

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of GERALD L. ADKINS and U.S. POSTAL SERVICE,  
POST OFFICE, Portland, OR

*Docket No. 02-705; Submitted on the Record;  
Issued August 1, 2002*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether appellant established that he sustained a left hip injury causally related to factors of his federal employment.

The Board has duly reviewed the case record in the present appeal and finds that appellant has not established that he sustained an employment-related injury.

On January 12, 2001 appellant, then a 52-year-old truck driver, filed a traumatic injury claim, alleging overwork over an extended period caused left hip bursitis. In support of his claim, he submitted an unsigned report dated January 12, 2001 in which Dr. Jackson Smood, who practices emergency medicine, diagnosed bursitis. Thomas R. Harbin, Jr., Supervisor, Transportation Operations, at the employing establishment, provided a statement also dated January 12, 2001 in which he advised that appellant reported that he had pulled a muscle over an extended period beginning with the Christmas rush. Appellant attributed the condition to working 55 hours per week.

By letter dated February 6, 2001, the Office of Workers' Compensation Programs informed appellant of the type of evidence needed to support his claim. In response, appellant submitted a statement dated February 23, 2001 in which he advised that he began experiencing hip problems on December 20, 2000 but continued working. He described his work duties and noted that he worked overtime during the Christmas holiday. On January 12, 2001 he was taken to the emergency room due to worsening pain. Finally, he described his treatment by Dr. Bryan Scott, a chiropractor. Appellant also submitted a January 12, 2001 report of an x-ray of the pelvis and left hip and unsigned treatment notes from Dr. Scott.

In a decision dated March 22, 2001, the Office denied appellant's claim finding that, while he established the claimed employment factor, he did not provide supportive medical

evidence. The Office further advised that appellant's treatment by Dr. Scott was not covered under the Federal Employees' Compensation Act.<sup>1</sup> The instant appeal follows.

An employee seeking benefits under the Act<sup>2</sup> has the burden of establishing the essential elements of his or her claim<sup>3</sup> including the fact that the individual is an "employee of the United States" within the meaning of the Act,<sup>4</sup> that the claim was timely filed within the applicable time limitation period of the Act,<sup>5</sup> 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>6</sup> These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>7</sup> However, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong and persuasive evidence.<sup>8</sup>

Causal relationship is a medical issue,<sup>9</sup> and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>10</sup> Moreover, neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>11</sup> In assessing the probative value of chiropractic evidence, the initial question is whether the chiropractor is considered a physician under section

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<sup>1</sup> From the tenor of the decision, it would appear that the Office properly adjudicated the claim as an occupational disease rather than a traumatic injury.

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> See *Daniel R. Hickman*, 34 ECAB 1220 (1983).

<sup>4</sup> See *James A. Lynch*, 32 ECAB 216 (1980); see also 5 U.S.C. § 8101(1).

<sup>5</sup> 5 U.S.C. § 8122.

<sup>6</sup> See *Melinda C. Epperly*, 45 ECAB 196 (1993).

<sup>7</sup> See *Delores C. Ellyett*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>8</sup> See *Robert A. Gregory*, 40 ECAB 478 (1989).

<sup>9</sup> *Mary J. Briggs*, 37 ECAB 578 (1986).

<sup>10</sup> *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, *supra* note 7.

<sup>11</sup> *Minnie L. Bryson*, 44 ECAB 713 (1993); *Froilan Negron Marrero*, 33 ECAB 796 (1982).

8101(2) of the Act.<sup>12</sup> A chiropractor cannot be considered a physician under the Act unless it is established that there is a subluxation as demonstrated by x-ray to exist.<sup>13</sup>

The medical evidence in the instant case includes a January 12, 2001 x-ray of the pelvis and left hip that was reported as nearly normal with minor arthritic changes. In a January 12, 2001 report, Dr. Smood diagnosed bursitis, provided limitations to appellant's physical activity and referred him to occupational medicine. He indicated that physical therapy was not prescribed. Appellant also submitted unsigned treatment notes from Dr. Scott, a chiropractor, dated February 16 and 23 and March 3 and 9, 2001.

The Board finds that appellant did not establish that he sustained an employment-related injury as the record contains no rationalized medical evidence that relates his hip condition to employment factors. The record in the instant case does not contain a diagnosis of subluxation by x-ray. Therefore, Dr. Scott is not considered a physician under the Act and his reports are of no probative value.<sup>14</sup> Dr. Smood did not provide an opinion regarding the cause of appellant's condition. As appellant did not provide the necessary medical evidence to establish that employment factors caused his hip condition, the Office properly denied his claim.<sup>15</sup>

The decision of the Office of Workers' Compensation Programs dated March 22, 2001 is hereby affirmed.

Dated, Washington, DC  
August 1, 2002

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

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<sup>12</sup> 5 U.S.C. § 8101(2).

<sup>13</sup> *Thomas R. Horsfall*, 48 ECAB 180 (1996).

<sup>14</sup> *Id.*

<sup>15</sup> The Board notes that appellant submitted additional medical evidence to the Office subsequent to the March 22, 2001 decision and with his appeal to the Board. The Board cannot consider this evidence, however, as its review of the case is limited to the evidence of record which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).