

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RENEÉ C. GAUDINEER and DEPARTMENT OF VETERANS AFFAIRS,
MEDICAL CENTER, West Palm Beach, FL

*Docket No. 00-2266; Submitted on the Record;
Issued May 24, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant sustained an injury while in the performance of duty on April 11, 2000.

On April 26, 2000 appellant, then a 34-year-old medical clerk, filed a traumatic injury claim alleging that she sustained a bump/abrasion on her forehead, neck, back and headaches due to an automobile accident on April 11, 2000.

In a May 2, 2000 report, Dr. Mark D. Figler, a chiropractor, diagnosed post-traumatic cervical sprain and post-traumatic lumbar sprain strain due to her April 11, 2000 automobile accident and noted his treatment schedule for the next four weeks.

In a letter dated May 23, 2000, the Office of Workers' Compensation Programs advised appellant the information was insufficient to support her claim and advised her as to when a chiropractor can be considered a physician pursuant to 5 U.S.C. § 8101(2).

The Office found that, while appellant experienced the claimed employment incident on April 11, 2000, she failed to establish that a medical condition had been diagnosed in connection with the April 11, 2000 incident. The Office further found that the evidence provided by appellant's chiropractor was insufficient to establish that she sustained an injury due to the incident of April 11, 2000.

The Board finds that appellant has not established that she sustained an injury due to her accepted April 11, 2000 employment injury.

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 that must be considered in

conjunction with one another.¹ The first component to be established is that the employee actually experienced the employment incident that is alleged to have occurred.² The second component is whether the employment incident caused a personal injury.³ This latter component generally can be established only by medical evidence.⁴ In the instant case, the Office denied appellant's claim because he failed to establish that the accepted employment incident of April 11, 2000 caused a personal injury.

Appellant has not submitted sufficient medical evidence to establish that she incurred an employment-related injury. The only evidence submitted by appellant were the reports of Dr. Figler, a chiropractor. The Board has held that a medical opinion, in general, can only be given by a qualified physician.⁵ Pursuant to sections 8101(2) and (3) of the Act,⁶ the Board has recognized chiropractors as physicians only to the extent of diagnosing spinal subluxations by x-ray according to the Office's definition⁷ and treating such subluxations by manual manipulation. Consequently, because Dr. Figler's opinion is not supported by x-ray evidence of a diagnosed spinal subluxation, his opinion does not constitute valid medical evidence and has no probative medical value.⁸ Appellant, therefore, failed to meet her burden of proof in establishing that she sustained an injury in the performance of duty on April 11, 2000.

¹ *Caroline Thomas*, 51 ECAB ____ (Docket No. 98-2353, issued April 6, 2000).

² *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Leon Thomas*, 52 ECAB ____ (Docket No. 00-671, issued January 4, 2001).

⁴ *Ernest St. Pierre*, 51 ECAB ____ (Docket No. 99-467, issued August 14, 2000); *Elaine Pendleton*, *supra* note 2.

⁵ *George E. Williams*, 44 ECAB 530 (1993).

⁶ 5 U.S.C. §§ 8101(2) and (3).

⁷ 20 C.F.R. § 10.400(e); *see also Linda Thompson*, 51 ECAB ____ (Docket No. 99-1164, issued September 26, 2000).

⁸ *See George E. Williams*, *supra* note 5.

The decision of the Office of Workers' Compensation Programs dated June 19, 2000 is affirmed.

Dated, Washington, DC
May 24, 2001

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member