

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES A. LOPICCOLO and U.S. POSTAL SERVICE,
POST OFFICE, Royal Oak, MI

*Docket No. 97-2287; Submitted on the Record;
Issued September 20, 1999*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant established that he sustained a back injury causally related to factors of his federal employment.

On May 5, 1997 appellant, then a 40-year-old mail processor clerk, filed a claim for a traumatic injury, Form CA-1, alleging that on that date he strained his back while he was taking a tray off rollers and turned to put it away. Appellant stopped work on May 6, 1997.

In a disability note dated May 6, 1997, Dr. Keith J. Khalil, a chiropractor, diagnosed that appellant had post-traumatic acute dorsal subluxation and dysponesis. In an attending physician's report dated May 14, 1997, Dr. Khalil considered appellant's history of injury and diagnosed postural distortion, palpable inflammatory signs with segmented distortion and diagnosed subluxation based on x-ray. He checked the "yes" box indicating that appellant's condition was related to his employment.

In a report dated May 15, 1997, Dr. Barry Leshman, an osteopath, considered appellant's history of injury, reviewed x-rays which he stated showed no fracture or dislocation and diagnosed that appellant had a thoracic sprain/strain and thoracic or lumbosacral neuritis. He also diagnosed that appellant had an acute straining injury to the right parathoracic region of the spine at T9-11. Dr. Leshman stated that appellant's range of motion was restricted due to pain. He prescribed use of a hydrocollator, medicine consisting of Motrin and Skelaxin and advised home care and the application of ice. In a duty status report, Form CA-17, dated May 22, 1997, Dr. Leshman stated that appellant could lift no more than 10 pounds continuously and intermittently, that he must do no pulling and he should not work for up to 12 hours.

By letter dated June 2, 1997, the Office of Workers' Compensation Programs informed appellant that additional information was required to establish his claim.

Appellant subsequently submitted a duty status report, Form CA-17, and disability notes dated May 28 and June 13, 1997 diagnosing his condition from Dr. Khalil and the x-ray report dated May 6, 1997 showing no fracture or dislocation

By decision dated June 26, 1997, the Office denied the claim, stating that the medical evidence was not sufficient to establish that appellant's back condition was caused by his injury.

The Board finds that appellant has established that he sustained an injury in the performance of duty, as alleged.

An employee seeking benefits under the Federal Employees' Compensation Act 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 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.¹ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.²

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.³ 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.⁴

The Board finds that the incident of appellant lifting a tray at work on May 5, 1997 occurred as alleged. Dr. Khalil's May 14, 1997 report establishes that appellant sustained an injury on May 5, 1997 in that he considered appellant's history and diagnosed postural distortion, palpable inflammatory signs with segmented distortion and subluxation based on x-ray. He also indicated that appellant's condition was work related. Under section 8101(2) of the Act, chiropractors are considered physicians and their reports considered medical evidence, to the extent that they treat spinal subluxations as demonstrated by x-ray to exist.⁵ Therefore, Dr. Khalil is a physician within the meaning of the Act since he diagnosed subluxation based on x-ray.

Dr. Leshman's May 15, 1997 report establishes that appellant sustained a thoracic sprain/strain and an acute straining injury to the right parathoracic region of the spine at T9-11

¹ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

² *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

³ *Robert J. Krstyen*, 44 ECAB 227, 229 (1992); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

⁴ *Id.*

⁵ 5 U.S.C. § 8107(a); *Carolyn M. Leek*, 47 ECAB 374, 380 n. 10 (1996).

due to his lifting a tray of mail at work on May 5, 1997 injury. Dr. Leshman based his finding on a physical examination, prescribed medical treatment and stated that appellant required up to 12 hours off work. Since both Dr. Khalil's and Dr. Leshman's reports are probative and establish that appellant established that he sustained a work-related injury on May 5, 1997, appellant has met his burden of proof to establish that he sustained an injury in the performance of duty, as alleged.

The decision of the Office of Workers' Compensation Programs dated June 26, 1997 is hereby reversed and the case is remanded for a further development on the issues of continuation of pay, the extent and nature of appellant's disability, compensation and medical expenses.

Dated, Washington, D.C.
September 20, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member