

**United States Department of Labor
Employees' Compensation Appeals Board**

D.C., Appellant

and

**OFFICE OF PERSONNEL MANAGEMENT,
BOYERS HUMAN RESOURCE SERVICES,
Boyer, PA, Employer**

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**Docket No. 14-670
Issued: June 18, 2014**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 3, 2014 appellant filed a timely appeal of a January 23, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUE

The issue is whether appellant has met her burden of proof to establish a traumatic injury on December 3, 2013 in the performance of duty.

FACTUAL HISTORY

On December 11, 2013 appellant, then a 50-year-old investigator, filed a traumatic injury claim alleging that on December 3, 2013 she was involved in a motor vehicle accident in the

¹ 5 U.S.C. § 8101 *et seq.*

performance of duty. She stated that she sustained neck strain, blurred vision and a headache as the result of a five-car collision which occurred when one vehicle attempted to make an illegal U-turn in the emergency vehicle area. Appellant stated that she was the third or fourth car in the accident line. On the reverse of the form, appellant's supervisor stated that she was injured in the performance of duty.

Appellant submitted a report dated December 12, 2013 from Dr. Phil Brenshaw, an internist, diagnosing whiplash injury and indicating that he recommended chiropractic treatment including spinal manipulation and nonsteroidal anti-inflammatories. Dr. Brenshaw indicated that appellant provided a history of a motor vehicle accident and that her findings on examination included decreased range of motion of the neck.

Appellant provided an additional factual statement noting that the motor vehicle accident occurred on December 3, 2013 at 1:45 p.m. She stated that five vehicles were involved in a chain reaction collision after the first vehicle abruptly slowed from highway speed to make an illegal U-turn. Appellant stated that the weather conditions were cloudy and foggy but did not contribute to the accident.

In a letter dated December 20, 2013, OWCP requested that appellant provide additional factual and medical evidence. It noted that the only diagnosis was provided by a chiropractor who did not appear to meet the qualifications of a physician under FECA. OWCP informed appellant that in order for a chiropractor to be considered a physician for the purposes of FECA, he must provide a diagnosis of spinal subluxation which is demonstrated by x-ray to exist.

Appellant submitted a form report dated December 26, 2013 from Dr. Jack Martin, a chiropractor, who diagnosed thoracic and lumbar subluxations and indicated with a checkmark "no" that appellant's condition was not caused by employment activities although he listed her history of injury as including a multi-car accident. Dr. Martin treated appellant with chiropractic manipulation and provided work restrictions.

By decision dated January 23, 2014, OWCP denied appellant's claim on the grounds that she failed to provide the necessary medical evidence to establish that an injury occurred as the result of her accepted employment incident. It noted that Dr. Martin did not provide any indication that x-rays were taken in support of his diagnoses of subluxations.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an "employee of the United States" within the meaning of FECA and that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment

² *Id.*

injury.³ 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.⁴

OWCP defines a traumatic injury as, “[A] condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain which is identifiable as to time and place of occurrence and member or function of the body affected.”⁵ 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.⁶ Second, the employee must submit sufficient evidence, generally only in the form a medical evidence, to establish that the employment incident caused a personal injury.⁷

Section 8101(2) of FECA⁸ provides that the term physician, as used therein, includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Secretary.⁹ Without a diagnosis of a subluxation from x-ray, a chiropractor is not a physician under FECA and his or her opinion on causal relationship does not constitute competent medical evidence.¹⁰

ANALYSIS

Appellant alleged that she was involved in a work-related motor vehicle accident in the performance of her duties as an investigator. The employing establishment agreed that her employment incident occurred in the performance of duty. In support of her claim, appellant submitted a form report from Dr. Brenshaw diagnosing a whiplash injury based on decreased range of motion of the neck. Dr. Brenshaw did not provide an opinion on the causal relationship between appellant’s diagnosed condition and her accepted employment incident. Without medical opinion evidence establishing that the employment incident caused or contributed to the diagnosed condition, this report is not sufficient to meet appellant’s burden of proof in establishing a traumatic injury claim.

³ *Kathryn Haggerty*, 45 ECAB 383, 388 (1994); *Elaine Pendleton*, 41 ECAB 1143 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ 20 C.F.R. § 10.5(ee).

⁶ *John J. Carlone*, 41 ECAB 354 (1989).

⁷ *J.Z.*, 58 ECAB 529 (2007).

⁸ 5 U.S.C. § 8101(2).

⁹ *See* 20 C.F.R. § 10.311.

¹⁰ *W.W.*, Docket No. 13-2106 (issued April 28, 2014); *Jay K. Tomokiyo*, 51 ECAB 361 (2000).

The only other evidence supporting a condition resulting from the December 3, 2013 employment incident is a December 26, 2013 form report from Dr. Martin, a chiropractor, who diagnosed thoracic and lumbar subluxations and noted appellant's history of multi-vehicle collision. In accordance with FECA,¹¹ chiropractors are considered physicians only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist. Although Dr. Martin diagnosed spinal subluxations, he did not state that he obtained x-rays. Without a diagnosis of a subluxation from x-ray, Dr. Martin is not considered a physician under FECA and his opinion does not constitute competent medical evidence.¹²

The Board finds that appellant has not submitted the necessary medical opinion evidence to establish that she sustained a whiplash as a result of her December 3, 2013 employment incident.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained an injury in the performance of duty on December 3, 2013.

¹¹ *Supra* note 1.

¹² *Supra* note 10.

ORDER

IT IS HEREBY ORDERED THAT the January 23, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 18, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board