition was related to the "established work-related accident." The Office explained that Dr. Dull did not qualify as a "physician" under the Federal Employees' Compensation Act because he did not report x-ray evidence of a spinal subluxation.

On appeal, appellant asserts that Dr. Dull's diagnosis did include spinal subluxation: "ICD-9-CM 739.3 Subluxation of L5 Vertebra."

LEGAL PRECEDENT

An employee seeking benefits under the Act[1] has the burden of proof to establish the essential elements of his claim. When an employee claims that he sustained an injury in the performance of duty, he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He must also establish that such event, incident or exposure caused an injury.[2]

[1] 5 U.S.C. §§ 8101-8193.

[2] *See Walter D. Morehead*, 31 ECAB 188, 194 (1979) (occupational disease or illness); *Max Haber*, 19 ECAB 243, 247 (1967) (traumatic injury). *See generally John J. Carlone*, 41 ECAB 354 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

Causal relationship is a medical issue,[3] and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,[4] must be one of reasonable medical certainty,[5] and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.[6]

Section 8101(2) of the Act 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."[7] Office regulations define "subluxation" as "an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae which must be demonstrable on any x-ray film to an individual trained in the reading of x-rays."[8] Office regulations also set forth special rules for the services of a chiropractor:

> "In accordance with 5 U.S.C. § 8101(3), a diagnosis of spinal 'subluxation as demonstrated by [x]-ray to exist' must appear in the chiropractor's report before [the Office] can consider payment of a chiropractor's bill.
>
> "A chiropractor may interpret his or her x-rays to the same extent as any other physician. To be given any weight, the medical report must state that x-rays support the finding of spinal subluxation. [The] Office will not necessarily require submittal of the x-ray, or a report of the x-ray, but the report must be available for submittal or request."[9]

ANALYSIS

The Office does not dispute the duties appellant performed as a security screener. In its June 23, 2004 decision, the Office noted an "established work-related accident," implying that appellant met his burden to establish a specific event, incident or exposure occurring at the time,

[3] *Mary J. Briggs*, 37 ECAB 578 (1986).

[4] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[5] *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

[6] *See William E. Enright*, 31 ECAB 426, 430 (1980).

[7] 5 U.S.C. § 8101(2); *see* 20 C.F.R. § 10.311 (1999) (special rules for the services of chiropractors).

[8] 20 C.F.R. § 10.5(bb) (1999).

[9] *Id*. at § 10.311(b)-(c).

place and in the manner alleged. Such a finding is supportable on the record.[10] The question for determination, therefore, is whether appellant's duties on April 11, 2004, which included bag searches and lifting, caused or contributed to a diagnosed condition.

The Office denied appellant's claim for failure to establish causal relationship. More specifically, the Office found that Dr. Dull was not a physician. 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.[11] The Office effectively found that Dr. Dull was not a physician under the Act because he did not use the word "subluxation" in his May 27, 2004 report. But he did make an x-ray finding and diagnosis of a vertebral "malposition." Although this finding appears synonymous with the definition of subluxation, Dr. Dull's report did not "state that x-rays support the finding of spinal subluxation," as Office regulations require. The Office did not ask Dr. Dull, directly or through appellant, whether his April 14, 2004 x-ray supported the finding of spinal subluxation, and so it remains unclear from the evidence developed in this case whether he satisfies the definition of a "physician" under the Act.[12]

The Board considers the Office's denial on these grounds harmless error: Even if Dr. Dull were a "physician" under the Act, he offered no opinion on whether the diagnosed flexion malposition, L5, was causally related to the duties appellant performed on April 11, 2004. On April 14, 2004 he noted that appellant was under active treatment "for a lifting related injury." On May 27, 2004 he reported a history of "prolonged lifting of suitcases on April 11, 2004." These statements amount to no more than a repetition of the history of injury related to him by appellant; they do not constitute an independent professional opinion on causal relationship, much less a reasoned professional opinion.

Appellant has the burden of proving by the weight of reliable, probative, and substantial evidence that the condition claimed was caused or aggravated by his federal employment. Because he submitted no medical opinion evidence to support the essential element of causal relationship, he has failed to make a *prima facie* claim for compensation.[13] The Board will affirm the denial of his claim on these grounds.

[10] Failure of the Office to make a finding upon operative facts may allow the Board, on review, to find the operative facts implicitly resolved in the claimant's favor when such operative facts are precedent or preliminary facts to the finding upon which the rejection is based, and such conclusion is supportable on the record. *Arietta K. Cooper*, 5 ECAB 11 (1952). Ordinarily, the medical question of whether an incident at work caused or contributed to a diagnosed condition arises only after a finding that the incident occurred as alleged. Here, the Office based its rejection on an analysis of the medical evidence without an explicit finding of fact concerning the incident reported.

[11] *See generally Theresa K. McKenna*, 30 ECAB 702 (1979).

[12] *Cf. Glen M. Hammack*, Docket No. 03-877 (issued September 8, 2003) n.5 (where the Office accepted the claim for a dislocation of a vertebra and the chiropractor discussed the claimant's condition in terms of wedge abnormalities and dislocation, the Board held that the chiropractor was considered a "physician" under the Act).

[13] *See Herman E. Harris* (Docket No. 91-1754, issued April 29, 1992) (finding that the claimant failed to establish a *prima facie* claim for compensation where he submitted no medical opinion relating his occupational disease or condition to factors of his federal employment).

CONCLUSION

Appellant has not met his burden of proof to establish that his left leg pain on April 11, 2004 was causally related to his federal employment. The record contains no reasoned opinion from a qualified physician on this issue.

ORDER

IT IS HEREBY ORDERED THAT the June 23, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 2, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member