United States Department of Labor
Employees' Compensation Appeals Board

M.W., Appellant	)	
and	)	**Docket No. 10-187**
	)	**Issued: August 25, 2010**
DEPARTMENT OF HOMELAND SECURITY, IMMIGRATION & CUSTOMS ENFORCEMENT, El Paso, TX, 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 October 26, 2009 appellant filed a timely appeal of a September 15, 2009 decision of the Office of Workers' Compensation Programs affirming the denial of her claim for compensation. 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 a traumatic injury on July 16, 2008 in the performance of duty.

FACTUAL HISTORY

On August 8, 2008 appellant, then a 38-year-old special agent, filed a traumatic injury claim alleging that on July 16, 2008 she strained her back while running from a lunchroom to her car while at work. She did not stop work.

In an August 21, 2008 report, Dr. Daniel Garcia, a chiropractor, noted appellant's complaint of neck pain with moderate restricted movement and stiffness with sharp pain generalized in the posterior left cervical and posterior left upper shoulder. His examination revealed a moderate degree of posterior joint restrictions at C1-7, L1-5 and the left ilium. Dr. Garcia found decreased range of motion in all cervical and lumbar planes with associated pain, paraspinal hypertonicity, trigger points and vertebral and sacroiliac joint restrictions. He diagnosed lumbosacral and thoracic sprain/strain, lumbar disc degeneration, muscle spasm, sacroiliac syndrome and lumbago. Dr. Garcia noted that lumbar spine x-rays showed no scoliosis, normal bone density for appellant's age, vertebral bodies with normal size and shape, disc spaces decreased at L5-S1, pedicles of normal size and shape and facet joint within normal limits. He further found normal sacroiliac joints, normal bilateral femoralacetabular joints and soft tissues within normal limits.

On September 19, 2008 Dr. Garcia noted appellant's complaint of stiffness, tightness and pain in the left side of the lower neck and upper back. His examination revealed a decreased amount of joint fixation at L1-5 and the left ilium. Dr. Garcia also found fixation at C3, C4, C7, T1, T3 and T4. He continued submitting reports dated between September 4 and November 7, 2008 indicating moderate level of pain and discomfort at C1-7, L1-5 and ilium bilaterally. Dr. Garcia also noted that palpation revealed a moderate degree of hypertonicity of the suboccipital muscle, cervical paraspinal muscles, lumbar paraspinal muscles and gluteal muscles bilaterally.

On September 26, 2008 the Office authorized 12 units of physical therapy with Millennium Chiropractic.

In an October 1, 2008 report, Dr. Garcia reiterated his diagnosis of lumbosacral and thoracic sprain/strain, lumbar disc degeneration, muscle spasm, sacroiliac syndrome and lumbago.

On January 15, 2009 the Office advised appellant of the medical evidence necessary to establish her claim. It requested an opinion from a physician supporting causal relationship. The Office also advised appellant of the circumstances under which a chiropractor qualifies as a physician under the Federal Employees' Compensation Act.[1]

In a February 9, 2009 report, Dr. Garcia noted treating appellant from August 21 to November 7, 2008. Appellant's history of injury consisted of a June 16, 2008 injury sustained when she ran from a lunchroom to her car and felt an intense pain in her upper and lower back and neck. Dr. Garcia noted that appellant reported that her pain had not worsened, but interfered with her work and daily activities. He diagnosed lumbosacral sprain, lumbar disc degeneration, thoracic sprain, muscle spasm, sacroiliac syndrome and lumbago. Dr. Garcia opined that appellant's thoracic and lumbar sprain/strain injury was likely the result of the accident as she described. He noted that appellant was overweight and deconditioned at the time of injury. Dr. Garcia advised that sudden physical exertion could have been more than enough to cause appellant's injuries as lumbosacral sprain/strain injuries were common in these types of cases. He indicated that a lumbar spine x-ray report found decreased disc height that could also have

[1] 5 U.S.C. §§ 8101-8193.

been aggravated by and contributed to appellant's symptoms. Dr. Garcia opined that the thoracic injury was likely caused by the sudden and abrupt opening and pulling of a vehicle door as there was sudden physical exertion of the cervical and upper to mid-thoracic musculature in the movement of the shoulder girdle. He noted that any sudden physical exertion placed on de-conditioned musculature may cause muscle strain injury. Dr. Garcia further noted that during examination appellant reported muscle tenderness and muscle spasm consistent with these types of injuries.

In a February 10, 2009 statement, appellant indicated that she injured her back running while training at a temporary duty location. She brought treatment from Dr. Garcia as she believed a chiropractor would be best for her back.

In a February 18, 2009 decision, the Office denied appellant's claim. It found that, although the evidence supported that the claimed incident occurred, there was no medical evidence with a diagnosis that could be connected to the event as the diagnosis was made by a chiropractor who did not fall within the definition of "physician" under the Act. The Office noted that medical treatment was not authorized and that any prior authorization was terminated.

