United States Department of Labor
Employees' Compensation Appeals Board

RUTH M. GOEDEN, Appellant	)	
and	)	**Docket No. 04-1610**
	)	**Issued: January 10, 2005**
U.S. POSTAL SERVICE, MAIN POST OFFICE, Milwaukee, WI, Employer	)	

Appearances:
Ruth M. Goeden, pro se
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
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On June 7, 2004 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated March 8, 2004, finding that she did not sustain an injury on July 27, 2001. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained an injury in the performance of duty on July 27, 2001.

FACTUAL HISTORY

On August 23, 2001 appellant, then a 46-year-old mail processor, filed a traumatic injury claim stating that on July 27, 2001 she injured her lower back and back muscles while in the performance of duty.

In a report dated October 5, 2001, Dr. Daniel E. Hyatt, appellant's attending chiropractor, stated that she had a subluxation of the right ilium, muscle spasms, low back pain and neck pain caused by a June 22, 2000 work-related injury. He indicated that his initial treatment was on June 1, 2001 and placed her on total disability from July 28 to August 11, 2001 and released her to return to light duty that day.

On October 9, 2001 appellant filed a CA-7 claim for wage loss from August 19 to October 9, 2001. She submitted physical therapy notes dated April 23, May 29, July 26[1] and August 27, 2001 and treatment certificates for chiropractor services from September 14 to October 5, 2001.

In a letter dated December 12, 2001, the Office advised appellant that her claim was initially processed "as a simple, uncontroverted case which resulted in minimal or no time loss from work." The Office noted that, as she had now submitted a claim for wage loss, it would adjudicate her claim. The Office requested additional factual and medical information from appellant, including a more detailed description of her injury and a comprehensive medical report addressing the causal relationship between any diagnosed condition and the July 27, 2001 employment incident. Appellant then filed additional CA-7 claims for wage loss for July 28 to August 18, 2001 and treatment notes from July 27 to December 18, 2001.

By decision dated March 16, 2002, the Office denied appellant's claim on the grounds that the medical evidence failed to establish a causal relationship between her claimed conditions and the July 27, 2001 incident and her disability from July 28 to October 9, 2001. The Office advised appellant that it doubled the claim with her accepted June 22, 2000 claim for a lumbar strain.

On April 5, 2002 appellant requested an oral hearing and submitted additional evidence.

In a report dated April 11, 2002, Dr. Hyatt stated that he treated appellant for an injury on June 22, 2000. She related that she was lifting trays of mail when she injured her lower back. Dr. Hyatt opined that this event led to appellant's spinal subluxation complex and a diagnosis of subluxation of the right ilium. He stated that she reinjured this area on July 27, 2001 based on her work requirements, including bending, lifting and twisting combined with excessive repetitive motion. Dr. Hyatt noted that his treatment consisted of corrective realignments of appellant's spine which required appropriate amounts of rest. He placed her on total disability from July 28 to October 9, 2001. Dr. Hyatt stated that because of appellant's consistent work stresses, "similar injures can result with similar diagnoses" and thus, her employment caused her current condition.

In a report dated July 9, 2002, Dr. Hyatt stated that appellant sustained a work-related subluxation of the right ilium, low back pain, neck pain and muscle spasms on June 22, 2000 which was not related to a preexisting injury. He noted that she was working seven hours a day with one hour off. In a report dated October 31, 2002, Dr. Hyatt noted appellant's symptoms

[1] The July 26, 2001 note refers to appellant's request for two weeks off as a result of back pain. It is noted that Dr. Hyatt placed her on total disability for two weeks on July 27, 2001.

regarding her sacroiliac joint which was tender and inflamed. Upon palpation he noted muscle spasms at the L5-S1 musculature. Dr. Hyatt stated that appellant exhibited restricted lumbar range of motion, shortened connective tissues, hypomobile joint motion, lumbar muscle rigidity and soft tissue swelling. He noted that these symptoms were typical with subluxation of the sacroiliac joints. A hearing was held on October 21, 2002, at which time the hearing representative advised appellant regarding the limitations of chiropractor services.

In a report dated October 31, 2002, Dr. Hyatt stated that he examined appellant on July 27, 2001 for a tender and inflamed right sacroiliac joint condition. He found Grade 2-3 muscle spasms of the L1-5 paravertebral musculature and noted that the upper and lower portions of the sacroiliac joint were tender due to moderate and severe edema. Appellant had restricted lumbar range of motion, shortened connective tissues, hypomobile joint motion, lumbar muscle rigidity and soft tissue swelling. Dr. Hyatt stated that she had subluxation of the sacroiliac joints. He placed appellant on total disability for a week and noted improvements on August 3 and September 6, 2001. Dr. Hyatt then released her to return to restricted duty from August 15 to October 14, 2001, for three hours on machines and five hours off; from October 15 to 24, 2001, four hours on machines and four hours off; from October 25 to November 25, 2001, five hours on machines, three hours off; from November 28, 2001 to February 1, 2002, six hours on machines and two hours off; and from February 2 to October 13, 2002, seven hours on machines and one hour off.

Dr. Hyatt submitted results of a June 1, 29, August 3 and September 6, 2001 electromyogram (EMG) evaluation which revealed elevations above standard deviations at multiple cervical and thoracic levels, several areas of significant asymmetry, several below standard deviations and several areas that revealed extreme hyperactivity.

