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<b>ROMA A. MORTENSON-KINDSCHI, Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 05-977</b>
	)	<b>Issued: February 10, 2006</b>
<b>DEPARTMENT OF HEALTH &amp; HUMAN</b>	)	
<b>SERVICES, SOCIAL SECURITY</b>	)	
<b>ADMINISTRATION, REGION V,</b>	)	
<b>Marshall, MN, Employer</b>	)	
	)	

*Case Submitted on the Record*

Before:  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge

On November 15, 2002 appellant, then a 52-year-old claims representative, filed a traumatic injury claim alleging that at 11:00 a.m. on November 1, 2002 she sustained injury when she fell on ice in the parking lot next to her office. She stopped work on November 15, 2002 and returned to work on November 18, 2002. Michael Reynolds, a supervisor and district

manager for the employing establishment, indicated on the claim form that appellant was on an unscheduled smoking break at the time of the alleged incident.

In a statement dated November 18, 2002, Mr. Reynolds indicated that at the time of the alleged November 1, 2002 injury, appellant was on an unscheduled smoking break. He noted that such breaks “have traditionally been allowed as long as they were not used too frequently.”

By decision dated January 8, 2003, the Office denied appellant’s claim that she sustained an injury in the performance of duty on November 1, 2002. The Office stated that appellant had established the occurrence of the alleged employment incident on November 1, 2002, but that she did not submit medical evidence providing a diagnosis which could be connected to the event.

Appellant submitted a December 12, 2002 form report from Dr. Paul J. Puetz, an attending chiropractor, who stated that she sustained right rib subluxations at T4 through T6 due to the November 1, 2002 employment incident.<sup>1</sup> An x-ray report obtained on December 6, 2002 contained notations that appellant had subluxations at T4-5 and T11. The record also was supplemented to include the results of January 2003 electromyogram testing and other brief reports of Dr. Puetz.<sup>2</sup>

Appellant requested a hearing before an Office hearing representative, which was held on October 22, 2003. Appellant testified that on November 1, 2002 she walked out the back door at work on her break and fell down on her right shoulder after she stepped on ice.<sup>3</sup> She stated that the parking lot immediately abutted the back door of the employing establishment without any intervening sidewalk. Appellant noted that she did not have an assigned parking space, that she thought that anyone could park in that area of the parking lot and that she believed the area was maintained by a private company.

After the hearing, appellant submitted a November 1, 2002 statement in which she explained that she went outside for a smoking break while on pay status that date and walked towards her car to get something she had forgotten. She asserted that her car was only 10 feet from the door of the employing establishment building and had taken about four steps when she fell. Appellant stated that Bruce Kruckenberg, a coworker, was taking a smoking break in the same area.<sup>4</sup> She also submitted an undated statement, received by the Office on November 24, 2003, in which Debbie Fredericksen, her union representative, asserted that appellant was on a

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<sup>1</sup> Dr. Puetz noted: “Patient had slipped outside of patient’s place of employment.” He indicated that appellant’s condition caused her to experience right shoulder pain and right hand numbness. The record also contains various notes ostensibly describing treatment provided to appellant by Dr. Puetz between late 2002 and early 2003. These documents are unsigned and it is unclear who prepared them.

<sup>2</sup> In a report dated October 20, 2003, Dr. Puetz diagnosed right rotator cuff sprain, rib pain and cervical sprain/strain.

<sup>3</sup> She indicated that she normally took a break at around 10:00 a.m. in the morning.

<sup>4</sup> The record contains a statement in which Mr. Kruckenberg described appellant’s fall.

smoking break at the time of her claimed injury.<sup>5</sup> Ms. Fredericksen stated that there was no designated area in the employing establishment's building for smoking breaks and that it was agency-wide policy for the interiors of the buildings to be smoke free environments.<sup>6</sup> She stated that it was common practice for employees to leave the building for their breaks and to retrieve items from their cars in the parking lot during breaks.

