United States Department of Labor
Employees' Compensation Appeals Board

FRANCES GONZALEZ, Appellant	)	
and	)	**Docket No. 03-2182**
	)	**Issued: May 23, 2005**
DEPARTMENT OF JUSTICE, IMMIGRATION & NATURALIZATION SERVICE, Laredo, TX, Employer	)	

Appearances:
Frances Gonzalez, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On August 28, 2003 appellant filed a timely appeal of a July 1, 2003 merit decision of the Office of Workers' Compensation Programs, finding that she did not sustain an injury while in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this decision.

ISSUE

The issue is whether appellant has established that she sustained an injury while in the performance of duty.

FACTUAL HISTORY

On February 27, 2003 appellant, then a 45-year-old detention enforcement officer, filed a traumatic injury claim alleging that on February 26, 2003 she hurt her head, neck, back, hips and legs as a result of a traffic accident. She stopped work on the date of injury. She submitted an unsigned treatment note dated March 4, 2003 which contained the typed name of Dr. Kayce A.

Frye, a chiropractor. This report indicated that a detailed history of her complaints and medical background had been obtained. The report provided findings on examination of appellant's lumbar, cervical and thoracic spine. On x-ray examination, it was reported that all films were negative for fracture, dislocation and other gross osseous pathology. Positive findings in the cervical spine were reversal of the normal cervical lorodosis and decreased disc space with intervertebral foramen (IVF) encroachment of the C5-7, C6-7 vertebral bodies. Mild left lateral listing of the thoracic spine with an apex at T5 was most likely secondary to muscle spasm. In the lumbar spine, gross pelvic unleveling with rotation and anterior weight bearing of the lumbar spine with IVF encroachment and a decrease in disc space at L4-5, L5-S1 were found. Appellant's complaint of pain was reported as 9 on a scale of 0 to 10 and a description of her February 26, 2003 motor vehicle accident and medical treatment was provided.

By letter dated March 27, 2003, the Office advised appellant that the evidence submitted was insufficient to establish her claim. The Office further advised about the type of factual and medical evidence she needed to submit to establish her claim.

By letters dated April 25 and May 1 and 2, 2003, the Office advised appellant and the employing establishment that the alleged injury may involve legal liability for payment of damages by a third party. To assist in this determination, the Office requested that she address specific questions regarding the alleged injury.

In a letter dated May 1, 2003, the Office advised appellant that Dr. Frye's March 4, 2003 treatment note was insufficient to authorize chiropractic treatment because she did not diagnose subluxation as demonstrated by x-ray. She was advised to submit additional information to authorize treatment.

In response to the Office's March 27, 2003 letter, appellant submitted Dr. Frye's attending physician's report dated April 14, 2003. Dr. Frye indicated that an illegible diagnosis caused by a February 2003 employment activity with an affirmative check mark. Appellant also submitted a workers' compensation status report dated March 3, 2003 of Dr. David E. Garza, a Board-certified family practitioner, who indicated that she sustained cervical, thoracic and lumbar strains and that she could return to work without restrictions as of that date. In an unsigned report dated March 3, 2003, Dr. Garza indicated that appellant was involved in a motor vehicle accident on February 26, 2003 while driving an employing establishment van. She complained about pain in the spine, neck, head, ribs and hips. Findings on physical examination and a diagnosis of cervical, thoracic and lumbar sprains were reported. Another unsigned report dated April 9, 2003 from Dr. Garzas addressed appellant's physical therapy treatment, normal range of motion findings regarding the cervical, thoracic and lumbar spine and minimal discomfort on palpation of the neck and lower back. The diagnosis of cervical, thoracic and lumbar sprains was reiterated and it was recommended that appellant continue therapy and resume her regular work duties.

In response to the Office's April 25, 2003 letter, the employing establishment stated that appellant last performed her official duty on February 26, 2003 at 12:00 p.m. The place of the motor vehicle accident occurred approximately 17 miles from the employing establishment. At the time of the accident, appellant had deviated from her route where she was supposed to deliver five files and documents relating to aliens and she traveled north of the office. Appellant

was not on the most direct route between the point of her last official duty and next expected official duty as the accident occurred two to three miles from the most direct travel route and it was unknown why she was at the place of the accident. The employing establishment noted that appellant was driving a government owned car.

