

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ANA R. VARGAS and DEPARTMENT OF HEALTH & HUMAN SERVICES,  
SOCIAL SECURITY ADMINISTRATION, San Francisco, Calif.

*Docket No. 97-1224; Submitted on the Record;  
Issued March 5, 1999*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issue is whether appellant has established that she sustained an injury on May 5, 1994 in the performance of duty, causally related to factors of her federal employment.

On May 9, 1994 appellant, then a 44-year-old claims representative, filed a claim alleging that on May 5, 1994 she injured her back with pain radiating to her neck, shoulders, arms and wrists, when she was required to lift heavy folders of claims and medical files.

The employing establishment issued appellant a Form CA-16 authorizing Dr. Karl R. Harer, a chiropractor, to provide up to 60 days of care for appellant's back. Dr. Harer completed the CA-16 on May 16, 1994 noting his findings as "restricted cervical and lumbar ranges of motion. Localized tenderness and spasms. X-rays were deferred." He diagnosed "cervical strain/sprain, lumbar strain/sprain, possible lumbar neuralgia, carpal tunnel syndrome bilaterally." Dr. Harer anticipated that appellant could return to light work on May 26, 1994.

In a June 10, 1994 progress report, Dr. Harer noted that examination that date revealed near full ranges of cervical and dorsolumbar spinal motion with tenderness to palpation and spasming in the paracervical and paralumbar musculature. He diagnosed "cervical sprain/strain, resolving, lumbosacral sprain/strain, resolving" and opined that appellant was released from total disability pertaining to her neck and lower back on May 26, 1994.

By progress report dated September 20, 1994, Dr. Harer diagnosed "lumbar subluxation due to strain/sprain insult, cervical subluxation due to strain/sprain insult, of mild to moderate nature" and noted that cervical and dorsolumbar spinal ranges of motion were near full, with palpation demonstrating tenderness and paraspinal muscular spasms. He opined that with regard to appellant's back and neck she should be able to return to work.

By letter dated October 17, 1994, the Office advised Dr. Harer 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. It advised that the medical evidence submitted did not establish the existence of a spinal subluxation, and that the 60-day medical treatment authorization issued by the employing establishment only covered services from May 9 through July 7, 1994. The Office advised that if x-rays were taken following the injury which indicated that a subluxation had occurred, he should submit a copy of the x-ray report promptly.

By report dated November 1, 1994, Dr. Harer noted that appellant underwent x-rays of both her cervical and lumbar spines which demonstrated retrolisthesis and subluxation of L4 on L5 and spondylosis of C4-5 and C5-6 with subluxation of C3 on C4.

By decision dated December 6, 1994, the Office rejected appellant's claim finding that the fact of injury had not been established. The Office found that appellant claimed injury on May 5, 1995, that a subluxation was not diagnosed by her treating chiropractor until September 14, 1994, four months and eight days after her alleged injury, but that x-rays diagnosing the subluxations were not taken until after the Office's October 17, 1994 letter advising Dr. Harer that subluxations as demonstrated by x-ray to exist must be diagnosed for his services to be considered for reimbursement. It found that the x-rays were not taken within a reasonable time following the injury had no value.

By letter dated December 23, 1994, appellant requested an oral hearing on the denial of her claim.

By letter dated October 9, 1995, Dr. Harer stated that appellant was first examined on May 9, 1994. He noted that at that time she had "injuries both to her neck and to her lower back." Dr. Harer stated that the "subjective and objective findings were consistent with the diagnosis of cervical strain/sprain with myospasms, lumbar strain/sprain with myospasms and possible lumbar neuralgia. He stated that diagnosis and treatment of these injuries were well within the scope of chiropractic and that the diagnosis was able to be made without x-rays. Dr. Harer noted that when x-rays were taken on October 21, 1994 and compared to x-rays taken on January 18, 1993, they revealed significant subluxations at T12, L1, L2 and at L5 which were not present on the January 18, 1993 x-rays. He explained that prior to the "accident in question" appellant did not have any back or neck complaints. Dr. Harer also explained that any strain/sprain of the spine will result in a subluxation of some degree. He explained that the reason x-rays were not promptly taken was because the "original diagnosis of strain/sprain was made and accepted as a work[ers'] comp[ensation] claim," that since the employing establishment referred appellant to him, every indication was given that this was an accepted claim and was fully reimbursable without limitations pertaining to x-rays, that he was not aware that federal laws were different from state laws and that in California appellant's diagnosis would be fully reimbursable, that he was not notified for five months that treatment was only authorized for 60 days without x-rays, and that the claim should be accepted with later substantiation by x-ray.

A hearing was held on April 29, 1996 at which appellant's representative argued her case. The representative argued that another reason Dr. Harer did not take x-rays was that appellant was off work for her carpal tunnel problems and he was not anxious to run up her bill.