Appellant submitted a July 1, 2000 lease agreement between JAG Properties Limited Partnership (JAG) and the General Services Administration (GSA), which provided that JAG leased to the GSA a property described as "4,256 net usable square feet and 4,953 rentable square feet including 28 outside parking spaces located at 1210 East College Drive, Marshall, MN 56258." This lease agreement was in effect at the time of the claimed injury on November 1, 2002.<sup>7</sup> The agreement incorporated a solicitation for offers document, signed by JAG and the GSA, which provided, "Vehicle parking facilities, to accommodate 27 parking spaces, must be available with 2-hour minimum meters or otherwise unrestricted parking for visitors and employees within two blocks of the office. Such parking must be usable during normal working hours. Parking space which is routinely occupied by mid-morning would not be acceptable for visitor use." The document also contained the requirement that JAG was responsible for maintenance of the property, to include the regular sweeping of parking lots and, as required, the removal of snow and ice from parking lots.<sup>8</sup>

By decision dated and finalized January 6, 2004, the Office hearing representative set aside the January 8, 2003 decision and remanded the case for further evidentiary development. The Office hearing representative directed development on whether appellant sustained an

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<sup>5</sup> Ms. Fredericksen also indicated that appellant was in pay status on her smoking break and walked to her car to obtain something she had forgotten.

<sup>6</sup> The record contains an April 6, 2000 agreement between the American Federation of Government Employees and the employing establishment, which indicated that there shall be no smoking in an employing establishment buildings. The record also contains a memorandum of understanding dated May 27, 1987 in which the employing establishment indicated that employees were not permitted to take smoking breaks. It is unclear how long this directive might have been in effect.

<sup>7</sup> The agreement supplemented an April 1, 1998 lease agreement between the two parties to account for an expansion of the leased area.

<sup>8</sup> Appellant submitted several questionnaires completed in 2003 in which coworkers indicated that the parking lot at work was commonly icy during the winter. She also submitted an undated inspection report, which indicated that there were problems with the removal of ice for the parking lot. The lease agreement provided that the employing establishment could withhold portions of rent payments during a dispute over whether JAG had carried out its obligations, such as maintaining the property. Appellant submitted numerous copies of documents pertaining to leasing agreements between JAG and the U.S. Government. A number of these copies were incomplete, but it appears that they all related to the successive lease agreements between the two parties for the employing establishment property on East College Drive.

employment incident on November 1, 2002, including the question of whether the parking lot was part of the employing establishment premises.<sup>9</sup>

On January 23, 2004 the Office conducted a conference with Mr. Reynolds regarding the parking lot where the claimed injury occurred. A memorandum of the conference provided the following account of Mr. Reynolds' answers to questions regarding the parking lot:

"It was determined that the [employing establishment] office is in the back of a privately owned building that contains other businesses and it is the only federal office in the building. The building has parking all around it and there is no specific area designated for the employees of the [employing establishment], much less assigned spots for each employee. The public is able to park in the lot and the spots are on a first come, first serve basis. The office is located on a main street that does not have street parking and no other parking is made available to the employees. The contract that the [F]ederal [G]overnment has with the owners of the building specifies that there are 27 parking spaces available to them but does not detail specific spots. The owners of the building are responsible for maintaining the lot. This parking is provided to the employees without cost."

Appellant submitted a January 6, 2004 report in which Dr. David J. Odland, an attending Board-certified family practitioner, noted that she sustained a fall at work on November 1, 2002 and indicated that she had a soft tissue injury to the upper right side of her back.<sup>10</sup>

By decision dated March 1, 2004, the Office denied appellant's claim on the grounds that she had not established that she sustained an employment-related injury. The Office found that the claimed injury did not occur on the employing establishment premises and therefore did not occur in the performance of duty.

Appellant requested a hearing before an Office hearing representative, which was held on August 16, 2004. Appellant's representative asserted that appellant was on a paid break when she fell in the parking lot on November 1, 2002. She argued that the parking lot was constructively part of the employing establishment premises and indicated that the lease required the parking facility to accommodate 27 parking spaces for the use of the employing establishment. She alleged that the employing establishment created a *de facto* parking area of exclusive use because its employees ordinarily arrived at work and used the parking spaces before the general public. The representative asserted that the lease agreement provided that if the lessor failed to perform any service agreed to in the lease, such as taking care of hazardous

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<sup>9</sup> She stated that it was necessary to consider whether the employing establishment contracted for the exclusive use by its employees of the parking area, whether parking spaces on the lot were assigned by the employing establishment to its employees, whether the parking areas were checked to see that no unauthorized cars were parked in the lot, whether parking was provided without cost to the employees, whether the public was permitted to use the lot and whether other parking was available to the employees.

