



In attending physician reports (Form CA-20) dated July 23 and 26, 2013, Dr. Joshua Oakley, an attending chiropractor, diagnosed lumbar strain/sprain, set periods of disability, and noted that appellant's lumbar sprain/strain was due to the bending/lifting injury on July 22, 2013. Dr. Oakley described sustaining intense back pain after attempting to lift a box of mail.

In a letter dated September 25, 2013, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It informed him that a chiropractor was not considered a physician under FECA unless there was a diagnosis of subluxation by x-ray interpretation. OWCP advised appellant as to the type of medical and factual evidence required to establish his claim and afforded him 30 days to provide the requested information.

In response to OWCP's request, appellant submitted additional reports from Dr. Oakley. In a July 22, 2013 report, he diagnosed upper and lower lumbar subluxations at L1, 2 and 5 for strain/sprain with possible disc involvement. Dr. Oakley noted that appellant was seen for lower back pain which occurred following lifting containers of mail. He described that appellant began to have constant lower back pain due to lifting containers of mail that morning. A physical examination revealed moderate lower back spasms, decreased lumbar flexion, moderately decreased bilateral rotation with pain, and antalgic posture when leaning forwards. Physical examination findings were provided and Dr. Oakley noted that appellant was being treated for upper and lower lumbar subluxations at L1, 2 and 5 for strain/sprain.

In subsequent reports dated July 23 to September 17, 2013, Dr. Oakley diagnosed subluxations at L5 and S1 and lumbar strain/sprain, provided physical examination findings, and reported the chiropractic adjustments and treatment he provided.

In an August 14, 2013 CA-20 form, Dr. Oakley noted an injury date of July 22, 2013 which occurred when appellant attempted to pick up a box of mail. He diagnosed lumbar strain/sprain which he attributed to the July 22, 2013 lifting/bending incident. Dr. Oakley commented that appellant was asymptomatic prior to the incident and felt instant pain while bending to lift the box of mail. He noted that appellant was totally disabled for the period July 22 to August 18, 2013 and was released to return to work on August 19, 2013.

By decision dated November 1, 2013, OWCP accepted that appellant was carrying or lifting mail on July 22, 2013, but denied the claim as appellant failed to submit any medical evidence diagnosing a condition causally related to the July 22, 2013 accepted employment incident. It noted that the medical evidence had not been provided by a physician under FECA. OWCP found the chiropractor insufficient as he failed to diagnose a subluxation by x-ray interpretation.

On November 20, 2013 appellant requested reconsideration and submitted a report from Dr. Oakley in support of his request. In a November 16, 2013 report, Dr. Oakley diagnosed a lumbar spine subluxation based on an x-ray interpretation taken that day. He noted that an x-ray was not initially performed because the physical examination revealed a subluxation, to reduce insurance cost, and felt it was unwarranted as it would not impact treatment of appellant's condition. Dr. Oakley reiterated that, during the initial July 22, 2013 visit, a diagnosis of lumbar sprain/strain and lumbar subluxations were made. He noted that on each visit appellant was treated for the subluxations by adjustments.

By decision dated March 5, 2014, OWCP denied modification as it again found that Dr. Oakley was not considered a physician under FECA as he had not diagnosed a subluxation by x-ray interpretation when he first treated appellant.

On April 16, 2014 appellant requested reconsideration following the submission of additional evidence in support of his request. On November 16, 2013 Dr. Bryan K. Hosler, a chiropractor, took an x-ray of appellant's spine at the request of Dr. Oakley. He reported moderate L5-S1 disc space narrowing together with mild-to-moderate T12-L1, L1-2, L2-4, L3-4, and L4-5 disc space loss, mild C6-7 disc space narrowing, L4-5 and L5-S1 mild degenerative facet arthropathy, and mild T12 anterior vertebral body height. Dr. Hosler diagnosed S1 lumbarization, cervical arcual kyphosis, C6-7 mild discogenic spondylosis, multilevel thoracic discogenic spondylosis, mild anterior T12 vertebral body wedge deformity, L5-S1 moderate discogenic spondylosis along mild-to-moderate T12-L1, L1-2, L2-4, L3-4, and L4-5 severity involvement, and L4-5 and L5-S1 degenerative facet arthropathy.

Additionally, in an April 15, 2014 report, Dr. James S. Burkhardt, an osteopathic Board-certified physician practicing in family and sports medicine, concurred with Dr. Oakley's diagnosis and treatment. He noted that based on his review of the medical evidence that the diagnosis was consistent with the history of the July 22, 2013 work incident. Dr. Burkhardt opined that appellant's injury was directly caused by the July 22, 2013 employment incident.

