

**R.M., Appellant**

**DEPARTMENT OF HOMELAND SECURITY,  
IMMIGRATION & CUSTOMS  
ENFORCEMENT, Des Plaines, IL, Employer**

*Appearances:*

*Alan J. Shapiro, Esq.*, for the appellant  
*Office of Solicitor*, for the Director

### Case Submitted on the Record

Before:

## JURISDICTION

**ISSUE**

### FACTUAL HISTORY

On May 20, 2011 appellant, then a 39-year-old special agent, filed a Form CA-1 alleging that he injured his neck that morning when his vehicle was rear ended. In a May 25, 2011 letter, OWCP advised him that medical evidence was needed to establish his traumatic injury claim and

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

gave him 30 days to submit a report from a qualified physician explaining how the traffic accident led to a cervical condition.<sup>2</sup>

By decision dated June 28, 2011, OWCP denied appellant's claim, finding that he failed to submit any medical evidence to establish that a diagnosed injury resulted from the accepted May 20, 2011 employment incident.

Appellant filed a request for reconsideration on February 27, 2012 and provided new evidence.<sup>3</sup> In a May 23, 2011 report, Dr. Erin E. Massey, a chiropractor, was informed by appellant that he was involved in a May 20, 2011 motor vehicle collision and thereafter experienced various head, neck, shoulder and back symptoms. She was also told that he sustained residual thoracic pain stemming from a February 1, 2011 accident. Dr. Massey noted that cervical, thoracic and lumbar x-rays were obtained and identified subluxation at C1, C5, T1, T8, T12 and L4. On cervical examination, she noted limited range of motion (ROM), apophyseal joint and spinous process tenderness between C1 and C6, suboccipital, trapezius, scalenus, and levator scapulae trigger points and positive cervical compression, foraminal compression and Jackson's compression tests. On thoracic examination, Dr. Massey identified costovertebral joint, spinous process and paravertebral muscle tenderness between T1 and T9 and a positive Schepelmann's test. On lumbar examination, she observed spinous process, lumbosacral joint and erector spinae muscle tenderness and positive Nachlas, Ely and right Kemp signs. Cervical, thoracic and lumbar x-rays exhibited evidence of degenerative disc disease and vertebral subluxation as well as thoracolumbar scoliosis. Dr. Massey diagnosed C1-C7, T1-T12, and L1-L5 subluxation, neck sprain/strain, thoracic neuritis/radiculitis and idiopathic scoliosis.<sup>4</sup>

On April 25, 2012 OWCP denied modification of the June 28, 2011 decision.

### **LEGAL PRECEDENT**

An employee seeking compensation under FECA has the burden of establishing the essential elements of his claim by the weight of reliable, probative and substantial evidence,<sup>5</sup> including that he is an "employee" within the meaning of FECA and that he filed his claim within the applicable time limitation.<sup>6</sup> The employee must also establish that he sustained an

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<sup>2</sup> In a separate May 25, 2011 letter, OWCP informed appellant that the circumstances of his case suggested that his injury may have been caused by a responsible third party and that he may be subject to FECA's subrogation provisions. See 5 U.S.C. §§ 8131-8132; 20 C.F.R. §§ 10.705-10.719. On May 31, 2011 appellant submitted a Form CA-1045 indicating that he had yet to file a lawsuit.

<sup>3</sup> Appellant indicated that he previously sustained an employment injury on February 1, 2011. OWCP File No. xxxxxx885.

<sup>4</sup> A July 13, 2011 report from Dr. Massey presented objective findings similar to those contained in her earlier report and commented that appellant's condition remained unchanged.

<sup>5</sup> *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

<sup>6</sup> *R.C.*, 59 ECAB 427 (2008).

injury in the performance of duty as alleged and that his disability for work, if any, was causally related to the employment injury.<sup>7</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.<sup>8</sup>

Rationalized medical opinion evidence is generally required to establish causal relationship. 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 employment factors identified by the claimant.<sup>9</sup>

### ANALYSIS

The case record supports that appellant's vehicle was rear ended on May 20, 2011. The Board finds that he did not establish his traumatic injury claim because the medical evidence does not establish that the accepted employment incident caused a spinal condition.<sup>10</sup>

Medical opinion, in general, can only be given by a qualified physician.<sup>11</sup> As defined under FECA, a "physician" includes a chiropractor only to the extent that her reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.<sup>12</sup> Subluxation means 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>13</sup> In this case, Dr. Massey diagnosed C1-C7, T1-T12 and L1-L5 subluxation based on x-ray findings and physical examination results in a May 23, 2011 report. Therefore, she is a "physician" as defined, but Dr. Massey did not explicitly attribute her diagnosed spinal conditions to appellant's federal employment. Instead, she appeared to merely communicate appellant's belief that the May 20, 2011 motor vehicle collision was the cause of injury.<sup>14</sup> Assuming *arguendo* that this

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<sup>7</sup> *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>8</sup> *T.H.*, 59 ECAB 388 (2008).

<sup>9</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>10</sup> The Board notes that appellant initially filed for a neck condition. However, the case record indicates that he amplified and expanded his claim to include allegations of thoracic and lumbar injuries. See *Wilfred M. Hamilton*, 41 ECAB 524 (1990).

<sup>11</sup> *Charley V.B. Harley*, 2 ECAB 208, 211 (1949).

<sup>12</sup> 5 U.S.C. § 8101(2); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

<sup>13</sup> 20 C.F.R. § 10.5(bb).

<sup>14</sup> See *P.K.*, Docket No. 08-2551 (issued June 2, 2009) (an award of compensation may not be based on a claimant's belief of causal relationship).

represented her opinion on causal relationship, Dr. Massey did not explain how the accepted employment incident caused or contributed to a spinal subluxation.<sup>15</sup> In the absence of rationalized medical opinion evidence, appellant failed to meet his burden of proof.

Counsel contends on appeal that the April 25, 2012 decision is contrary to law and fact. The Board has addressed the deficiencies of the medical evidence of record.

Appellant may submit new evidence or argument as part of a formal 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 did not establish that he sustained a traumatic injury in the performance of duty on May 20, 2011.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the April 25, 2012 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: November 1, 2012  
Washington, DC

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

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

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

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<sup>15</sup> See *Theresa M. Fitzgerald*, 47 ECAB 689 (1996) (rationalized medical opinion evidence must related diagnosed subluxation to employment incident). See also *Joan R. Donovan*, 54 ECAB 615, 621 (2003); *Ern Reynolds*, 45 ECAB 690, 696 (1994).