<sup>10</sup> She later submitted a similar report of Dr. Odland which was dated December 10, 2003.

conditions, the employing establishment could perform the service and deduct the costs from its payments.<sup>11</sup>

Appellant submitted a map which she drew of the parking areas at the employing establishment, showing the employing establishment building surrounded by parking areas on all sides. She identified the employing establishment's parking area as being in the southeastern part of the area and starting immediately adjacent to the break room and janitor doors on the east side of the building.<sup>12</sup> Appellant also submitted statements and questionnaires completed in mid 2004 in which coworkers answered questions about where they parked at work. A number of coworkers indicated that they parked in the southeastern part of the parking lot and others generally indicated that they parked in the southern part. Several coworkers indicated that an employing establishment manager told them in 1988 to park in the area behind the employing establishment building<sup>13</sup> and other coworkers stated that they were told not to park in the spaces reserved for the Minnesota Public Defender's office, which were located north of the area behind the employing establishment building.

In a statement dated September 8, 2004, Mr. Reynolds noted that since he became district manager for the employing establishment in 1991 he had not placed parking restrictions on the staff and did not believe that prior managers had implemented such restrictions. There were numerous spaces surrounding the employing establishment building where employees could park besides the area where appellant parked on November 1, 2002 and that employees parked near the building for the sake of convenience. Mr. Reynolds noted that there were a total of approximately 71 lined spaces and 12 unlined spaces and that there was adequate parking in the lots around the employing establishment for anyone to park there. He indicated that he had no authority to restrict nonemployees from parking near the employing establishment building.<sup>14</sup>

By decision dated November 8, 2004, the Office hearing representative affirmed the Office's March 1, 2004 decision. He found that the claimed injury did not occur on the employing establishment premises and therefore did not occur in the performance of duty.

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<sup>11</sup> Appellant stated that she was on a cigarette break at the time of her claimed injury on November 1, 2002. She asserted that a security guard patrolled the parking and asserted that she had no other place to park if she could not find a space in the area she usually parked.

<sup>12</sup> The employing establishment's public entrance was shown as being on the west side of the building.

<sup>13</sup> Two of the coworkers indicated that in 1988 they were told not to park north of the back doors of the employing establishment building. One coworker indicated that she was told by a Minnesota state worker not to park next to a no parking sign on the back doors of the employing establishment.

<sup>14</sup> Mr. Reynolds stated that some time ago there was a no parking sign on the back wall of the employing establishment, but indicated that this was only intended to allow for the garbage trucks to have room to pick up trash and that the sign was removed when the dumpsters were moved to another location.

## **LEGAL PRECEDENT**

The Federal Employees' Compensation Act<sup>15</sup> provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.<sup>16</sup> The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, "arising out of and in the course of employment."<sup>17</sup> "In the course of employment" relates to the elements of time, place and work activity. To arise in the course of employment, an injury must occur at a time when the employee may reasonably be said to be engaged in her master's business, at a place when she may reasonably be expected to be in connection with her employment and while she was reasonably fulfilling the duties of her employment or engaged in doing something incidental thereto. As to the phrase "in the course of employment," the Board has accepted the general rule of workers' compensation law that, as to employees having fixed hours and places of work, injuries occurring on the premises of the employing establishment, while the employees are going to or from work, before or after working hours or at lunch time, are compensable.<sup>18</sup>

Regarding what constitutes the "premises" of an employing establishment, the Board has stated:

"The term 'premises' as it is generally used in workmen's compensation law, is not synonymous with 'property.' The former does not depend on ownership, nor is it necessarily coextensive with the latter. In some cases 'premises' may include all the 'property' owned by the employer; in other cases even though the employer does not have ownership and control of the place where the injury occurred the place is nevertheless considered part of the 'premises.'"<sup>19</sup>

The Board has also pointed out that factors which determine whether a parking lot used by employees may be considered a part of the employing establishment's "premises" include whether the employing establishment contracted for the exclusive use by its employees of the parking area, whether parking spaces on the lot were assigned by the employing establishment to its employees, whether the parking areas were checked to see that no unauthorized cars were

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<sup>15</sup> 5 U.S.C. §§ 8101-8193.

