U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DENA M. HELBOCK and U.S. POSTAL SERVICE,
POST OFFICE, Albany, N.Y.

Docket No. 97-84; Submitted on the Record;
Issued July 27, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant has met her burden of proof to establish that she sustained an injury in the performance of duty on February 24, 1996.

On April 9, 1996 appellant, then a 40-year-old carrier, filed a traumatic injury claim alleging that she sustained a pinched nerve in her neck and right shoulder blade on February 24, 1996 "fighting [with a] frozen mailbox over the top of the car." Appellant did not stop work. On the reverse side of the claim form, appellant's supervisor reported that his knowledge of the incident was that "which the employee has stated to me" and that the employing establishment controverted continuation of pay as the claim was filed more than 30 days after the date of injury and as he had not received medical documentation.

In a statement accompanying her claim, appellant related that on February 24, 1996 she attempted to open a frozen mailbox by hitting the front of it until it released. Appellant related that she had her head tilted and her right arm up and "did not realize at that point I had pinched some nerves." Appellant related that when she returned to work on Monday she could not move her arm and had limited mobility of the neck. She stated that she informed her supervisor that she "had a fight with a frozen mailbox" and that she went to the chiropractor that afternoon.

In a chiropractor's report dated February 26, 1996, appellant described her condition as pain which began two days prior after she fought with a frozen mailbox. The chiropractor noted her complaints of neck pain, right shoulder pain and severe headaches, and diagnosed cervical strain, cervical brachial syndrome, lumbar strain and right shoulder bursitis. The record indicates that the chiropractor continued to treat appellant for pain until March 29, 1996.

In an x-ray report dated February 26, 1996, a chiropractor interpreted an x-ray as revealing subluxations at C7 on the right lateral flexion, and C5-6 and C7 on the right.

By letter dated June 18, 1996, the Office of Workers' Compensation Programs requested additional factual and medical information from appellant and informed her of the conditions under which a chiropractor was considered a physician under the Federal Employees' Compensation Act.

In response to the Office's request for additional factual information, appellant related that she reported her injury to her supervisor within 48 hours, again described her injury as occurring when she attempted to open a frozen mailbox, and stated that she did not know she was injured until Sunday and sought treatment for her injury on Monday.

By decision dated July 23, 1996, the Office denied appellant's claim on the grounds that the evidence did not establish fact of injury. In the accompanying memorandum to the Director, incorporated by reference, the Office found that the record contained insufficient evidence regarding whether or not the claimed event, incident or exposure occurred at the time, place and in the manner alleged. The Office also found that the medical evidence consisted of a report from a chiropractor who was not a "physician" under the Act and who did not relate the claimed injury to any incident occurring at work.

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

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 conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[1] An injury does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.[2] An employee has not met his or her burden of proof of establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.[3]

In this case, the Office found that the evidence of record failed to support that an employment incident occurred. However, the Board notes that appellant's claim is consistent with the facts of the case and her subsequent course of action and there are no discrepancies, inconsistencies or contradictions in the evidence which create serious doubt that the incident occurred as alleged on February 24, 1996. Appellant's supervisor did not contradict her version of events but rather stated that his knowledge of the incident was that which she relayed to him. Appellant consistently maintained that she injured her neck and right shoulder "fighting with a frozen mailbox." Appellant sought medical treatment two days after the incident and the history contained in the chiropractor's report, obtained on February 26, 1996, is consistent with that

[1] *See Elaine Pendleton*, 40 ECAB 1142 (1989).

[2] *Charles B. Ward*, 38 ECAB 667 (1989).

[3] *Tia L. Love*, 40 ECAB 586 (1989).

presented by appellant on the claim form. As the Board has held, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[4] The Office has not specified what evidence is conflicting or absent with regard to this element of fact of injury. Consequently, the Board finds that the incident of February 24, 1996 occurred as alleged.

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such causal relationship.[5]

Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[6]

In support of her claim, appellant submitted a report dated February 26, 1996 from a chiropractor. The chiropractor diagnosed cervical strain, cervical brachial syndrome, lumbar strain and right shoulder bursitis. Section 8101(2) of the Federal Employees' Compensation Act[7] provides that the term "physician" as used therein "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." A chiropractor, therefore, is only considered a physician under the Act to the extent that he or she diagnoses a subluxation as established by x-ray.[8]

In the instant case, the chiropractor obtained x-rays which revealed a subluxation but did not diagnose a subluxation but rather diagnosed cervical strain, cervical brachial syndrome, lumbar strain and right shoulder bursitis. Thus, the chiropractor's report does not constitute that of a "physician" under the Act. Additionally, the medical evidence of record fails to provide a rationalized opinion regarding whether factors of appellant's federal employment caused or aggravated a specific medical condition. The belief of appellant that a condition was caused or aggravated by her employment is not sufficient to establish causal relationship. Without a

[4] *See Robert A. Gregory*, 40 ECAB 478 (1989).

[5] *John M. Tornello*, 35 ECAB 234 (1983).

[6] *James Mack*, 43 ECAB 321 (1991).

[7] 5 U.S.C. § 8101(2).

[8] *Kathryn Haggerty*, 45 ECAB 383 (1994).

medical report explaining why factors of employment may have caused or aggravated the claimed medical condition, the evidence is insufficient to meet appellant's burden of proof in establishing that she sustained an employment-related injury.[9]

The decision of the Office of Workers' Compensation Programs dated July 23, 1996 is modified to reflect that an employment incident occurred on February 24, 1996 at the time, place and in the manner alleged. The decision is affirmed as modified.[10]

Dated, Washington, D.C.
July 27, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member

[9] *Lourdes Harris*, 45 ECAB 545 (1994).

[10] Subsequent to the Office's decision, appellant submitted additional evidence. The Board cannot consider new evidence on appeal; however, appellant can submit new evidence to the Office and request reconsideration pursuant to 5 U.S.C. § 8128(a); *see* 20 C.F.R. § 501.2(c).