

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DONNA J. SEERMAN and DEPARTMENT OF LABOR, PENSION  
& WELFARE BENEFIT ADMINISTRATION, Chicago, Ill.

*Docket No. 96-1700; Submitted on the Record;  
Issued May 7, 1998*

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DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

The issue is whether appellant has met her burden of proof to establish that her migraine headaches are causally related to her accepted employment injury of February 15, 1994.

On February 17, 1994 appellant, then a 30-year-old senior investigator, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that she sustained a possible fracture of right ribs and traumatic injury of soft tissue to right side of back, when she slipped on ice and fell on February 15, 1994. The claim was accepted for right rib contusion.

On August 8, 1995 appellant filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that her migraine headaches were a result of her February 15, 1994 slip and fall.

In a report dated May 22, 1995, Dr. Glen G. Glista, a Board-certified neurologist, noted that on examination appellant had a normal neurological examination.

Dr. K.S. Vedantham, a Board-certified radiologist and nuclear medicine specialist, interpreted a June 22, 1995 magnetic resonance imaging test, as showing normal ventricular system and that the test was normal.

In a report dated June 22, 1995, Dr. Glista opined that appellant's headaches sound vascular in nature and he was "sure they are complicated by the pregnancy and the hormones thereof."

In a report dated August 9, 1995, Michael Fuys, a chiropractor, diagnosed headache migraine, cervical subluxation and cervical myofascites. Dr. Fuys opined that appellant's migraine headaches and neck tightness "are consistent with and suggestive of an injury such as described" by appellant. Dr. Fuys made the diagnosis of cervical subluxation without an accompanying x-ray reading due to appellant's pregnancy.

In a letter dated July 18, 1995, the Office of Workers' Compensation Programs advised appellant that additional medical evidence was required for her recurrence claim.

In a note dated October 17, 1995, Dr. Manvinder Singh, a Board-certified internist, wrote:

“This is to confirm that patient’s headaches seems to be related to the accident she suffered on February 15, 1994.”

In an x-ray interpretation dated December 15, 1995, Dr. Fuys diagnosed multiple cervical subluxations at C2-4 rotation, C3-7 flexion.

On January 2, 1996 the Office medical adviser opined that migraine headaches are vascular in origin and thus unrelated to appellant’s accepted February 15, 1994 employment injury. The Office medical adviser explained that the fact that the employee had an extensive workup to evaluate her migraine headaches was primarily to look for space occupying lesions within the central nervous system. The Office medical adviser also opined that the subluxation was a tentative diagnosis and not confirmed by x-ray reading due to her pregnancy.

By decision dated February 14, 1996, the Office found the evidence of record insufficient to support that appellant’s migraine headaches and subluxation of the cervical spine were causally related to her accepted February 15, 1994 employment injury.

The Board finds that the weight of the medical evidence does not establish that appellant’s migraine headaches are causally related to her accepted February 15, 1994 employment injury.

An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which she claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disability is causally related to the employment injury and supports that conclusion with sound medical reasoning.<sup>1</sup>

In the instant case, appellant has submitted an opinion from Dr. Singh who wrote, in a note dated October 17, 1995, that appellant’s migraine headaches “seem to be related” to her accepted employment injury. Dr. Singh’s opinion that appellant’s migraine headaches are due to her accepted employment injury of February 15, 1994, is equivocal and speculative. Furthermore, this report is not rationalized because it did not provide any explanation or rationale in support of his opinion on causal relationship. Such a report is insufficient to meet appellant’s burden of proof.<sup>2</sup>

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<sup>1</sup> *Dennis J. Lasanen*, 43 ECAB 549 (1992).

<sup>2</sup> *Debra S. King*, 44 ECAB 203 (1992); *Salvatore Dante Roscello*, 31 ECAB 247 (1979).

Appellant also submitted two reports from Dr. Fuy, a chiropractor dated August 9 and December 15, 1995. Pursuant to section 8101(2) of the Federal Employees' Compensation Act, "[t]he 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>3</sup> Inasmuch as Dr. Fuy cannot be considered a physician, with the meaning of the Act since his August 9, 1995 report, does not interpret x-rays as demonstrating a subluxation of appellant's spine, his report does not constitute competent medical evidence in support of appellant's claim.<sup>4</sup> Moreover, Dr. Fuy cannot express an opinion beyond the scope of what a chiropractor may diagnose under the Act.<sup>5</sup> Thus, Dr. Fuy's opinion that appellant's migraine headaches were causally related to her February 15, 1994 employment injury is of diminished probative value.

In light of the negative medical reports and the opinion of the Office medical adviser, as well of Dr. Glista, who treated appellant, and the absence of rationale in the reports of Dr. Singh, the Board finds that the weight of the medical evidence does not establish that appellant's migraine headaches are causally related to her accepted February 15, 1995 employment injury.

The decision of the Office of Workers' Compensation dated February 14, 1996 is affirmed.

Dated, Washington, D.C.  
May 7, 1998

George E. Rivers  
Member

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member

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<sup>3</sup> 5 U.S.C. § 8101(2).

<sup>4</sup> *Linda L. Mendenhall*, 41 ECAB 532, 537 (1990).

<sup>5</sup> *See Robert F. Hamilton*, 41 ECAB 431, 436 (1990).