By decision dated April 28, 2014, OWCP denied modification. It found that as the x-ray interpretation was taken approximately four months following the July 22, 2013 incident it was insufficient to establish that Dr. Oakley would be considered a physician under FECA. OWCP also found the x-ray interpretation did not clearly identify the subluxations.

By letter dated July 12, 2014, appellant requested reconsideration. In support of his request, he submitted a June 16, 2014 report from Dr. Oakley. Dr. Oakley again explained that an x-ray interpretation was not initially taken at the time of the July 22, 2013 incident as he did not believe it was warranted for treatment of appellant's condition. Based on his physical examination, he diagnosed and treated appellant for lower lumbar strain, lower lumbar disc involvement, and multiple lumbar subluxations. Dr. Oakley related that x-rays are unnecessary in diagnosing subluxations and are not warranted unless there is no improvement in the patient's condition or there is suspicion of another diagnosis.

By decision dated October 7, 2014, OWCP denied modification. It found that as no x-ray interpretations diagnosing a subluxation had been "taken close in time to the work injury" that Dr. Oakley could not be considered a physician under FECA.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>2</sup> has the burden of proof to establish 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 FECA; that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any

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<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>3</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>4</sup>

OWCP regulations, at 20 C.F.R. § 10.5(e) define 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.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup> Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>8</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.<sup>9</sup> 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.<sup>10</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, 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>

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 regulation by the Secretary.<sup>12</sup>

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<sup>3</sup> *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

<sup>4</sup> *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> 20 C.F.R. § 10.5(ee); *Ellen L. Noble*, 55 ECAB 530 (2004).

<sup>6</sup> *B.F.*, Docket No. 09-60 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 3.

<sup>7</sup> *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

<sup>8</sup> *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 3.

<sup>9</sup> *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006).

<sup>10</sup> *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

<sup>11</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>12</sup> *D.S.*, Docket No. 09-860 (issued November 2, 2009); *Paul Foster*, 56 ECAB 208 (2004). *See* 5 U.S.C. § 8101(2).

## ANALYSIS

OWCP accepted that on July 22, 2013 appellant was carrying/lifting a tray of flats while at work and experienced pain. The issue is whether appellant established an injury causally related to the employment incident. The Board finds that appellant failed to submit sufficient rationalized medical evidence to establish the causal connection between his diagnosed back conditions and the July 22, 2013 employment incident.

Appellant submitted treatment records from Dr. Oakley, a chiropractor. In assessing the probative value of opinion evidence of a chiropractor, the initial question is whether the chiropractor is a physician as defined under FECA.<sup>13</sup> A chiropractor is not considered a physician under FECA unless it is established that there is a subluxation as demonstrated by x-ray to exist.<sup>14</sup> As the July 23 and 26 and August 14, 2013 Forms CA-20 and reports dated July 22 to September 17, 2013 from Dr. Oakley did not diagnose appellant with subluxations, as demonstrated by x-ray to exist, for purposes of these reports, he does not qualify as a physician under FECA and, therefore, these reports and CA-20 forms and the opinions contained therein do not constitute competent medical evidence.<sup>15</sup> Thus, the CA-20 forms and reports signed by Dr. Oakley are of no probative value.<sup>16</sup>

On November 16, 2013 Dr. Oakley obtained an x-ray based on OWCP's determination that he was not considered a physician under FECA. In his subsequent June 16, 2014 report, Dr. Oakley opined that the November 16, 2013 x-ray of the lumbar region confirmed his diagnosis of upper and lower lumbar subluxations. OWCP's implementing federal regulations define subluxation as an incomplete dislocation, off-centering, misalignment, fixation, or abnormal spacing of the vertebrae which must be visible on any x-ray film.<sup>17</sup> For purposes of FECA and this report, because Dr. Oakley diagnosed subluxations as shown to exist by x-ray, he qualifies as a physician as defined by FECA. Thus, at that point in time Dr. Oakley qualified as a physician under FECA for this report.<sup>18</sup>

The October 7, 2014 decision found that Dr. Oakley could not be considered a physician under FECA as the x-ray he used to diagnose a subluxation was not taken close in time to the July 22, 2013 incident. While diagnostic testing performed immediately after an alleged injury tends to increase the reliability of a medical opinion regarding the relationship between any condition documented by the testing and the employment injury, the Board has held that the timing of diagnostic testing alone should not be given dispositive weight to the exclusion of

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<sup>13</sup> 5 U.S.C. § 8101(2).

<sup>14</sup> See 20 C.F.R. § 10.311(a).

<sup>15</sup> 5 U.S.C. § 8101(2). See *Mary A. Ceglia*, 55 ECAB 626 (2004).

<sup>16</sup> *Isabelle Mitchell*, 55 ECAB 623 (2004).

