United States Department of Labor
Employees' Compensation Appeals Board

CYNTHIA A. DEAROLF, Appellant	)	
and	)	**Docket No. 06-362**
	)	**Issued: April 4, 2006**
DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Pittsburgh, PA, Employer	)	

Appearances:
Cynthia A. Dearolf, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On December 5, 2005 appellant filed a timely appeal of decisions of the Office of Workers' Compensation Programs dated March 3 and August 17, 2005 finding that she had not established an injury causally related to an accepted December 1, 2004 motor vehicle accident. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(3), the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant has established that she sustained an injury causally related to an accepted December 1, 2004 motor vehicle accident. On appeal, appellant asserts that the other four passengers in the car with her had their claims accepted based on the same police report and that her claim should also be accepted.

FACTUAL HISTORY

On December 3, 2004 appellant, then a 49-year-old tax specialist, filed a traumatic injury claim for "muscle spasms especially in the upper body/back region" sustained on December 1, 2004 at 7:45 a.m. when the car in which she was traveling to mandatory training was struck from behind by a truck.[1] Appellant submitted supervisory statements and a police report corroborating her account of the accident.

Appellant submitted a December 1, 2004 emergency room report signed by Dr. Sandra Banks, a physician Board-certified in emergency medicine, and Badruz Zaman, a physician's assistant. The form indicates that appellant was examined by both Dr. Banks and Mr. Zaman. Dr. Banks provided a history of injury and diagnosed "muscle spasm" and "MVC [motor vehicle crash] – general precautions." She prescribed a nonsteroidal anti-inflammatory and a muscle relaxant.

In a February 1, 2005 letter, the Office advised appellant that the evidence of record was insufficient to establish her claim. The Office noted that she had not submitted any medical evidence signed by a physician diagnosing an injury related to the December 1, 2004 accident. The Office explained that under the Federal Employees' Compensation Act, findings of pain or discomfort were generally insufficient to establish fact of injury.

By decision dated March 3, 2005, the Office denied appellant's claim on the grounds that fact of injury was not established. The Office accepted that the December 1, 2004 accident occurred at the time, place and in the manner alleged. However, the Office found that appellant failed to submit sufficient medical evidence to establish an injury arising from the December 1, 2004 accident. The Office explained that as the emergency room report was signed only by a physician's assistant, it did not constitute medical evidence as it was not signed by a physician.

In a March 29, 2005 letter, appellant requested a review of the written record by a representative of the Office's Branch of Hearings and Review. Appellant asserted that the Office should reimburse her emergency room expenses, noting that the other four passengers in the vehicle had had their claims accepted. She submitted additional evidence.[2]

In a December 1, 2004 prescription slip with the printed letterhead of Dr. Sandra Banks and Mr. Zaman, Mr. Zaman prescribed medication.

In a February 25, 2005 letter, an employing establishment supervisor confirmed that appellant was in the performance of duty at the time of the December 1, 2004 accident. Appellant also provided maps of the accident location and witness statements corroborating her account of events.

[1] The record indicates that appellant did not file a third-party action against the truck driver.

[2] In an August 1, 2005 letter, the Office submitted the additional evidence to the employing establishment for review. The employing establishment did not respond within the 20 days allotted.

By decision dated August 17, 2005, an Office hearing representative affirmed the March 3, 2005 decision, finding that there was insufficient evidence to establish that appellant sustained an injury in the December 1, 2004 accident. The hearing representative found that the December 1, 2004 emergency room report did not constitute medical evidence as it was not signed by a physician. Also, the report did not contain a specific diagnosis related to the December 1, 2004 accident.

LEGAL PRECEDENT

An employee seeking benefits under the Act[3] 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; that the claim was filed within the applicable time limitation; that 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.[4] 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.[5]

In order to determine whether an employee sustained a traumatic 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 that must be considered in conjunction with one another. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident that is alleged to have occurred.[6] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[7]

ANALYSIS

Appellant claimed that on December 1, 2004 she sustained a muscle spasm of the neck, back and upper body in a work-related motor vehicle accident. The Office accepted that this incident occurred as alleged. The Office found, however, that appellant failed to submit insufficient medical evidence to establish that the incident caused an injury.

In support of her claim, appellant submitted a December 1, 2004 emergency room report and an accompanying prescription slip. The emergency room report was signed by Dr. Banks, a physician Board-certified in emergency medicine, and Mr. Zaman, a physician's assistant. However, the Office found that the emergency room report was signed only by a physician's

[3] 5 U.S.C. §§ 8101-8193.

[4] *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

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

[7] *Deborah L. Beatty*, 54 ECAB 340 (2003).

assistant. The Office noted that, as a physician's assistant is not a "physician" under the Act, the report was of no probative value.[8]

The Board finds, however, that the December 1, 2004 emergency room report constitutes medical evidence as it was signed by Dr. Banks, who diagnosed a muscle spasm secondary to the motor vehicle accident. This diagnosis was based on a complete history of injury and made within hours of the December 1, 2004 accident. Although Dr. Banks' opinion is not sufficiently rationalized[9] to meet appellant's burden of proof in establishing her claim, it stands uncontroverted in the record and is, therefore, sufficient to require further development of the case.[10] Also, the Board finds that further development is warranted as the employing establishment failed to issue a Form CA-16 or other authorization for examination and treatment.[11]

On return of the case, the Office shall prepare a statement of accepted facts and forward it and the medical record to an appropriate specialist for review. If deemed necessary, the Office shall also refer appellant for examination. Following this and all other appropriate development, the Office shall issue an appropriate decision in the case.[12]

CONCLUSION

The Board finds that the case is not in posture for a decision. The case must be remanded to the Office for further development.

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[8] 5 U.S.C. § 8101(2).

[9] *See Jimmie H. Duckett*, 52 ECAB 332 (2001); *Frank D. Haislah*, 52 ECAB 457 (2001) (medical reports lacking rationale on causal relationship are entitled to little probative value).

[10] *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 280 (1978).

[11] *John J. Carlone*, *supra* note 10.

[12] Following issuance of the August 17, 2005 decision, appellant submitted additional evidence. The Board may not consider evidence for the first time on appeal that was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c). Appellant may submit such evidence to the Office accompanying a valid request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated August 17 and March 3, 2005 are set aside and the case remanded for further development consistent with this decision.

Issued: April 4, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board