The employing establishment submitted accident reports that appellant filed with Raymundo Cantu, Jr., a supervisor, and the local police department. The employing establishment also submitted internal memoranda from Mr. Cantu and Harold J. McLaurin, an employing establishment district safety and health manager. Mr. Cantu stated that on February 26, 2003 he instructed appellant to serve five "CART" files on inmates at a facility near the employing establishment. He further stated that upon his arrival at the scene of the accident, appellant was being prepared to be transported to the hospital by paramedics and she refused to release her weapon to him or Roel Gonzalez, an employing establishment supervisor. Mr. Cantu accompanied her to the hospital and noted that upon her arrival she continued to refuse to turn over her gun and she became frantic. Appellant refused medical treatment and left the hospital. Mr. Cantu stated that, when he returned to the office he noticed that she had dropped off the "CART" files and left without advising him or the other supervisor about where she was going. He concluded that it was still a mystery as to where appellant went and why. In a May 14, 2003 memorandum, Mr. McLaurin recommended that Mr. Cantu or another management official in appellant's supervisory chain submit additional responses to specific questions posed by him.

By decision dated July 1, 2003, the Office accepted the claimed employment incident of February 26, 2003, but found the evidence of record insufficient to establish that appellant sustained a medical condition causally related to the employment incident. Accordingly, the Office denied her claim.

LEGAL PRECEDENT

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 individual is an "employee of the United States" within the meaning of the Act; the claim was filed within applicable time limitation; an injury was sustained while 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] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[3]

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

[1] 5 U.S.C. §§ 8101-8193.

[2] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[3] *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 2.

conjunction with one another. The first component to be established is that the employee actually experienced the employment incident or exposure, which is alleged to have occurred.[4] In order to meet her burden of proof to establish the fact that she sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that she 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.[5] 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.[6] The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.[7]

ANALYSIS

The Office accepted that the February 26, 2003 employment incident occurred as alleged, that appellant was involved in a car accident while in the performance of duty. The Office found, however, that the medical evidence submitted did not establish that appellant sustained an injury causally related to the accepted employment incident.

An unsigned treatment note from Dr. Frye, a chiropractor, provided findings on physical, orthopedic, neurological and x-ray examination of appellant's lumbar, cervical and thoracic spine. The unsigned reports from Dr. Garza revealed that appellant sustained cervical, thoracic and lumbar sprains. These treatment note and reports, however, are insufficient to establish appellant's claim because they are unsigned by any physician and it is not clear that they are from a physician.[8] The Board finds that as the reports lack proper identification, they do not constitute probative medical evidence in support of appellant's claim.

Moreover, Dr. Frye's attending physician's report indicated that appellant sustained a condition, which was illegible, due to the February 2003 employment incident with an affirmative mark. Section 8101(2) of the Act[9] defines the term "physician," to include 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.[10]

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

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

[6] *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

[7] *Charles E. Evans*, 48 ECAB 692 (1997).

[8] *Vickey C. Randall*, 51 ECAB 357 (2000); *Merton J. Sills*, 39 ECAB 572 (1988) (reports not signed by a physician lack probative value).

[9] 5 U.S.C. § 8101(2).

[10] *See* 20 C.F.R. § 10.400(e) (defining reimbursable chiropractic services). *See Marjorie S. Geer*, 39 ECAB 1099, 1101-02 (1988).

The Board notes that as the diagnosis is illegible, it is unable to conclude that the diagnosis is a subluxation as demonstrated by x-ray. Consequently, as Dr. Frye did not diagnose a subluxation as demonstrated by x-ray to exist, she is not considered a "physician" under the Act and her reports have no probative value.

In a March 3, 2003 report, Dr. Garza diagnosed cervical, thoracic and lumbar strains and opined that appellant could return to work with no restrictions as of that date. This report does not address whether the diagnosed conditions were caused by the February 26, 2003 employment incident.[11] Therefore, the Board finds that Dr. Garza's report is insufficient to establish appellant's claim.

As there is no rationalized medical evidence of record establishing that appellant sustained a cervical, thoracic and lumbar injury while in the performance of duty as alleged, the Board finds that she has failed to meet her burden of proof.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the July 1, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 23, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

[11] *See Michael E. Smith, supra* note 3.