<sup>17</sup> 20 C.F.R. § 10.5(bb).

<sup>18</sup> See *Mary A. Ceglia*, *supra* note 15 (as the chiropractor qualified as a physician under FECA, the question was whether he provided sufficient evidence to establish the causal relationship between the diagnosed subluxation and the accepted incident); *Mary J. Briggs*, 37 ECAB 578 (1986).

other circumstances.<sup>19</sup> Therefore, the fact that Dr. Oakley did not obtain x-rays until November 16, 2013 does not preclude him from being considered a physician under FECA.<sup>20</sup> To discharge appellant's burden of proof, however, he must provide sufficient medical rationale to support the affirmative opinion offered regarding the cause of the diagnosed subluxations.<sup>21</sup> Dr. Oakley provided no opinion as to the cause of the diagnosed conditions in the June 16, 2014 report other than explaining why x-rays were not taken at the time of the July 22, 2013 incident. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>22</sup>

In his April 15, 2014 report, Dr. Burkhardt referenced the findings of Dr. Oakley and opined that appellant's injury was directly caused by the July 22, 2013 incident. He did not, however, provide any rationale for his causation finding other than noting that he concurred with Dr. Oakley's opinion. The Board has held that brief medical notes consisting solely of conclusory statements without supporting rationale are of diminished probative value.<sup>23</sup> Medical reports not containing rationale on causal relationship are generally insufficient to support an employee's burden of proof.<sup>24</sup> In view of the lack of any rationale provided by Dr. Burkhardt on the issue of causal relationship, the Board finds that his opinion fails to establish that appellant's diagnosed conditions were caused or aggravated by the July 22, 2013 incident.

Appellant also submitted a November 16, 2013 report from Dr. Hosler, a chiropractor, diagnosing S1 lumbarization, cervical arcual kyphosis, C6-7 mild discogenic spondylosis, multilevel thoracic discogenic spondylosis, mild anterior T12 vertebral body wedge deformity, L5-S1 moderate discogenic spondylosis along mild-to-moderate T12-L1, L1-2, L2-4, L3-4, and L4-5 severity involvement, and L4-5 and L5-S1 degenerative facet arthropathy. Dr. Hosler cannot be considered a physician as defined under FECA as his diagnosis did not include a spinal subluxation based on x-ray.<sup>25</sup>

The record before the Board is without rationalized medical evidence establishing a diagnosed medical condition causally related to the accepted July 22, 2013 employment incident. OWCP advised appellant that it was his responsibility to provide a comprehensive medical report which described his symptoms, test results, diagnosis, treatment, and the physician's opinion, with medical reasons, on the cause of his condition. Appellant failed to submit appropriate

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<sup>19</sup> See *Linda L. Mendenhall*, 41 ECAB 532 (1990).

<sup>20</sup> See *Lauramae Heard*, 42 ECAB 688 (1991).

<sup>21</sup> See *supra* note 19.

<sup>22</sup> *A.F.*, 59 ECAB 714 (2008); *Ellen L. Noble*, 55 ECAB 530 (2004); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

<sup>23</sup> See *T.M.*, Docket No. 08-975 (issued February 6, 2009); *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006); *William C. Thomas*, 45 ECAB 591 (1994) (a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

<sup>24</sup> See *D.U.*, Docket No. 10-144 (issued July 27, 2010); *S.S.*, 59 ECAB 315 (2008); *William C. Thomas*, *supra* note 23.

<sup>25</sup> 5 U.S.C. § 8101(2). See *Mary A. Ceglia*, *supra* note 17.

medical documentation in response to OWCP's request. The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference of causal relation.<sup>26</sup> An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relation.<sup>27</sup> As there is no probative, rationalized medical evidence containing a medical diagnosis and explaining how the diagnosed condition was causally related to the accepted July 22, 2013 employment incident, he has not met his burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision.

### **CONCLUSION**

The Board finds appellant did not meet his burden of proof to establish that he sustained a lower back injury causally related to a July 22, 2013 employment incident.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated October 7, 2014 is affirmed.<sup>28</sup>

Issued: May 12, 2016  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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<sup>26</sup> *L.D.*, Docket No. 09-1503 (issued April 15, 2010); *D.I.*, 59 ECAB 158 (2007); *Daniel O. Vasquez*, 57 ECAB 559 (2006).

<sup>27</sup> *S.S.*, 59 ECAB 315 (2008); *J.M.*, 58 ECAB 3003 (2007); *Donald W. Long*, 41 ECAB 142 (1989).

<sup>28</sup> James A. Haynes, Alternate Judge, participated in the original decision but was no longer a member of the Board effective November 16, 2015.