U. S. DEPARTMENT OF LABOR

# Employees' Compensation Appeals Board

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In the Matter of ALVEDA C. KING-TOOKES and DEPARTMENT OF EDUCATION, OFFICE OF THE SECRETARY'S REGIONAL REPRESENTATIVE, Atlanta, GA

*Docket No. 03-1013; Submitted on the Record;*
*Issued July 28, 2003*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant established that she sustained an injury in the performance of duty on October 4, 2002.

On October 7, 2002 appellant, then a 51-year-old employee of the deputy secretary's regional representative, filed a traumatic injury claim alleging that on October 4, 2002 she was injured when a heavy suitcase and child's car seat fell onto the right side of her body. The incident allegedly occurred at the Atlanta Hartsfield International Airport when appellant was riding in the airport parking shuttle after returning home from a business trip in Orlando, Florida. In support of her claim, appellant submitted a report dated October 5, 2002 from Dr. Bradford J. Pizza, a chiropractor, as well as an incident report.

By letter dated January 2, 2003, the Office of Workers' Compensation Programs informed appellant of the type of evidence needed to support her claim. Additionally, the Office informed appellant that Dr. Pizza's chiropractic report was insufficient to support her claim and asked appellant to submit a comprehensive medical report from a physician. The Office left the record open for 30 days for the submission of such evidence. The record does not indicate that the requested medical evidence was submitted within the allotted time frame.

In a decision dated February 6, 2003, the Office denied appellant's claim finding that, while she established that the employment incident occurred, she did not provide supportive medical evidence establishing that she sustained any injuries due to the incident.

The Board finds that appellant has not established that she sustained an employment-related injury.

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 timely filed within the applicable time limitation period 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. These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[1]

In accordance with the Federal (FECA) Procedure Manual, in order to determine whether an employee actually sustained an injury in the performance of her duty, the Office begins with the analysis of whether "fact of injury" has been established. Generally, "fact of injury" consists of two components which must be considered in conjunction with the other. The first component to be established is that the employee actually experienced the employment incident or exposure which is alleged to have occurred.[2] In order to meet her burden of proof to establish the fact that she sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that she actually experienced the employment injury or exposure at the time, place and in the manner alleged.[3]

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[4] The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.[5] Moreover, neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief of the claimant that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[6]

In this case, it is undisputed that on October 4, 2002 appellant was struck by a heavy suitcase and child's car seat while in the performance of duty. Therefore, the only issue is whether appellant established that she sustained injuries as a result of the employment incident. As noted above, this component generally can be established only by medical evidence.

The medical evidence in the instant case consists solely of an initial report from Dr. Pizza, a chiropractor, dated October 5, 2002. In assessing the probative value of chiropractic evidence, the initial question is whether the chiropractor is considered a physician under section 8101(2) of the Act.[7] A chiropractor cannot be considered a physician under the Act unless it is

[1] *Kathryn A. Tuel-Gillem*, 52 ECAB 451 (2001); *see* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. §§ 10.5(q), 10.5(ee) ("occupational disease" and "traumatic injury" defined).

[2] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

[3] *Leon Thomas*, 52 ECAB 202 (2001).

[4] *Id.*

[5] *Fereidoon Kharabi*, 52 ECAB 291 (2001).

[6] *Ernest St. Pierre*, 51 ECAB 623 (2000).

[7] 5 U.S.C. § 8101(2).

established that there is a subluxation as demonstrated by x-ray to exist.[8] In his October 5, 2002 report, Dr. Pizza stated that physical examination of appellant's cervical spine revealed that the cervical paravertebral musculature, bilaterally, was in spasm and painful to palpation at the trapezius level. Cervical range of motion was within normal limits, and lateral listhesis, a subluxation or segmental dysfunction in which the vertebrae slips laterally due to ligament instability, was observed at the C1 level. Dr. Pizza noted that lateral listhesis is chronic and reoccurrence is possible. Dr. Pizza further observed that appellant's right knee was swollen and contused, and that appellant's lumbar paravertebral musculature, bilaterally, was in spasm and painful to palpation. Dorsolumbar flexion was restricted and elicited a pain reaction at 20 degrees and Thompson's leg check revealed a short leg on the right of one quarter inch.

The Board finds that appellant did not establish that she sustained an employment-related injury as the record contains no rationalized medical evidence containing a diagnosis and relating that diagnosed condition to employment factors. While Dr. Pizza noted that appellant had a subluxation of the cervical spine, there is no indication in the record that this subluxation was demonstrated on x-ray. Therefore, Dr. Pizza is not considered a physician under the Act and his report is of no probative value.[9] As there is no other medical evidence in the record, appellant did not provide the necessary medical evidence to establish that employment factors caused any injuries and the Office properly denied her claim.[10]

The decision of the Office of Workers' Compensation Programs dated February 6, 2003 is hereby affirmed.

Dated, Washington, DC
July 28, 2003

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[8] *Thomas R. Horsfall*, 48 ECAB 180 (1996).

[9] *Id.*

[10] The Board notes that, subsequent to the Office's February 6, 2003 decision, and subsequent to her filing her appeal with the Board, appellant submitted additional medical evidence to the Office and requested reconsideration by the Office. 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). Subsequent to the return of the case file to the Office, it should consider appellant's request for reconsideration and additional evidence and render an appropriate decision.