

FACTUAL HISTORY

On September 16, 2010 appellant, then a 46-year-old management analyst, filed a traumatic injury claim alleging that she sustained injury on September 9, 2010 as a result of her employment. She explained that as she was entering the employing establishment, the entrance door recoiled and hit her on the right side.

Christine Gassman, a coworker, submitted a witness statement on September 9, 2010, noting that, at approximately 2:30 p.m., she and appellant were entering the employee entrance. Appellant swiped her badge and opened the right side door. Ms. Gassman stated that the door moved “quickly and unexpectedly with a visibly strong force,” striking appellant; and that appellant was pushed to the unopened doorframe on the left and her “head jerked back and forth.”

On September 28, 2010 appellant submitted documents from Morrison Chiropractic, which reported that she had been seen on eight occasions from September 23, 2010 for arm, back and neck complaints. She received mechanical traction and therapeutic exercise by Dr. William Bleam, a chiropractor. A September 21, 2010 note from Dr. Bleam stated that appellant could return to work on September 27, 2010. Appellant also submitted physical therapy and occupational therapy authorization requests from Dr. Bleam, dated September 22 to 30, 2010.

OWCP advised appellant on October 1, 2010 that the medical evidence of record was insufficient for the authorization of chiropractic care. It requested that she submit x-ray findings that supported a diagnosis of spinal subluxation. Appellant was advised that the definition of “physician” included chiropractors only if there was a diagnosed spinal subluxation and it was demonstrated by x-ray. OWCP also issued a development letter on October 1, 2010, requesting that she submit a signed medical report, which provided a diagnosis of her condition and an opinion, supported by medical rationale, explaining how the diagnosed condition was caused by the employment incident.

On October 1, 2010 OWCP received a Form CA-16 authorization for examination and treatment, which was issued by the employing establishment on September 15, 2010. It authorized Morrison Chiropractic P.A. to furnish medical treatment as necessary for the effects of appellant’s September 9, 2010 injury.

Appellant submitted an unsigned radiology report dated October 14, 2010, prepared for Dr. Bleam. It noted anterior osteophytes at C5, C6 and C7, particularly at C6, and mild intervertebral disc space narrowing at C6-C7. The report stated an impression of “degenerative changes of the cervical spine, centered at C6-C7.”

In a September 14, 2010 report, Dr. Bleam noted appellant’s history of injury, described examination findings and identified her condition as a sprain/strain of her cervical and thoracic spine as a result of the work-related injury on September 9, 2010. In an addendum report dated October 15, 2010, he reported that she had undergone x-ray examination on October 14, 2010 which showed degenerative changes in the cervical spine, most predominantly at C6-C7, with additional narrowing of the intervertebral disc. Dr. Bleam concluded “these findings support the findings of subluxation at these levels.”

By decision dated November 15, 2010, OWCP accepted that the September 9, 2010 incident occurred as alleged, but denied appellant's claim on the grounds that Dr. Bleam did not diagnose a spinal subluxation based upon x-ray evidence. Therefore, the medical evidence was not sufficient to establish fact of injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden to establish the essential elements of her claim including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed, that an injury was sustained in the performance of duty as alleged and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.³

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 or she actually experienced the employment incident at the time, place and in the manner alleged.⁴ Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁵

Section 8101(2) of FECA provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law.

The term "physician" 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 regulations by the Secretary.⁶ To be given any weight, the chiropractic report must state that x-rays support the finding of a spinal subluxation.⁷

ANALYSIS

The Board finds that appellant has not established that she sustained a back injury on September 9, 2010 as a result of being struck by a door at work.

² 5 U.S.C. §§ 8101-8193.

³ *Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

⁵ *John J. Carlone*, 41 ECAB 354, 356-57 (1989); *T.H.*, 59 ECAB 388 (Docket No. 07-2300, issued March 7, 2008).

⁶ *Paul Foster*, 56 ECAB 208 (2004).

⁷ 20 C.F.R. § 10.311(c). *See also George E. Williams*, 44 ECAB 530 (1993).

OWCP accepted that the September 9, 2010 incident occurred as alleged, but denied the claim on the grounds that Dr. Bleam did not diagnose a spinal subluxation, based upon x-ray evidence. The Board notes that in an addendum report dated October 15, 2010, Dr. Bleam diagnosed subluxation to the cervical spine based upon the x-rays that were taken on his behalf on October 14, 2010. Dr. Bleam is therefore a “physician” pursuant to FECA, for purposes of treatment of spinal subluxation.⁸

Dr. Bleam’s reports, however, are not sufficient to establish that appellant sustained an injury as a result of the incident. Although he related appellant’s history of injury in his September 14, 2010 report, he did not discuss the cause of appellant’s diagnosed subluxations. Dr. Bleam related that appellant sustained a sprain/strain injury to her cervical and thoracic spine as a result of the September 8, 2010 incident. He never addressed the cause of appellant’s cervical subluxation condition. To establish causal relationship appellant must submit rationalized medical evidence. Rationalized medical evidence must include a physician’s opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factor. The opinion of the physician must be based on a complete factual and medical background, 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 compensable employment factor.⁹

While Dr. Bleam made other diagnoses, including sprain, strain and degenerative changes of the cervical and thoracic spine; as a chiropractor he is limited to the diagnosis and treatment of a spinal subluxation. He is not considered a “physician” for diagnosis and treatment of the other diagnosed conditions. Dr. Bleam’s opinion regarding the cause of these conditions is still of no probative value.

The Board notes that the employing establishment issued a Form CA-16 to Morrison Chiropractic, on September 15, 2010. A properly executed CA-16 form creates a contractual obligation, which does not involve the employee directly, to pay the cost of the examination or treatment regardless of the action taken on the claim. As the Form CA-16 was properly executed, on return of the case record OWCP shall consider appellant’s entitlement to medical expenses as appropriate pursuant to this CA-16 form.¹⁰

CONCLUSION

The Board finds that appellant failed to establish that she sustained an injury on September 9, 2010 while in the performance of duty.

⁸ A chiropractor may interpret his x-rays to the same extent as any other physician. 20 C.F.R. § 10.311(c). See *Mary A. Ceglia*, 55 ECAB 626 (2004).

⁹ *D.G.*, 59 ECAB 734 (2008).

¹⁰ See *Elaine M. Kreyborg*, 41 ECAB 256 (1989).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 15, 2010 is affirmed as modified.

Issued: October 18, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

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