By decision dated November 15, 1996, the hearing representative affirmed the December 6, 1994 decision, finding that the Office properly found that appellant failed to submit medical evidence sufficient to establish that employment on May 5, 1994 caused a personal injury. The hearing representative, however, found that fact of injury was established by the submission of Dr. Harer's October 9, 1995 report, but that causal relationship was not established as, although Dr. Harer supported causal relationship, his opinion on causal relation was of diminished probative value, as the evidence establishing fact of injury was obtained more than five months after the fact.

The Board finds that appellant has failed to establish that she sustained injury on May 5, 1994 in the performance of duty, causally related to factors of her federal employment.

An award of compensation may not be based on surmise, conjecture, speculation or appellant's belief of causal relationship.<sup>1</sup> A person who claims benefits under the Federal Employees' Compensation Act<sup>2</sup> has the burden of establishing the essential elements of his or her claim.<sup>3</sup> Appellant must establish that she sustained an injury in the performance of duty and that her disability resulted from such injury.<sup>4</sup> As part of this burden, a claimant must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.<sup>5</sup> The mere manifestation of a condition during a period of employment does not raise an inference of causal relationship between the condition and the employment.<sup>6</sup> Neither the fact that the condition became apparent during a period of employment nor appellant's belief that the employment caused or aggravated her condition is sufficient to establish causal relationship.<sup>7</sup>

In the present case, appellant did not provide such rationalized medical opinion evidence.

In *Linda L. Mendenhall*,<sup>8</sup> the Board stated that the greater the delay in objective testing, the greater the likelihood that an event not implicated by the employee has worsened the injury claimed or has caused the condition for which the employee seeks compensation. When the delay becomes so significant that it calls into question the validity of an affirmative opinion based at least in part on that testing, such delay diminishes the probative value of the opinion offered. Testing conducted a substantial period after the date of the alleged injury may well document the injury claimed, however, to discharge an employee's burden of proof the physician

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<sup>1</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979); *Miriam L. Jackson Gholikely*, 5 ECAB 537, 538-39 (1953).

<sup>2</sup> 5 U.S.C. §§ 8101-8193 (1974).

<sup>3</sup> *Nathaniel Milton*, 37 ECAB 712, 722 (1986); *Paul D. Weiss*, 36 ECAB 720, 721 (1985).

<sup>4</sup> *Daniel R. Hickman*, 34 ECAB 1220, 1223 (1983).

<sup>5</sup> *Mary J. Briggs*, 37 ECAB 578, 581 (1986); *Joseph T. Gulla*, 36 ECAB 516, 519 (1985).

<sup>6</sup> *Edward E. Olson*, 35 ECAB 1099, 1103 (1984).

<sup>7</sup> *Bruce E. Martin*, 35 ECAB 1090, 1093 (1984); *Dorothy P. Goad*, 5 ECAB 192, 193 (1952).

<sup>8</sup> See *supra* note 7.

must provide sufficient medical rationale to support the affirmative opinion offered.<sup>9</sup> The longer the period of time between the alleged incident and the objective diagnostic testing, the greater the rationale of the medical evidence supporting causal relation must be. Such probative medical rationale is absent in this case. In the instant case, Dr. Harer, in his November 1, 1994 report, offered no medical rationale for causation whatsoever and offered no affirmative medical opinion supporting an employment relationship; he merely reported the existence of subluxations. This is insufficient to give it any probative value on that issue. In his October 9, 1995 report, he again reports the existence of subluxations. Dr. Harer also affirmatively supports causal relation with a May 1994 employment incident, but provides no medical rationale to support that causal relationship, beyond stating that prior to the work incident appellant did not have any neck or back problems or complaints. He noted that 1993 spinal x-rays showed no subluxations but those in 1995 did, and concluded, therefore, the 1995 work incident must have caused them. The Board notes that an opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury is insufficient, without supporting rationale, to establish causal relation.<sup>10</sup> Dr. Harer further states that strain/sprains, which he initially diagnosed following the alleged injury, will result in subluxations of one degree or another, but he offers no medical explanation or rationale to support this pathophysiological hypothesis, nor does he explain how an initially diagnosed cervical strain/sprain and lumbar strain/sprain can result in a thoracic (T12) subluxation. Neither of these medical explanations offered are sufficient to support causal relationship between a May 5, 1994 incident and subluxations at either C3-4 and L4-5 or at T12, L1, L2 and L5.

As appellant has failed to submit probative medical evidence with complete and acceptable medical rationale causally relating her diagnosed subluxations to incidents of her employment, she has failed to establish that she sustained injury, causally related to factors of her federal employment.

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<sup>9</sup> *Id.*; see also *Steven R. Piper*, 39 ECAB 312 (1987); *Ronald K. White*, 37 ECAB 176 (1985); *Harold Hendrix*, 1 ECAB 54 (1947).

<sup>10</sup> *Kimper Lee*, 45 ECAB 565 (1994); *Thomas D. Petrylak*, 39 ECAB 276 (1987).

Accordingly, the decision of the Office of Workers' Compensation Programs dated November 15, 1996 is hereby affirmed.

Dated, Washington, D.C.  
March 5, 1999

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member