

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOSEPH E. TAYLOR and DEPARTMENT OF JUSTICE,  
IMMIGRATION & NATURALIZATION, Dallas, TX

*Docket No. 98-506; Submitted on the Record;  
Issued November 19, 1999*

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DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof to establish that he sustained an injury to his neck and lower back in the performance of duty on July 31, 1996.

On August 2, 1996 appellant, then a 41-year-old special agent, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that on July 31, 1996 he sustained injuries to his neck and lower back as a result of a work-related automobile accident.<sup>1</sup> The record reveals that appellant stopped work on August 1, 1996 at 4:00 p.m. and returned to work the following date at 8:00 a.m.

In response to the Office of Workers' Compensation Programs' September 24, 1996 request for further information appellant submitted itemized medical bills from the Byroad Medical Center, which noted charges for, *inter alia*, x-rays, electrical stimulation, traction "colpaks," and manipulations.

By decision dated October 30, 1996, the Office denied appellant's claim on the grounds that he did not establish fact of incident, *i.e.*, that an incident occurred as alleged, but insufficient to establish that an injury was sustained, as alleged.

On July 2, 1997 appellant requested reconsideration of the Office's decision and enclosed additional evidence. This included appellant's response to the Office's request for information regarding a possible subrogation claim (Form CA-1045), copies of medical bills from First Choice Family Health Associates, a copy of the motor vehicle accident report, the Patient Personal/Confidential Data Report completed by appellant (Form 09/B) and pictures of the wrecked vehicle.

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<sup>1</sup> Appellant contends that while performing his official duties and traveling in an official car, a civilian vehicle ran a red light and struck the car in which he was riding.

Also filed was an initial medical report by Dr. W. Blake Bowler dated August 1996, which noted that appellant was in an automobile accident on July 31, 1996 when the car in which he was riding was broadsided on the passenger side and spun three times. Dr. Bowler noted that appellant was “pulled out [of the vehicle] by rescue team.” He noted that appellant was complaining of pain in various areas, including the neck, low back and right shoulder, stating that appellant “c/o pain [complained of] post reck [sic] and low back and right shoulder in seat belt area.” Dr. Bowler also noted that in the areas where appellant complained of pain, there were “visible contusions.” In addition, he limited appellant to light duties for one to two weeks. A bill was also submitted with this report, in which the diagnosis of “strain/sprain, joint, ligament” is circled.

Also enclosed were clinic notes for dates of service between August 24 to November 12, 1996 of Dr. Clark C. Byroad, a chiropractor with the Byroad Chiropractic Center. The August 27, 1996 office notes indicate that appellant was examined radiographically to rule out osseous pathology to determine subluxation level or rule out gross dislocation or fracture. On August 29, 1996 Dr. Byroad reported that he administered chiropractic manipulative procedure to correct spinal misalignment and to reduce subluxations and vertebral and osseous disrelationships. This treatment continued throughout appellant’s visits. He noted, “Although these injuries were caused by an automobile accident, [appellant] was driving a government car and was ‘on-the-clock.’” In addition, medical bills were submitted from Byroad Chiropractic Center, which included a diagnosis of hyperextension -- flexion injury, lumbar neuritis and cervical segmental dysfunction.<sup>2</sup> The bill also included charges for x-rays of the cervical and lumbar spines taken on August 27, 1996.

By decision dated September 17, 1997, the Office modified the previous order, finding that the evidence submitted in support of the request for reconsideration was sufficient to establish fact of injury, but insufficient to establish causal relationship.

The Board finds that appellant met his burden of establishing that he sustained an injury in the performance of his duty on July 31, 1996.

An employee seeking benefits under the Federal Employees’ Compensation Act has the burden of establishing 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 the Act, that the claim was filed within the applicable time limitation of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition, for which compensation is claimed are causally related to the employment injury.<sup>3</sup>

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<sup>2</sup> The Board notes that subsequent to the Office’s September 17, 1997 decision, the Office received additional medical evidence. However, the Board cannot consider evidence was not before the Office at the time of the final decision. The Board further notes that with regard to the reports of Dr. Byroad that were before the Office at the time the September 17, 1997 decision was issued, these reports are of no probative value because he is not a physician under the Act since he did not diagnose subluxation as demonstrated by x-ray to exist; see *Cheryl L. Veale*, 47 ECAB 607 (1996); *Kathryn Haggerty*, 45 ECAB 383 (1994); see also 5 U.S.C. § 8101(2), § 8103.

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

Causal relation is a medical question that generally can be resolved only through medical evidence.<sup>4</sup> In order to establish causal relationship, a physician's opinion must be based on a complete factual and medical background and must be supported by medical rationale that establishes that the diagnosed condition resulted from the specific employment activities.<sup>5</sup> However, fact of injury is generally easily established in a situation where not only is there no dispute that the employment incident occurred in the performance of duty as alleged, but the employee's injury is readily apparent, *i.e.*, amputation, laceration, abrasion, bruise, swelling, etc. Under these circumstances, the Office may determine that minimal evidence is required to establish fact of injury.<sup>6</sup>

In the instant case, there is no dispute that the motor vehicle accident occurred on July 31, 1996 as alleged. Therefore, the question currently under consideration is whether this motor vehicle accident caused appellant's injuries. Appellant saw Dr. Bowler on August 1, 1996 just one day after the accident. Dr. Bowler's notes clearly indicate the facts of the incident. *i.e.*, that on July 31, 1996 the car was broadsided on the passenger side, that it spun three times, that appellant was wearing a heavy seatbelt and that he was "pulled out [of the vehicle] by rescue team." He then noted that appellant complained of pain in neck, low back and right shoulder in the area that the seatbelt restrained him. Dr. Bowler noted tenderness over the various areas where appellant complained of pain and he further noted that there are "visible contusions" on appellant. He limited appellant to light duties for one to two weeks. In addition, on the medical bill for the services rendered, he entered his diagnosis by circling "strain/sprain, joint, ligament," and listing the injury as "workers' comp[ensation]."

As appellant saw Dr. Bowler contemporaneously with the automobile accident, one day after and as he, after discussing the accident lists various medical problems that were consistent with the statements of appellant, this medical evidence, in combination with appellant's statements, is sufficient to establish that the employment incident caused a personal injury. This case is remanded to enable the Office to determine the nature and extent of any resulting disability and whether appellant is entitled to reimbursement of medical expenses incurred resulting from the injury. The case is remanded to enable the Office to determine the nature and extent of any resulting disability and whether appellant is entitled to reimbursement of medical expenses incurred resulting from the injury.

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<sup>4</sup> *Id.*

<sup>5</sup> *Charles E. Burke*, 47 ECAB 185, 189-90 (1995).

<sup>6</sup> *Elaine Pendleton*, *supra* note 3 at 1151 (1989); *see generally* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810(6)(c)(1), (2) (1996).

The decisions of the Office of Workers' Compensation Programs dated September 17, 1997 are hereby set aside regarding the finding that appellant has failed to establish a causal relationship between the employment-related motor vehicle accident and his injury and the case is remanded for further action consistent with this decision.

Dated, Washington, D.C.  
November 19, 1999

George E. Rivers  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member