

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOHN W. KLOSSNER and U.S. POSTAL SERVICE,  
POST OFFICE, Kasson, Minn.

*Docket No. 97-433; Submitted on the Record;  
Issued December 1, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether appellant has met his burden of proof to establish that he sustained injuries to his lower back and buttocks in the performance of duty as alleged.

On October 27, 1995 appellant, then a 61-year-old letter carrier, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that on October 25, 1995 he injured his back and buttocks as a result of sitting in a broken driver's seat for four hours in a delivery vehicle. In support of his claim, appellant submitted a duty status report dated the same day from Dr. Lon L. Meyer, a chiropractor, who diagnosed low back pain and subluxation of the lumbosacral spine.

By letter dated December 1, 1995, the Office of Workers' Compensation Programs advised appellant that pursuant to the Federal Employees' Compensation Act, 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 subluxation as demonstrated by x-ray to exist.<sup>1</sup> The Office requested that appellant submit the results of any x-rays taken, as well as a complete medical report from his attending physician.

In a decision dated January 31, 1996 and an accompanying memorandum, the Office denied appellant's claim on the grounds that, although the evidence of file supports the fact that the claimed incident occurred at the time, place and in the manner alleged, the file is devoid of medical evidence and thus does not support a finding that a medical condition resulted from the incident as alleged.

On April 24, 1996 appellant filed a request for reconsideration. In support of his request, appellant submitted a May 7, 1996 report from Dr. Bradley Meints, a chiropractor, in which he stated that x-rays "support the diagnosis of lumbosacral dysfunction with neuralgia."

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<sup>1</sup> 5 U.S.C. § 8101(2); *see Samuel Theriault*, 45 ECAB 586 (1994).

In a medical report dated May 17, 1996, Dr. Thomas C. Jetzer, Board-certified in preventive medicine, stated:

“The patient apparently had sent some x-rays in of his lower back that were taken by a chiropractor dated [April 22, 1996]. They appear to be lumbar spine films. An anterior-posterior lateral view is included. There are two lateral views; one seems a bit fuzzy and showing some movement. The second one is clear. He does have some sacralization of L5, but other than that there is some degenerative spurring of a mild nature, particularly at [L]2-3 and [L]3-4 to some extent.

“Some of these were officially reviewed by the radiologist, but I see no evidence of subluxation of his x-ray exam[inations].”

In a merit decision dated July 27, 1996 and an accompanying memorandum, the Office denied appellant’s request for reconsideration on the grounds that the evidence submitted by appellant was insufficient to warrant modification of the prior decision.<sup>2</sup> The Office noted that appellant’s new medical evidence consisted of a report from a chiropractor who noted that, based on x-rays, appellant had lumbosacral dysfunction with neuralgia. The Office concluded that, although a chiropractor may be considered a physician 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, since Dr. Meints’ did not diagnose subluxation as demonstrated by x-ray to exist, his medical report lacks probative value.

The Board finds that appellant has not established that he sustained an injury in the performance of duty on October 25, 1995 as alleged.

In order to determine whether an employee actually sustained an 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 which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.<sup>3</sup> In order to meet his burden of proof to establish the fact that he sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged. In some traumatic injury cases, this first component can be established by an employee’s uncontroverted statement on the Office Form CA-1.<sup>4</sup> The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.<sup>5</sup>

In this case, appellant provided sufficient evidence to establish the first component but the medical evidence submitted did not establish the second component of fact of injury, that a personal injury resulted from the October 25, 1995 incident. In support of his claim, appellant

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<sup>2</sup> On May 30, 1996 the Office notified appellant that his May 8, 1996 claim for traumatic injury was a duplicate claim.

<sup>3</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>5</sup> *Id.*

submitted medical reports from Drs. Meyer and Meints, both chiropractors. In assessing the probative value of chiropractic evidence, the initial question is whether the chiropractor is considered a physician under the Act. Section 8101(2) of the Act provides that 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.<sup>6</sup> In an October 27, 1995 duty status report, Dr. Meyer diagnosed low back pain and subluxation of the spine. However, inasmuch as his diagnosis was not based on x-rays, the Board finds that Dr. Meyer is not a “physician” under the Act and his report has no probative value to appellant’s claim.<sup>7</sup> Further, Dr. Meints also failed to diagnose subluxation as demonstrated by x-ray to exist, and his medical report is similarly of no probative medical value to appellant’s claim. Furthermore, Dr. Jetzer’s May 17, 1996 medical report only interpreted x-rays dated April 22, 1996. This report did not address causal relationship between appellant’s alleged work-related injury and his back condition. Appellant therefore did not submit any medical evidence in support of his claim and the Office properly denied his claim for benefits.

The decisions of the Office of Workers’ Compensation Programs dated July 27 and January 31, 1996 are affirmed.

Dated, Washington, D.C.  
December 1, 1998

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member

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<sup>6</sup> See *supra* note 1; *Kathryn Haggerty*, 45 ECAB 383 (1994).

<sup>7</sup> *Id.*; *Linda Holbrook*, 38 ECAB 229 (1986).