



Appellant submitted a September 30, 2004 note in which Dr. Ralph Manfredi, an attending chiropractor, indicated that appellant had a lumbar disc herniation and recommended that he be excused from work until October 7, 2004.<sup>1</sup> The record also contains a November 12, 2004 note in which Dr. Howard B. Kaplan, an attending physician specializing in internal medicine, stated that he advised appellant to continue seeking treatment from Dr. Manfredi. Dr. Kaplan indicated that appellant could go back to work on December 1, 2004.

By letter dated January 25, 2005, the Office advised appellant to submit additional factual and medical evidence.

By decision dated February 24, 2005, the Office denied appellant's claim that he sustained an injury on September 27, 2004 in the performance of duty. The Office found that appellant established the existence of an employment incident in the form of lifting a playground slide at work on September 27, 2004, but that he did not submit sufficient medical evidence to establish that he sustained an injury due to the incident.<sup>2</sup>

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>3</sup> 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 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.<sup>4</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>5</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the "fact of injury" has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged.<sup>6</sup> Second, the employee must

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<sup>1</sup> The record contains a Form CA-16, completed by a supervisor on September 30, 2004, which authorized appellant to receive treatment from Dr. Manfredi for up to 60 days. Where an employing establishment properly executes a Form CA-16 which authorizes medical treatment of a medical examination as a result of an employee's claim of sustaining an employment-related injury, the Form CA-16 creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *Elaine K. Kreyborg*, 41 ECAB 256, 259 (1989); *Pamela A. Harmon*, 37 ECAB 263, 264-65 (1986).

<sup>2</sup> Appellant did not submit any additional evidence after receiving the Office's January 25, 2005 letter.

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>5</sup> *Delores C. Ellyett*, 41 ECAB 992, 998-99 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-27 (1990).

<sup>6</sup> *Julie B. Hawkins*, 38 ECAB 393, 396 (1987); see Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>7</sup> The term “injury” as defined by the Act, refers to some physical or mental condition caused by either trauma or by continued or repeated exposure to, or contact with, certain factors, elements or conditions.<sup>8</sup>

### ANALYSIS

Appellant established the existence of an employment incident in the form of lifting a playground slide at work on September 27, 2004, but he did not submit sufficient medical evidence to establish that he sustained an injury due to the incident.

Appellant submitted a September 30, 2004 note in which Dr. Manfredi, an attending chiropractor, indicated that he had a lumbar disc herniation and recommended that he be excused from work until October 7, 2004. Under section 8101(2) of the Act, chiropractors are only considered physicians, and their reports considered medical evidence, to the extent that they treat spinal subluxations as demonstrated by x-ray to exist.<sup>9</sup> The Office’s regulations at 20 C.F.R. § 10.5(bb) have defined subluxation as an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae which must be demonstrable on any x-ray film to an individual trained in the reading of x-rays.<sup>10</sup> Although Dr. Manfredi indicated that appellant had a lumbar disc herniation, he did not provide diagnosis of a spinal subluxation as demonstrated by x-rays to exist. Therefore, his report does not constitute medical evidence or have probative value concerning the main issue of the present case, *i.e.*, whether appellant sustained an employment-related injury on September 27, 2004.<sup>11</sup>

The record also contains a November 12, 2004 note in which Dr. Kaplan, an attending physician specializing in internal medicine, stated that he advised appellant to continue seeking treatment from Dr. Manfredi. Dr. Kaplan indicated that appellant could go back to work on December 1, 2004. This report, however, is of limited probative value on the relevant issue of the present case in that it does not contain an opinion on causal relationship.<sup>12</sup> Dr. Kaplan did not discuss appellant’s medical condition and, although he suggested that appellant suffered a period of disability, he did not provide any opinion on the cause of this apparent disability. The record does not contain a rationalized medical report relating a diagnosed condition to the September 27, 2004 employment incident.

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<sup>7</sup> *John J. Carlone*, 41 ECAB 354, 356-57 (1989); see Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

<sup>8</sup> *Elaine Pendleton*, *supra* note 4; 20 C.F.R. § 10.5(a)(14).

<sup>9</sup> 5 U.S.C. § 8101(2). See *Jack B. Wood*, 40 ECAB 95, 109 (1988).

<sup>10</sup> 20 C.F.R. § 10.5(bb); see also *Bruce Chameroy*, 42 ECAB 121, 126 (1990).

<sup>11</sup> As causal relationship is a medical question that can only be resolved by medical opinion evidence, the reports of a nonphysician cannot be considered by the Board in adjudicating that issue. *Arnold A. Alley*, 44 ECAB 912, 920-21 (1993).

<sup>12</sup> See *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee’s condition is of limited probative value on the issue of causal relationship).

**CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish that he sustained an injury on September 27, 2004 in the performance of duty.

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' February 24, 2005 decision is affirmed.

Issued: July 11, 2005  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member