



transformer with a 2-wheel cart the cart tipped, appellant attempted to catch it, and he felt a strain in his lower back.

Appellant submitted a collection of medical notes and reports from Dr. Mitchell D. Pfeiffer, chiropractor, the majority of which were illegible. These reports did not include x-rays or a diagnosis of subluxation.

By letter dated January 11, 2008, the Office notified appellant that the evidence of record was insufficient to support that he sustained a diagnosed medical condition as the result of factors of employment.

Appellant submitted no other evidence in support of his claim, and by decision dated February 11, 2008 the Office denied his claim because the evidence submitted was insufficient to establish that he sustained an injury as defined by the Federal Employees' Compensation Act.

Appellant disagreed and, through counsel, requested an oral hearing. In support of his request, he submitted a July 21, 2008 report from Dr. Pfeiffer, who reported that x-rays revealed a subluxation at L5, causing a wedging of the L5 disc space, misalignment of the L5-S1 facet joints and narrowing of the L5-S1 intervertebral foramen causing nerve impingement of the right S1 root nerve. She diagnosed appellant with acute lumbar sprain/strain and lumbar disc displacement. Regarding the cause of the diagnosed subluxation Dr. Pfeiffer stated, "It is the opinion of this physician with reasonable medical certainty that the accident dated July 28, 2007 was the direct cause of the lumbar disc displacement and acute lumbar sprain/strain which was caused by the L5 vertebral subluxation as demonstrated on x-ray."

By letter dated May 5, 2008, a telephonic hearing was scheduled for June 10, 2008 at 11:00 a.m. By decision dated August 14, 2008, the Office's Branch of Hearings and Review affirmed the Office's February 11, 2008 decision because appellant failed to establish that he sustained an injury as defined by the Act. The Branch of Hearings and Review accepted that the employment incident occurred as alleged.

### **LEGAL PRECEDENT**

An employee seeking benefits under the 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 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. Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.<sup>2</sup>

Section 10.5(ee) of Office regulations 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

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Gary J. Watling*, 52 ECAB 278 (2001).

workday or shift.<sup>3</sup> To determine whether an employee sustained a traumatic injury in the performance of duty, the Office must determine whether fact of injury is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed. An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.<sup>4</sup>

Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>5</sup>

### ANALYSIS

The Office accepted that the employment incident occurred as alleged. It is then appellant's burden to submit rationalized medical evidence establishing a diagnosed condition causally related to the identified employment factors.<sup>6</sup> The evidence of record is insufficient to satisfy appellant's burden.

The only relevant evidence of record is a collection of notes from Dr. Pfeiffer, the overwhelming majority of which were illegible. The majority of the legible reports are of no probative medical value because as a matter of law, under section 8101(2) of the Act, chiropractors are not considered "physicians" and their reports considered medical evidence, to the extent that they treat spinal subluxations as demonstrated by x-ray to exist.<sup>7</sup> The Office's regulations at 20 C.F.R. § 10.5(bb) define 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>8</sup> The record reflects that Dr. Pfeiffer did not diagnose or treat subluxation as demonstrated by x-rays to exist in these reports prior to July 21, 2008. Therefore, she was not considered a physician for purposes of this analysis, prior to her diagnosis of subluxation based upon x-ray evidence. Thus, the majority of her reports do not constitute medical evidence.<sup>9</sup>

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<sup>3</sup> 20 C.F.R. § 10.5(ee); *Ellen L. Noble*, 55 ECAB 530 (2004).

<sup>4</sup> *Gary J. Watling*, *supra* note 2.

<sup>5</sup> *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

<sup>6</sup> See *Edgar G. Maiscott*, 4 ECAB 558 (1952) (holding appellant's subjective symptoms and self-serving declarations do not, in the opinion of the Board, constitute evidence of a sufficiently substantial nature).

<sup>7</sup> 5 U.S.C. § 8101(2). See *Paul Foster*, 56 ECAB 208 (2004); *Jack B. Wood*, 40 ECAB 95, 109 (1988).

<sup>8</sup> 20 C.F.R. § 10.5(bb); see also *Mary A. Ceglia*, 55 ECAB 626 (2004); *Bruce Chameroy*, 42 ECAB 121 (1990).

<sup>9</sup> 5 U.S.C. § 8101(3), 20 C.F.R. § 10.311(a). See *Thomas W. Stevens*, 50 ECAB 288 (1999); *George E. Williams*, 44 ECAB 530 (1993).

However, Dr. Pfeiffer's July 21, 2008 report does contain a diagnosis of subluxation as revealed by x-rays. Therefore, for purposes of this report and this diagnosis, she does constitute a "physician" for purpose of the Act. But this medical report remains of limited probative value as Dr. Pfeiffer's report proffered no rationalized opinion on the causal relationship between the diagnosed subluxation and appellant's employment.<sup>10</sup> She concluded that there was a relationship between the incident on August 28, 2007 and appellant's diagnosed subluxation. However, Dr. Pfeiffer offered no medical explanation as to how the incident would have caused the diagnosed condition. Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the client, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.<sup>11</sup>

As there is no other competent probative medical evidence of record establishing causal relationship, appellant has not met his burden.

Therefore, Board finds that appellant did not establish that an injury occurred as a result of the August 28, 2007 incident.

### **CONCLUSION**

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

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<sup>10</sup> See *Mary E. Marshall*, 56 ECAB 420 (2005) (medical reports that do not contain rationale on causal relationship have little probative value).

<sup>11</sup> *I.J.*, 59 ECAB \_\_\_ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated August 14, 2008 is affirmed.

Issued: May 18, 2009  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board