<sup>16</sup> 5 U.S.C. § 8102(a).

<sup>17</sup> This construction makes the statute effective in those situations generally recognized as properly within the scope of workers' compensation law. *Bernard D. Blum*, 1 ECAB 1 (1947).

<sup>18</sup> *Narbik A. Karamian*, 40 ECAB 617, 618 (1989). The Board has also applied this general rule of workers' compensation law in circumstances where the employee was on an authorized break. *See Eileen R. Gibbons*, 52 ECAB 209 (2001).

<sup>19</sup> *Wilmar Lewis Prescott*, 22 ECAB 318, 321 (1971). Another exception to the rule is the proximity rule which the Board has defined by stating that under special circumstances the industrial premises are constructively extended to hazardous conditions, which are proximately located to the premises and may therefore be considered as hazards of the employing establishment. The main consideration in applying the rule is whether the conditions giving rise to the injury are causally connected to the employment. *See William L. McKenney*, 31 ECAB 861 (1980).

parked in the lot, whether parking was provided without cost to the employees, whether the public was permitted to use the lot and whether other parking was available to the employees. Mere use of a parking facility, alone, is not sufficient to bring the parking lot within the “premises” of the employing establishment. The premises doctrine is applied to those cases where it is affirmatively demonstrated that the employer owned, maintained or controlled the parking facility, used the facility with the owner’s special permission or provided parking for its employees.<sup>20</sup>

The mere fact that an alleged injury did not occur on the employing establishment premises would not be fatal to an employee’s claim.<sup>21</sup> With regard to off-premises breaks, the operative principle used to determine whether the off-premises injury is within the course of employment is whether the employer, in all of the circumstances including duration, shortness of off-premises distance and limitations of off-premises activity during the interval, can be deemed to have retained authority over the employee. If so, the off-premises injury may be found to be within the performance of duty.<sup>22</sup>

In *Helen L. Gunderson*,<sup>23</sup> the employee was injured off the premises of the employing establishment while on her way to get coffee on her morning break. The evidence established that the employee was on a paid break at the time of her fall, that coffee was not available on the premises and that her leaving the premises was in accordance with past practice and was done with the knowledge and consent of the employing establishment. Emphasizing all of the above-mentioned factors, the Board held that the injury was sustained in the performance of duty.<sup>24</sup> On a petition for reconsideration by the Director of the Office (then the Bureau of Employees’ Compensation), the Board clarified its opinion by adding the following paragraph:

“The drinking of coffee and similar beverages or the eating of a snack, in the opinion of the Board, during recognized breaks in the daily work hours is now so generally accepted in the industrial life of our Nation as to constitute a work-related activity falling into a general class of activities closely related to personal ministrations so that engaging in such activity does not take an employee out of the course of his employment.”

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<sup>20</sup> *Diane Bensmiller*, 48 ECAB 675 (1997); *Edythe Erdman*, 36 ECAB 597 (1985); *Karen A. Patton*, 33 ECAB 487 (1982).

<sup>21</sup> As a general rule, off-premises injuries sustained by employees having fixed hours and place of work, while going to or from the employing establishment premises are not compensable. See *Mary M. Martin*, 34 ECAB 525 (1983). However, exceptions to the general rule have been made in order to protect activities that are so closely related to the employment itself as to be incidental thereto (see *Betty R. Rutherford*, 40 ECAB 496 (1989)) or which are in the nature of necessary personal comfort or ministration. See, e.g., *Harris Cohen*, 8 ECAB 457, 457-58 (1954) (accident occurred while the employee was obtaining coffee); *Abraham Katz*, 6 ECAB 218, 218-19 (1953) (accident occurring while the employee was on the way to the lavatory).

<sup>22</sup> See *Lola M. Thomas*, 37 ECAB 572 (1986).

<sup>23</sup> 7 ECAB 288 (1954), *reaff’d on recon.*, 7 ECAB 707 (1955).

<sup>24</sup> *Id.* at 289.

