United States Department of Labor
Employees' Compensation Appeals Board

E.D., Appellant	)	
and	)	**Docket No. 07-403**
	)	**Issued: May 2, 2007**
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, Romulus, MI, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 27, 2006 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated October 16, 2006, denying modification of a decision dated August 8, 2006. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this decision.

ISSUE

The issue is whether appellant sustained a back injury causally related to her employment on June 8, 2006.

FACTUAL HISTORY

On June 10, 2006 appellant, then a 47-year-old transportation security screener, filed a traumatic injury claim alleging that on June 8, 2006 she sustained a lower back injury to her right side when she was clearing a large bag on a conveyor belt.

In a June 28, 2006 letter, the Office requested additional factual information from appellant. Multiple documents were submitted consisting of memoranda documenting doctor visits and a June 29, 2006 letter from the employing establishment of appellant's claim. Also submitted was a July 7, 2006 report in which David Budaj, a chiropractor, noted appellant's reduced range of motion.

In a July 25, 2006 letter, appellant requested an extension of time to submit medical information.

By decision dated August 8, 2006, the Office denied appellant's claim based on insufficient medical evidence.

In an August 23, 2006 letter, appellant requested reconsideration. Accompanying the request was an August 18, 2006 letter from Dr. Budaj.

In a September 14, 2006 letter, the Office informed appellant that a letter had been sent to Dr. Budaj seeking clarification regarding her claim but that it was her responsibility to provide the necessary medical evidence.

In a September 20, 2006 telephone call, Dr. Budaj informed the Office that no x-rays were taken of appellant's back.

By decision dated October 16, 2006, the Office denied modification of the prior August 8, 2006 decision.

LEGAL PRECEDENT

In order to determine whether an employee sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether "fact of injury" has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident that is alleged to have occurred.[1] The second component is whether the employment incident caused a personal injury.[2] Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.[3]

To establish causal relationship, appellant must submit a physician's report in which the physician reviews the employment factors identified by appellant as causing his condition and,

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

[2] *John J. Carlone*, 41 ECAB 354 (1989).

[3] *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on the issue of causal relationship must be based on a complete factual and medical background of the claimant. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and claimant's specific employment factors. *Id*.

taking these factors into consideration as well as findings upon examination, state whether the employment injury caused or aggravated the diagnosed conditions and present medical rationale in support of his or her opinion.[4]

ANALYSIS

Appellant alleged that she sustained an injury to her back on June 8, 2006 when she was clearing a bag jam from a conveyor belt. The Office accepted that the employment incident occurred as alleged. The issue in this case is therefore whether the employment incident caused a personal injury.

The medical reports submitted failed to diagnose an injury as the submitted reports were not from a physician. Only a physician under the Federal Employees' Compensation Act can provide a diagnosis.[5] In assessing the probative value of chiropractic evidence, the initial question is whether the chiropractor is considered a physician under 5 U.S.C. § 8101(2). A chiropractor is not considered a physician under the Act unless it is established that there is a spinal subluxation as demonstrated by x-ray to exist.[6] Dr. Budaj did not diagnose a subluxation based on an x-ray, he is not considered a physician under the Act and his report is of no probative medical value. Had Dr. Budaj taken an x-ray of appellant's spine and diagnosed a subluxation, he would be considered a "physician" under the Act.[7] As there is no diagnosis of any condition causally related to appellant's employment incident by a physician, there is no evidence of a personal injury.

CONCLUSION

The Board finds that appellant failed to establish that she sustained a traumatic injury in the performance of duty.

[4] *Calvin E. King*, 51 ECAB 394 (2000).

[5] 5 U.S.C. § 8101(2).

[6] *Mary A. Ceglia*, 55 ECAB 626 (2004).

[7] *Id*.

ORDER

IT IS HEREBY ORDERED THAT the October 16 and August 8, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 2, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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