U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ERNESTO FERNANDEZ and DEPARTMENT OF JUSTICE, U.S. MARSHAL SERVICE, Miami, Fla.

Docket No. 97-1826; Submitted on the Record;
Issued May 3, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS, WILLIE T.C. THOMAS

The issue is whether appellant has met his burden of proof to establish that he sustained an injury while in the performance of duty on October 24, 1995.

The Board has duly reviewed the case record in this appeal and finds that appellant has failed to meet his burden of proof to establish that he sustained an injury while in the performance of duty on October 24, 1995.

On October 24, 1995 appellant, then a Deputy United States Marshal, filed a traumatic injury claim (Form CA-1) alleging that on that date he sustained pain in his neck, back, shoulder and both arms and a headache as a result of a car accident. Appellant stopped work on that date.

By letter dated November 30, 1995, the Office of Workers' Compensation Programs advised appellant that the evidence submitted was insufficient to establish his claim. The Office advised appellant to submit medical evidence supportive of his claim.

By decision dated February 26, 1996, the Office found the evidence of record insufficient to establish fact of injury. In an accompanying memorandum, the Office found the evidence of record sufficient to establish that the claimed event, incident or exposure occurred at the time, place and in the manner alleged. The Office, however, found the evidence of record insufficient to establish that appellant sustained a medical condition caused by the employment incident.

In a December 13, 1996 letter, appellant requested reconsideration of the Office's decision contending that he received medical treatment subsequent to the October 24, 1995 employment incident and that he would submit evidence of such treatment.

By decision dated February 6, 1997, the Office denied appellant's request for reconsideration without a review of the merits on the grounds that the evidence submitted was irrelevant and immaterial and thus insufficient to warrant review of its prior decision. In an

accompanying memorandum, the Office found that appellant failed to submit medical evidence supportive of his claim.

An employee seeking benefits under the Federal Employees' Compensation Act[1] 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 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 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.[4] In this case, the Office accepted that the incident occurred at the time, place and in the manner alleged. The Board finds that the evidence of record supports this incident.

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 a causal relationship.[5] In the instant case, appellant has submitted no rationalized medical evidence establishing that he sustained a medical condition causally related to the October 24, 1995 employment incident.

In support of his claim, appellant submitted a notification of initial treatment form dated November 16, 1995 from Dr. Howard A. May, a chiropractor. In this form, Dr. May indicated the date of the employment incident. He diagnosed cervical sprain/strain with radiculitis, thoracic sprain/strain with radiculitis, left shoulder sprain/strain and cephalgia. Dr. May provided an initial plan of treatment for appellant's conditions.

Under section 8101(2) of the Act,[6] "[t]he term 'physician' includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual

[1] 5 U.S.C. §§ 8101-8193.

[2] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[3] *Daniel J. Overfield*, 42 ECAB 718 (1991).

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

[5] 20 C.F.R. § 10.110(a); *see John M. Tornello*, 35 ECAB 234 (1983).

[6] 5 U.S.C. §§ 8101-8193.

manipulation of the spine to correct a subluxation of the spine as demonstrated by x-ray to exist and subject to regulation by the Secretary."[7] If a chiropractor's reports are not based on a diagnosis of subluxation as demonstrated by x-ray to exist, they do not constitute competent medical evidence to support a claim for compensation.[8] Dr. May's notification of initial treatment form does not diagnose subluxation of the spine as demonstrated by x-ray. Inasmuch as Dr. May's form report failed to diagnose subluxation of the spine by x-ray, he does not qualify as a physician under section 8101(2).[9]

Further, the medical treatment notes of record failed to indicate that appellant had a subluxation as demonstrated by x-ray. Therefore, Dr. May's form and the treatment notes do not constitute competent medical evidence to support a claim for compensation.[10]

Accordingly, the Board finds that appellant has failed to meet his burden of proof to establish that he sustained an injury while in the performance of duty on October 24, 1995.

[7] 5 U.S.C. § 8101(2); *see also* 20 C.F.R. § 10.400(a); *Robert J. McLennan*, 41 ECAB 599 (1990); *Robert F. Hamilton*, 41 ECAB 431 (1990).

[8] *Loras C. Dignann*, 34 ECAB 1049 (1983).

[9] *Milton E. Bentley*, 32 ECAB 1805 (1981).

[10] *Theresa K. McKenna*, 30 ECAB 702 (1979).

The February 6, 1997 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
May 3, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member