U. S. DEPARTMENT OF LABOR

# Employees' Compensation Appeals Board

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In the Matter of STEVEN A. SALADINO and DEPARTMENT OF THE NAVY, NAVY SPECIAL PROJECTS OFFICE, Bremerton, WA

*Docket No. 03-2006; Submitted on the Record;*
*Issued October 21, 2003*

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DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON, MICHAEL E. GROOM

The issue is whether appellant sustained an injury in the performance of duty on August 8, 2002.

On August 12, 2002 appellant, then a 47-year-old rigger, filed a Form CA-1 notice of traumatic injury claiming that on August 8, 2002 while he was directing a mobile crane, he got up on a workbench and hit his head on pipes, injuring his neck, left shoulder, left hip and left foot. A witness confirmed that appellant hit his head on a pipe as alleged, knocking his hardhat off. Appellant did not stop work and he first sought medical treatment on August 9, 2002 with Dr. James M. Jones, a chiropractor.

In support of his claim, appellant submitted materials related to the presence or absence of symptoms and to the therapies employed. No medical narrative or radiology report accompanied these charts.

By letter dated November 20, 2002, the Office of Workers' Compensation Programs advised appellant that the evidence submitted was insufficient to establish his claim, and it requested that he submit a comprehensive medical report from his treating physician containing a complete history of injury, findings upon examination and an opinion on causal relation. The Office advised that chiropractors were considered to be physicians under the Federal Employees' Compensation Act only to the extent that their reimbursable services were limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist. Appellant was given 30 days within which to submit the requested medical report.

In response appellant submitted a sheet listing dates of treatment and check marks.

By decision dated January 5, 2003, the Office denied appellant's claim, finding that he had failed to establish fact of injury. The Office accepted that the work incident occurred as alleged but noted that the medical evidence of record failed to establish that an injury resulted from the work incident.

The Board finds that appellant has failed to establish that he sustained an injury in the performance of duty on August 8, 2002,

To establish that a traumatic injury was sustained in the performance of duty it must first be determined whether the "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence to establish that the employment incident caused a personal injury.[1] Appellant failed to meet the second criterion in this case.

The Office accepted that appellant hit his head on August 8, 2002 as alleged, particularly as the incident was witnessed by a coworker. However, appellant has failed to submit rationalized medical evidence that establishes that an injury resulted from that incident.

Appellant submitted materials from his treating chiropractor, which contained only check marks, plus and minus signs and dates. No medical narrative accompanied these graphic sheets and no radiology report demonstrating a subluxation was submitted. Under section 8101(2) of the Act,[2] a "physician" is defined to include 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. There is no radiology report of record to demonstrate the presence of a spinal subluxation, nor a medical narrative report diagnosing a subluxation or its treatment by manual manipulation. The evidence submitted by appellant has no probative value as it is unaccompanied by any explanation or an opinion on causal relation. It has not been established that appellant's chiropractor qualifies as a physician in this case in the absence of x-rays supporting the diagnosis of a spinal subluxation.[3]

Appellant was advised of the deficiencies in his case record and was given 30 days within which to remedy these deficiencies. However, no medical narrative was submitted nor x-rays to establish the presence of a spinal subluxation.

Appellant has failed to submit medical evidence sufficient to establish that an injury occurred from the accepted employment incident.[4]

[1] *Gloria J. McPherson*, 51 ECAB 441 (2000).

[2] 5 U.S.C. § 8101(2).

[3] *See* 20 C.F.R. § 10.311.

[4] Following the issuance of the Office's decision, appellant submitted a narrative medical report from his chiropractor, but the Board is precluded from reviewing it because its jurisdiction is limited to the evidence before the Office at the time of its most recent decision; *see* 20 C.F.R. § 501.2(c).

Accordingly, the decision of the Office of Workers' Compensation Programs dated January 5, 2003 is hereby affirmed.

Dated, Washington, DC
October 21, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member