In *Harris Cohen*,<sup>25</sup> the employee was injured in an off-premises accident while he was returning from getting coffee. The record showed that the employing establishment had an established rule that employees were not permitted to leave the building during “rest, coffee or relief periods” and that a notice was posted to this effect. The Board held that the employee’s injury did not occur in the performance of duty because his “off-premises activities were neither accepted nor approved by the employer and were not in accordance with any generally accepted past practice.”<sup>26</sup>

### ANALYSIS

Appellant alleged that she sustained an injury on November 1, 2002 when she slipped and fell after walking a few steps into a parking area, which was adjacent to the back doors of the employing establishment building.<sup>27</sup> The Board will first consider whether appellant’s claimed injury occurred on the employing establishment premises or on a constructive extensive of the employing establishment premises. The Board finds that the parking lot where appellant fell on November 1, 2002 did not constitute the employing establishment premises under the relevant Board precedent.

The record contains a lease agreement between JAG and the GSA for the leasing of space to include 28 outside parking spaces located at 1210 East College Drive in Marshall, MN.<sup>28</sup> A review of the lease agreement shows that the parking lot where appellant fell was not owned or maintained by the employing establishment. The responsibilities of JAG included the regular sweeping of parking lots and, as required, the removal of snow and ice from parking lots. In several statements, Mr. Reynolds, the district supervisor for the employing establishment since April 1991, indicated that the parking lot in question was owned and maintained by JAG.<sup>29</sup>

A review of the lease agreement also shows that the employing establishment did not contract for exclusive use of any particular parking area. The parking spaces, set aside for the employees and visitors, were not specifically identified in the lease agreement and the lease did

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<sup>25</sup> 8 ECAB 457 (1955).

<sup>26</sup> *Id.* at 458.

<sup>27</sup> Appellant submitted a self-drawn map, which showed the employing establishment building surrounded by parking areas on all sides and which identified the employing establishment’s parking area as being in the southeastern part of the area and starting immediately adjacent to the break room and janitor doors on the east side of the building.

<sup>28</sup> Another portion of the lease indicated that the figure was 27 spaces.

<sup>29</sup> Appellant asserted that the lease agreement provided that if the lessor failed to perform any service agreed to in the lease, such as taking care of hazardous conditions, the employing establishment could perform the service and deduct the costs from its payments. Although the lease provided that the employing establishment could withhold portions of rent payments during a dispute over whether JAG had carried out its obligations and the employing establishment presumably could remove hazardous conditions if JAG failed to do so, the essential responsibility for maintaining the parking lot rested with JAG.



not provide the employing establishment with exclusive use of any specific parking spaces.<sup>30</sup> Mr. Reynolds also indicated that the employing establishment building had parking all around it and that there was no specific area designated for employing establishment employees, much less assigned spots for each employee. He indicated that the public was able to park in the lot, including the portion where the claimed injury occurred. He noted that the spaces were free and that spots were available on a first come, first serve basis. Mr. Reynolds acknowledged that there was limited parking outside the parking lots surrounding the employing establishment, but he also noted that there was adequate parking in the lots around the employing establishment for anyone to park there.<sup>31</sup>

For these reasons, it has not been shown that the employer owned, maintained or controlled the parking facility such that it would be considered part of its premises.<sup>32</sup>

The Board will now consider whether appellant's claimed injury occurred in the course of her employment despite the fact that it occurred off the employing establishment premises.

The record reveals that at the time of her alleged injury on November 1, 2002, appellant was on an authorized smoking break. Mr. Reynolds indicated that employee smoking breaks were unscheduled, but that such breaks traditionally had been allowed as long as they were not used too frequently. The record does not reveal any express prohibition against employees taking smoking breaks. No employing establishment official provided any indication that appellant was not on an authorized smoking break at the time of her alleged injury. Moreover, employees were not allowed to smoke while on the employing establishment premises.<sup>33</sup>

Appellant fell in the area which was usually used for smoking breaks, an area immediately adjacent to the back doors of the employing establishment. When she fell, appellant was only a few steps from the employing establishment premises and intended to walk about 10 feet.<sup>34</sup> With respect to the actual activity that appellant was engaged in or intended to engage in at the time of her fall, the Board notes that this activity was not of such a nature to take her out of the course of employment. As noted above, smoking breaks were condoned by the employing

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<sup>30</sup> Appellant submitted several coworker statements which suggested that employees were directed to park in the southern portion of the parking lot area. However, it appears that these coworkers were referring to a practice that had ended well before November 1, 2002.

