United States Department of Labor
Employees' Compensation Appeals Board

K.H., Appellant	)	
and	)	**Docket No. 07-2319**
	)	**Issued: March 14, 2008**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Syracuse, NY, Employer	)	

Appearances:
Appellant, pro se
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 September 11, 2007 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated July 3, 2007, denying modification of a decision dated February 22, 2007. 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 sustained a traumatic injury on January 4, 2007 causally related to her employment.

FACTUAL HISTORY

On January 10, 2007 appellant, then a 44-year-old nurse, filed a traumatic injury claim alleging that on January 4, 2007 she sustained a left neck and shoulder condition after she lifted two patients during her shift.

On January 16, 2007 the Office requested additional factual and medical information from appellant.

In a January 6, 2007 progress note, Dr. Jeffrey A. Byrne, a chiropractor, noted that appellant had a new complaint of severe occasional pain on the left side of the neck region. He diagnosed cervical brachial radicular syndrome and both cervical and thoracic segmental somatic dysfunction and measured the range of motion of her arms.

In a February 22, 2007 decision, the Office denied appellant's traumatic injury claim. The Office found that the claimed incident occurred but there was no evidence that appellant sustained a diagnosed condition in connection with the incident.

On March 8, 2007 appellant requested a review of the written record. She submitted two letters, the first dated March 9, 2007 from appellant's employer to Dr. Byrne informing him that appellant's claim was denied. In a March 19, 2007 letter, Dr. Byrne's office wrote to appellant explaining the appeal process.

On July 3, 2007 the Office denied modification of the February 22, 2007 decision, finding that there was no medical evidence of record to demonstrate that appellant sustained a medical condition due to the lifting incident on January 4, 2007.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing that 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 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.[2] These are the essential elements of each and every 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 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. The first component to be established is that the employee actually experienced the employment incident that is alleged to have occurred.[4] The second component is whether the employment incident caused a personal injury.[5]

[1] 5 U.S.C. §§ 8101-8193.

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

[3] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[4] *Elaine Pendleton*, *supra* note 2.

[5] *John J. Carlone*, 41 ECAB 354 (1989).

Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.[6] To establish causal relationship, appellant must submit a physician's report, in which the physician reviews the employment factors identified by appellant as causing his condition and, taking these factors into consideration as well as findings upon examination of appellant and his medical history, state whether the employment injury caused or aggravated appellant's diagnosed conditions and present medical rationale in support of his or her opinion.[7]

Under section 8101(2) of the Act, chiropractors are only considered physicians and their reports considered medical evidence, to the extent that they treat spinal subluxations as demonstrated by x-ray to exist.[8] The Office's regulations at 20 C.F.R. § 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.[9]

ANALYSIS

Appellant alleged that she sustained a neck and shoulder injury on January 4, 2007 after lifting two patients during her shift. The Office accepted that the employment incident occurred as alleged. Therefore the issue is whether the employment incident caused a personal injury.

Appellant has not submitted any medical evidence to establish that she sustained a diagnosed condition as a result of the employment incident. The only evidence submitted was a progress report from Dr. Byrne, a chiropractor. In assessing the probative value of chiropractic evidence, the initial question is whether the chiropractor is a "physician" as defined under 5 U.S.C. § 8101(2). A chiropractor is only considered to be a physician under the Act when a spinal subluxation, as demonstrated by x-ray, is established to exist.[10] As Dr. Byrne did not diagnose any spinal subluxation based on an x-ray, he is not considered to be a physician under the Act. A report may not be considered probative medical evidence unless it can be established that the person completing the report is a physician.[11] Consequentially, Dr. Byrne's report is of no probative medical value. Appellant has not submitted any medical evidence relating her left neck and shoulder condition to the accepted incident. Therefore she has not established that she sustained a personal injury in the performance of duty.

[6] *See Robert G. Morris*, 48 ECAB 238 (1996).

[7] *Id*.

[8] 5 U.S.C. § 8101(2).

[9] 20 C.F.R. § 10.5(bb).

[10] *Mary A. Ceglia*, 55 ECAB 626 (2004).

[11] *Thomas Agee*, 56 ECAB 465 (2005).

CONCLUSION

The Board finds that appellant failed to establish that she sustained a traumatic injury in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the July 3, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 14, 2008
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