On March 9, 2009 appellant requested a telephone hearing which was held on June 15, 2009. In a March 9, 2009 statement, she requested that the leave she took be covered as the Office had approved her treatment.

An undated report from Dr. Brian Hesser, a chiropractor and associate of Dr. Garcia, noted that appellant was treated at their office from August 21 through November 7, 2008 for work-related injury resulting in a subluxation complex. Dr. Hesser indicated that a subluxation complex dealt with kinesiopathology, neuropathology, myopathology and biochemical abnormalities resulting in abnormal joint motion and restriction, abnormal muscle tension and guarding and abnormal nerve conduction resulting in inflammation. He noted that a subluxation complex was visible on plain film radiographs.

In a September 15, 2009 decision, an Office hearing representative affirmed the February 18, 2009 decision finding the medical evidence insufficient to establish the elements of appellant's claim.

LEGAL PRECEDENT

An employee seeking benefits under the Act has the burden of establishing the essential elements of his 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 conditions for which compensation is claimed are causally related to the employment injury. 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.[2]

[2] *S.P.*, 59 ECAB ___ (Docket No. 07-1584, issued November 15, 2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether a "fact of injury" has been established. 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 only in the form of medical evidence, to establish that the employment incident caused a personal injury.[3]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed conditions and the specific employment factors identified by the employee.[4]

ANALYSIS

The record reflects that on July 16, 2008 appellant ran from a lunchroom to her car while in the performance of duty. However, the medical evidence is insufficient to establish that this incident caused or aggravated her back condition.

Dr. Hesser's undated report diagnosed subluxation complex due to a work-related injury. He also noted that a subluxation complex was visible on plain film radiographs. However, Dr. Hesser did not specify whether appellant's subluxation complex pertained to her spine. He did not identify the x-rays that she reviewed or indicate if the x-rays were of the spine. The Board notes that section 8101(2) of the Act provides that the 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 as demonstrated by x-ray to exist.[5] To be given any probative medical weight, a chiropractor's report must state that x-rays support the finding of spinal subluxation.[6] Dr. Hesser's report is too vague for the Board to determine whether the diagnosed subluxation complex relates to appellant's spine. Thus, his report has no probative medical value. Dr. Hesser intended to diagnose a spinal subluxation, he provided no medical rationale explaining the reasons why the July 16, 2008 work incident caused or aggravated to such subluxation.

The reports from Dr. Garcia dated August 21 to November 7, 2008 noted appellant's complaint of neck and back pain. He reviewed a lumbar spine x-ray that revealed decreased disc spaces at L5-S1 with otherwise normal findings. Dr. Garcia did not diagnose a spinal

[3] *Id*.

[4] *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[5] 5 U.S.C. § 8101(2). *See also Linda Holbrook*, 38 ECAB 229 (1986).

[6] *See D.S.*, 61 ECAB ___ (Docket No. 09-860, issued November 2, 2009).

subluxation based on his review of the x-ray. As noted, a chiropractor is not considered a physician under the Act if spinal subluxation has not been diagnosed by x-ray.[7] As Dr. Garcia did not diagnose a spinal subluxation based on x-ray, he is not a "physician" under the Act and his reports are of no probative medical value.[8]

On appeal appellant asserts that she submitted all medical reports including a report indicating subluxation. As noted, Dr. Hesser's report indicating subluxation did not specify whether appellant had spinal subluxation based on x-rays nor did he explain the reasons why the July 16, 2008 work incident caused or aggravated a spinal subluxation. Appellant did not otherwise submit reasoned medical evidence from a physician explaining why the July 16, 2008 work incident caused or aggravated a diagnosed medical condition. She also asserts that she should be entitled to 48 hours of leave that she used for treatment as the Office approved her for 12 treatments. However, as appellant's claim has not been accepted, she is not entitled to any wage-loss compensation for time missed from work due to medical treatment.[9]

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained a traumatic injury on July 16, 2008 in the performance of duty.

[7] The Office's definition of spinal subluxation means an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae which must be demostratable on x-ray to an individual trained in the reading of x-rays. *See* 20 C.F.R. §10.5(bb).

[8] *See A.O.*, 60 ECAB ___ (Docket No. 08-580, issued January 28, 2009) (without diagnosing a subluxation from x-ray, a chiropractor is not a physician under the Act).

[9] The record indicates that the Office authorized physical therapy with Millennium Chiropractic while the claim was being developed. The Board has held that the Office's gratuitous payment for medical treatment, without more, does not constitute acceptance of a medical condition or of a period of disability. *See Gary L. Whitmore*, 43 ECAB 441 (1992); *James F. Aue*, 25 ECAB 151 (1974).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated September 15, 2009 is affirmed.

Issued: August 25, 2010
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