In a decision dated January 21, 2003, an Office hearing representative affirmed the March 16, 2002 decision, finding insufficient medical opinion evidence to support appellant's claim of a work-related injury on July 27, 2001. The hearing representative stated that the medical evidence did not cite a particular employment factor as a cause or an aggravating factor in her condition, nor did the evidence explain how an employment factor may have affected a preexisting condition.

Appellant requested reconsideration on February 20, 2003 and submitted a February 25, 2003 report from Dr. Hyatt, who stated that her low back pain and muscle spasms were caused by the subluxation of her right ilium and based his finding on an x-ray, EMG studies, computerized range of motion and muscle strength testing and nerve conduction velocity studies. He stated that "this type of rotational subluxation is caused by repetitive bending, twisting and lifting motions, which [are] consistent with [appellant's] injury."

On August 15, 2001 Dr. Hyatt attributed appellant's right ilium subluxation, muscle spasms, low back pain and neck pain to her June 22, 2000 work-related injury. He noted that there was no history of a preexisting injury and placed her on total disability from July 28 to August 15, 2001. In a report dated August 28, 2001 Dr. Joseph S. Kostrzewski, a chiropractor, stated that appellant sustained work-related lumbar spasms in strain and arthralgia at S1 as a

result of a work-related June 23, 2000 injury. He stated that she was on restricted duty from June 24, 2000 and that her condition was not related to a preexisting injury.

By decision dated March 8, 2004, the Office denied modification of the January 21, 2003 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employee's Compensation Act[2] 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. These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[3]

In order to determine whether an employee actually sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether "fact of injury" has been established. There are two components involved in establishing fact of injury which must be considered. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit sufficient evidence, generally in the form of medical evidence, to establish that the employment incident caused the personal injury.[4]

The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence.[5] 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. Such an opinion of the physician 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.[6]

ANALYSIS

The Office accepted that the July 27, 2001 work incident occurred at the time, place and in the manner alleged. The Board finds, however, that appellant has failed to submit rationalized

[2] 5 U.S.C. §§ 8101-8193.

[3] *Gabe Brooks*, 51 ECAB 184 (1999).

[4] *Gloria J. McPherson*, 51 ECAB 441 (2000).

[5] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[6] *Id*.

medical opinion sufficient to establish that the July 27, 2001 employment incident caused her back condition or disability for work.

Under section 8101(2) of the Act,[7] "[t]he 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 of the spine as demonstrated by x-ray to exist and subject to regulation by the Secretary."[8] If a chiropractor's report is not based on a diagnosis of subluxation as demonstrated by x-ray to exist, it does not constitute competent medical evidence to support a claim for compensation.[9] The Office's regulation at 20 C.F.R. § 10.5(bb)[10] have defined subluxation as an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae anatomically which must be demonstrable on any x-ray film to an individual trained in the reading of x-rays.

Dr. Hyatt's October 31, 2002 report diagnosed a sacroiliac subluxation, but he did not note any review of x-rays. On February 25, 2003 he noted reviewing x-rays and diagnosed a subluxation of the right ilium. However, it does not appear that the ilium may be considered a "vertebrae" within the Office's regulatory definition of subluxation, noted above. Even to the extent that a diagnosis of a subluxation of the right ilium, based on x-ray, may be construed as a spinal subluxation, the Board finds that Dr. Hyatt's opinion is of limited probative value on the issue of the causal relationship between appellant's alleged July 27, 2001 incident and her condition as he did not provide sufficient medical rationale explaining how and why the employment activity would cause or aggravate a spinal subluxation as shown by x-ray.[11]

None of appellant's additional reports submitted in support of her claim by her treating chiropractors found subluxation of the spine as demonstrated by x-rays to exist. The July 27, August 15 and October 5, 2001 and April 11 and July 9, 2002 reports from Dr. Hyatt and the August 28, 2001 report from Dr. Kostrzewski, both of whom are chiropractors, did not include a diagnose of subluxation of the spine as demonstrated by x-ray to exist. Accordingly, the Board finds that Dr. Hyatt and Dr. Kostrzewski are not physicians with respect to these reports under the Act and thus, they are of no probative medical value to appellant's claim.

Appellant's physical therapy notes from July 27 to August 27, 2001 have no probative value as the Board has long held that a physical therapist is not a physician for the purposes of the Act, therefore the physical therapy notes do not constitute medical evidence.[12]

---

[7] 5 U.S.C. §§ 8101-8193.

[8] 5 U.S.C. § 8101(2).

[9] *Loras C. Digmann*, 34 ECAB 1049 (1983).

[10] 20 C.F.R. § 10.5(bb).

[11] *See Leon Harris Ford*, 31 ECAB 514, 518 (1980), (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

[12] *Jennifer L. Sharp*, 48 ECAB 209 (1996).

Accordingly, appellant has failed to establish her claim as no probative medical evidence identifying the activities performed and the conditions caused was submitted.

CONCLUSION

The Board finds that appellant has failed to establish that she sustained an injury on July 27, 2001 in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the March 8, 2004 decision of the Office of Workers' Compensation Programs is affirmed.[13]

Issued: January 10, 2005
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

[13] The Board notes that this case record contains evidence which was submitted subsequent to the Office's March 8, 2004 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952).