



## **FACTUAL HISTORY**

On July 24, 2002 appellant, then a 40-year-old mailhandler, filed a traumatic injury claim alleging that on July 19, 2002 she injured her back and right shoulder after lifting trays of mail.<sup>1</sup> She was working in a light-duty capacity at the time of the alleged injury on July 19, 2002.

In form reports dated July 23 and August 5, 2002, Dr. Kevin L. Reiman, a chiropractor, noted that appellant had low back pain with right sciatica and right shoulder pain. He diagnosed myofascitis as a result of the July 19, 2002 employment incident.<sup>2</sup>

By decision dated September 5, 2002, the Office denied appellant's claim on the grounds that the evidence of record did not establish that she sustained an injury causally related to the employment incident on July 19, 2002.

An x-ray report dated August 9, 2001 and signed by Dr. Reiman indicated findings for osseous (bone) and ligamentous (ligament) structures that included vertebral body malalignment at L3-4 and L5 indicative of spinal subluxation, no evidence of hypertrophic arthritic changes, decreased intervertebral spacing at L5-S1, intervertebral foraminal encroachment at L4-5 and L5-S1, jamming of the posterior articular facets at L4-5 and no sign of osteoporosis, fracture or tumors.

In a form report dated July 19, 2002, Dr. Reiman diagnosed a lumbar subluxation as revealed by x-rays, lumbar myofascitis, myospasm and shoulder tenosynovitis and indicated that he had performed spinal adjustments. The record contains similar reports from Dr. Reiman dated through February 6, 2003.<sup>3</sup>

In a July 23, 2002 x-ray report, Dr. Reiman indicated the same findings as in the August 9, 2001 x-ray report, as listed above.

By letter dated July 29, 2002, the Office advised appellant that she needed to submit a rationalized physician's report explaining how her condition was caused or aggravated by the employment incident on July 19, 2002.

Appellant requested an oral hearing that was held on April 29, 2003. She submitted additional evidence.

By decision dated and finalized September 26, 2003, the Office hearing representative affirmed the Office's September 5, 2002 decision on the grounds that the medical evidence did

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<sup>1</sup> Appellant had a previous claim for an injury on May 24, 2001 that was accepted for a lumbar strain/sprain. The employing establishment indicated that a physician who performed a fitness-for-duty examination on July 10, 2002 determined that her May 24, 2001 employment-related back strain had resolved.

<sup>2</sup> Other diagnoses in the reports are illegible.

<sup>3</sup> In support of her claim, appellant also submitted notes from a physical therapist. However, as a physical therapist is not a physician for the purposes of the Federal Employees' Compensation Act, these notes do not constitute probative medical evidence and are insufficient to establish appellant's claim. *Jennifer L. Sharp*, 48 ECAB 209 (1996).

not establish that appellant sustained a back or shoulder condition caused or aggravated by the July 19, 2002 incident.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Act<sup>4</sup> 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 or specific condition for which compensation is claimed are causally related to the employment injury.<sup>5</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be established whether a “fact of injury” has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.<sup>6</sup> 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.<sup>7</sup> An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability or medical condition was related to the employment incident. As the Office did not dispute that the July 19, 2002 employment incident occurred at the time, place and in the manner alleged, the remaining issue is whether the alleged injury was caused by the employment incident.

In order to satisfy his or her burden of proof, an employee must submit a physician’s rationalized medical opinion on the issue of whether the alleged injury was caused by the employment incident.<sup>8</sup>

### **ANALYSIS**

The medical reports from Dr. Reiman include a July 23, 2002 x-ray report listing findings that include, vertebral body misalignment at L3, L4 and L5 indicative of spinal subluxation. However, the findings in this report are the same as those reported in Dr. Reiman’s August 9, 2001 x-ray report, which predated the July 19, 2002 employment incident. Thus, it is not established that the July 19, 2002 employment incident caused a spinal subluxation. In his July 19, 2002 report, Dr. Reiman diagnosed lumbar subluxation and myofascitis, myospasm and shoulder tenosynovitis. He indicated that the back condition was aggravated by the July 19, 2002 employment incident and the right shoulder condition was caused by the incident. However, Dr. Reiman failed to provide sufficient explanation as to how the July 19, 2002

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<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>6</sup> *John D. Carlone*, 41 ECAB 354 (1989).

<sup>7</sup> *Shirley A. Temple*, 48 ECAB 404 (1997).

<sup>8</sup> *Gary L. Fowler*, 45 ECAB 365 (1994).

incident aggravated appellant's spinal subluxation. Such explanation is particularly critical in light of the fact that the x-ray findings in July 2002 are identical to those in August 2001, prior to the alleged injury. The Board notes that the prior injury of May 24, 2001 was accepted for a lumbar strain/sprain and not for a spinal subluxation of the lumbar spine.

With respect to the shoulder condition, the Board notes that section 8101(2) of the Act<sup>9</sup> defines the term, "physician" 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 and subject to regulation by the Secretary [of Labor]." The Board has held that chiropractic opinions are of no probative value on conditions beyond the spine.<sup>10</sup> Therefore, Dr. Reiman's opinion regarding appellant's right shoulder condition is of no probative medical value and is insufficient to establish causal relationship.

On appeal appellant's attorney asserts that evidence submitted at the hearing on April 29, 2003 was ignored. However, he did not indicate the specific evidence that was not considered by the Office. The Board finds the assertion that the Office did not consider all the evidence submitted in support of appellant's claim to be without merit.

### **CONCLUSION**

The Board finds that appellant failed to submit sufficient evidence to establish that she sustained a back or right shoulder condition causally related to the July 19, 2002 employment incident. Therefore, the Office properly denied her claim.

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<sup>9</sup> 5 U.S.C. § 8101(2).

<sup>10</sup> *George E. Williams*, 44 ECAB 530, 533 (1993).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated September 26, 2003 is affirmed.

Issued: April 28, 2004  
Washington, DC

Alec J. Koromilas  
Chairman

Colleen Duffy Kiko  
Member

Michael E. Groom  
Alternate Member