



Appellant submitted a disability certificate dated November 20, 2003 in which a nurse practitioner indicated that she was to stay off work until further evaluation on December 8, 2003, a November 19, 2003 progress note from a physical therapist, who indicated that appellant arrived at work and felt something pop and then felt increased pain in her neck and bilateral shoulders, and disability certificates dated December 9 and 10, 2003 from Dr. Zafar Chowdhry, a Board-certified neurological surgeon, who advised cervical traction, heat and range of motion exercises three times a week for four weeks and diagnosed cervical disc degeneration. Appellant also submitted several reports from a physical therapist dating from December 10 to 19, 2003.

By letter dated January 20, 2004, the Office advised appellant that additional factual and medical evidence was needed. Appellant was requested to describe in detail how the injury occurred and to provide dates of examination and treatment, a history of injury given by her to a physician, a detailed description of any findings, the results of all x-rays and laboratory tests, a diagnosis and course of treatment followed and a physician's opinion supported by a medical explanation as to how the reported work incident caused the claimed injury. The Office explained that the physician's opinion was crucial to her claim and allotted appellant 30 days within which to submit the requested information.

Appellant submitted additional evidence including physical therapy notes dating from November 7, 2003 to February 7, 2004, a November 28, 2003 Form CA-16, from a nurse practitioner, results of diagnostic tests taken prior to the work incident from Dr. D.K. Choi, Board-certified in internal medicine and Dr. Scott R. Kerns, a Board-certified diagnostic radiologist and three additional reports from Dr. Chowdhry. In a December 9, 2003 report, Dr. Chowdhry advised that appellant reported with neck pain radiating into her arms, with paresthasias and numbness. He noted a history of appellant lifting a package at work and experiencing neck and arm pain. He diagnosed bilateral cervical radiculopathy secondary to cervical spondylosis at C4-5, C5-6 and C6-7 and referred appellant to physical therapy. In a December 10, 2003 physical therapy initial evaluation, signed by Dr. Chowdhry, he concurred with the treatment plan recommended by the physical therapist. In a disability certificate dated January 13, 2004, Dr. Chowdhry advised that appellant remain off work until further notice.

By decision dated April 20, 2004, the Office denied appellant's claim on the grounds that she did not establish an injury as alleged. The Office found that the evidence was sufficient to establish that the events occurred as alleged. However, it found that, prior to the work incident, appellant was being treated for complaints of pain, numbness and tingling and decreased range of motion and strength, tenderness and spasms, which were the same after the work incident. The Office advised appellant that she had not provided any medical evidence to support that the incident on November 19, 2003 caused a worsening of her preexisting condition.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> 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

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

was timely filed within the applicable time limitation period of the Act<sup>2</sup> and that an injury was sustained in the performance of duty.<sup>3</sup> These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>4</sup>

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.<sup>5</sup> 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.<sup>6</sup>

### ANALYSIS

Appellant alleged that she hurt her back while lifting a box at work. There is no dispute that appellant lifted a box at work on November 19, 2003. The Board finds that the first component of fact of injury, the claimed incident -- lifting a box at work, occurred as alleged.

However, the medical evidence is insufficient to establish the second component of fact of injury, that the employment incident caused an injury. The medical reports of record do not establish that the lifting of a box at work caused a personal injury. The medical evidence contains no rationale and no explanation of the mechanism of injury. Appellant provided reports from Dr. Chowdhry dated December 9 and 10, 2003 and January 13, 2004. However, the doctor did not provide a specific opinion addressing whether any diagnosed condition was caused or aggravated by the lifting incident on November 19, 2003. In his December 9, 2003 report, he noted the history of injury provided by appellant but he did not offer his own opinion on causal relationship. For example, the physician did not offer any explanation regarding why the lifting incident would have caused or aggravated a particular condition in light of appellant’s preexisting history of bulging discs of the cervical spine and arthritis of the cervical spine. Because the medical reports submitted by appellant do not address how the November 19, 2003 lifting incident caused or aggravated her preexisting condition, these reports are of limited probative value<sup>7</sup> and are insufficient to establish that the November 19, 2003 employment incident caused or aggravated a specific injury.

Appellant also provided numerous physical therapy notes and notes from a nurse practitioner. However, section 8101(2) of the Act provides that the term “physician” includes

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<sup>2</sup> *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>3</sup> *James E. Chadden Sr.*, 40 ECAB 312 (1988).

<sup>4</sup> *Delores C. Ellyet*, 41 ECAB 992 (1990).

<sup>5</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>6</sup> *Id.*

<sup>7</sup> *See Linda I. Sprague*, 48 ECAB 386, 389-90 (1997).

surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by the applicable state law.<sup>8</sup> Only medical evidence from a physician as defined by the Act will be accorded probative value.<sup>9</sup> Health care providers such as nurses and physical therapists are not physicians under the Act.<sup>10</sup> Thus, their reports do not constitute medical evidence. The record also contains diagnostic reports from Drs. Choi and Kerns. However, these reports predate the claimed injury.

Because appellant has not submitted medical evidence explaining how the November 19, 2003 employment incident caused or aggravated her claimed condition, she has not met her burden of proof in establishing her claim.

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof in establishing that she sustained an injury in the performance of duty.

### **ORDER**

**IT IS ORDERED THAT** the April 20, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 29, 2004  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

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<sup>8</sup> 5 U.S.C. § 8101(2).

<sup>9</sup> See *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board held that medical opinion, in general, can only be given by a qualified physician).

<sup>10</sup> See *Vicky L. Hannis*, 48 ECAB 538, 540 (1997); *Jan A. White*, 34 ECAB 515, 518 (1983).