United States Department of Labor
Employees' Compensation Appeals Board

J.P., Appellant	)	
and	)	**Docket No. 07-943**
	)	**Issued: August 20, 2007**
DEPARTMENT OF DEFENSE, DEFENSE LOGISTICS AGENCY, COMMISSARY, LACKLAND AIR FORCE BASE, San Antonio, TX, Employer	)	

Appearances:
Michael Moore, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 21, 2007 appellant, through his representative, filed a timely appeal of a January 8, 2007 decision of the Office of Workers' Compensation Programs denying his traumatic injury claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant has established that he sustained a lumbar injury in the performance of duty.

FACTUAL HISTORY

On September 30, 2005 appellant, then a 51-year-old store worker, filed a traumatic injury claim (Form CA-1) asserting that, on September 29, 2005, he sustained a low back strain while pushing a cart. He did not stop work.

On October 5, 2005 Dr. Cassandra Ramos, an attending chiropractor, ordered four lumbar x-rays. In an October 8, 2005 report, she opined that lumbar x-rays showed "subluxation of L1 [to] L5 all in right rotation, right rotation restriction." Dr. Ramos submitted chart notes through December 7, 2005 noting improving lumbar pain.

In a November 9, 2005 letter, the Office advised appellant of the additional medical and factual evidence needed to establish his claim. The Office explained that, under the Federal Employees' Compensation Act, chiropractors were considered physicians only if they diagnosed a spinal subluxation by x-ray.

In a November 29, 2005 report, Dr. Ramos opined that x-rays demonstrated a mild decrease of lumbar lordosis, paraspinal muscle spasm, a narrowed disc space at L5-S1 and a "right rotation restriction … from the first to the fifth lumbar vertebrae."[1]

By decision dated December 14, 2005, the Office denied appellant's claim on the grounds that fact of injury was not established. The Office accepted that the September 29, 2005 work incident occurred at the time, place and in the manner alleged. The Office found that appellant did not establish that the accepted incident caused an injury as Dr. Ramos was not a physician under the Act because she did not provide objective medical evidence of a spinal subluxation.

In a January 13, 2006 letter, appellant requested a hearing, held November 14, 2006. At the hearing, he asserted that Dr. Ramos diagnosed spinal subluxations.

Appellant submitted additional evidence. In an October 6, 2005 report, Dr. Ramos noted work restrictions. In a December 14, 2005 report, she opined that appellant's back pain was improving. In a January 2, 2006 letter, Dr. Ramos stated that appellant had a mild loss of lordotic curvature, paraspinal muscle spasms, a narrowed disc space at L5-S1 and a right rotation restriction from L1 to L5. She defined a subluxation as "a motion segment in which alignment, movement, integrity and/or physiologic function are altered, although contact between joint surfaces remains intact. Dr. Ramos asserted that appellant had multiple lumbar subluxations.[2]

By decision dated and finalized January 8, 2007, the Office hearing representative affirmed the Office's December 14, 2005 decision, finding that appellant did not establish that he sustained a lumbar injury as alleged. The hearing representative found that Dr. Ramos did not provide medical rationale explaining how and why the September 29, 2005 work incident would cause an injury. The hearing representative noted that Dr. Ramos provided insufficient evidence to substantiate her diagnosis of spinal subluxations.

[1] Appellant also submitted a September 30, 2005 report from Susan McCallow, a nurse practitioner. However, nurses are not physicians as defined under the Act and their reports do not constitute medical evidence. *Roy L. Humphrey*, 57 ECAB ___ (Docket No. 05-1928, issued November 23, 2005).

[2] In a November 3, 2006 memorandum, the Office noted that appellant submitted x-rays on November 7, 2005 that could not be scanned into the Office's electronic case imaging system.

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]

Section 8101(2) of the Act provides that medical opinion, in general, can only be given by a qualified physician.[8] This section defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by stated law. Section 8101(3) of the Act, which defines services and supplies, limits reimbursable chiropractic services 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.[9] The Office's regulations at section 10.5(bb) 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."[10]

ANALYSIS

Appellant claimed that he sustained a traumatic lumbar injury on September 29, 2005 while pushing a cart. The Office accepted that this incident occurred at the time, place and in the

[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).

[8] 5 U.S.C. § 8101(2). *See also Mary A. Ceglia*, 55 ECAB 626 (2004).

[9] 5 U.S.C. § 8101(3), 20 C.F.R. § 10.311(a). *See Thomas W. Stevens*, 50 ECAB 288 (1999); *George E. Williams*, 44 ECAB 530 (1993).

[10] 20 C.F.R. § 10.5(bb).

manner alleged. However, the Office denied the claim on the grounds that appellant did not submit medical evidence establishing the claimed causal relationship. The Office found that Dr. Ramos, an attending chiropractor, did not provide sufficient medical rationale explaining how and why the accepted September 29, 2005 incident would cause the diagnosed lumbar subluxations.

The Board finds that Dr. Ramos is a physician under the Act for the purposes of this case as she diagnosed a spinal subluxation by x-ray. In October 8 and November 29, 2005 x-ray reports, Dr. Ramos diagnosed right rotation subluxations from L1 to L5. She explained why the objective radiologic findings of vertebral misalignments constituted lumbar subluxations. The Board finds that Dr. Ramos' opinion is sufficient to establish the diagnosis of spinal subluxations and constitutes competent medical evidence.[11]

The Board finds, however, that appellant submitted insufficient rationalized medical evidence to establish causal relationship. Dr. Ramos did not explain how and why the accepted incident of pushing a cart would cause the claimed lumbar injury. She did not set forth the pathophysiologic mechanism whereby pushing a cart on September 29, 2005 would cause the diagnosed lumbar subluxations. Dr. Ramos' opinion is of insufficient probative value to establish causal relationship in this case.[12]

The Board finds that appellant submitted insufficient rationalized medical evidence to establish the causal relationship asserted. Therefore, the Office's decision dated and finalized January 8, 2007 denying appellant's claim is proper under the law and facts of this case.

CONCLUSION

The Board finds that appellant has not established that he sustained a lumbar injury in the performance of duty.

[11] *See George E. Williams*, *supra* note 9.

[12] *Deborah L. Beatty*, *supra* note 7.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated and finalized January 8, 2007 is affirmed.

Issued: August 20, 2007
Washington, DC

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

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board