<sup>31</sup> Appellant alleged that the employing establishment created a *de facto* parking area of exclusive use because its employees ordinarily arrived at work and used the parking spaces before the general public. Although it may have been the practice for employees to park in the southern portion of the parking lot area, this was apparently done for the sake of convenience rather than any express or implied requirement by the employing establishment.

<sup>32</sup> See *supra* note 20 and accompanying text. It also has not been shown that the industrial premises were constructively extended to hazardous conditions which are proximately located to the premises. See *supra* note 19.

<sup>33</sup> The record contains documents which indicate that the employing establishment building was a smoke free environment.

<sup>34</sup> Appellant indicated that during her smoking break she also intended to retrieve something she had forgotten from her car, which was parked about 10 feet from the back doors of the employing establishment.

establishment and, under the circumstances of the present case, this activity should be considered similar to activities that are engaged in for personal comfort and ministration.<sup>35</sup>

The facts of the present case are similar to those of *Helen L. Gunderson*, in that the off-premises activity (taking a smoking break) was approved and condoned by the employing establishment and there was no possibility to engage in the activity on the employing establishment premises. Moreover, the activity took place at a location immediately adjacent to the employing establishment premises for a limited period of time. The activity itself is similar to those activities generally related to personal comfort or ministration. Under these circumstances, it can be found that the employing establishment retained authority over appellant during the time of the alleged injury.<sup>36</sup> Therefore, appellant has established the occurrence of an employment incident when she fell at work on November 1, 2002.

Although appellant has established the occurrence of an employment incident, it is also her burden of proof to submit medical evidence showing that she sustained an injury due to the accepted incident.<sup>37</sup> The Board finds that appellant did not submit sufficient medical evidence to show that she sustained an employment injury on November 1, 2002. She submitted a December 12, 2002 form report in which Dr. Puetz, an attending chiropractor, stated that she sustained thoracic rib subluxations due to the November 1, 2002 employment incident.<sup>38</sup> This thoracic report, however, is of limited probative value on the relevant issue of the present case in that Dr. Puetz did not provide adequate medical rationale in support of his stated conclusion on causal relationship.<sup>39</sup> He did not describe the employment incident in any detail, provide a detailed factual and medical history or explain how the employment incident would have been competent to cause the diagnosed condition. Appellant did not submit any other medical evidence relating her claimed condition to the November 1, 2002 employment injury.

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<sup>35</sup> The Board has indicated that, dependant of the particular facts of the case, a variety of actions may be considered necessary for personal comfort and ministration such as using the restroom, drinking coffee, eating snacks and moving a car during an authorized break. See *Cheryl Bean-Welch*, Docket No. 03-714 (issued June 12, 2003) and *supra* note 21 (cases cited therein). Professor Larson has indicated that practically all cases hold that smoking during an authorized break does not constitute a departure from employment. See A. Larson, *The Law of Workers' Compensation* § 21.04 (2003). Appellant also indicated that she intended to retrieve something from her car, but her primary purpose for walking outside appears to have been to take a smoking break and her intention to remove something from her car during that break would not take her out of the course of employment.

<sup>36</sup> See *supra* note 22 and accompanying text.

<sup>37</sup> An employee seeking benefits under the Act has the burden of establishing the existence of an employment incident or factor as well as the fact that any claimed disability and/or specific condition are causally related to the employment incident or factor. See *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989). The medical evidence required to establish such causal relationship is rationalized medical evidence. See *Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

<sup>38</sup> Dr. Puetz would be considered a physician under the Act because he treated spinal subluxations as demonstrated by x-ray to exist. See 5 U.S.C. § 8101(2); *Jack B. Wood*, 40 ECAB 95, 109 (1988). The record contains a report of x-ray testing obtained by Dr. Puetz on December 6, 2002, which contained notations that appellant had subluxations at T4-5 and T11.

<sup>39</sup> See *Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

Therefore, appellant did not meet her burden of proof to establish that she sustained an injury in the performance of duty on November 1, 2002.

**CONCLUSION**

The Board finds that appellant did not meet her burden of proof to establish that she sustained an injury in the performance of duty on November 15, 2002.

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' November 8, 2004 decision is affirmed as modified to reflect that appellant established the occurrence of an employment incident on November 1, 2002, but did not submit sufficient medical evidence to show that she sustained an employment injury on that date.

Issued: February 10, 2006  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board