



train or compete in triathalons and that he had progressively worsening “pain in back of neck and upper shoulders.” Appellant did not stop work. The employing establishment indicated that appellant performed his regular employment duties following his injury.

In a note dated March 31, 2003, a physician stated that appellant would need one to two “days off periodically from work due to cervical arthritis.”<sup>1</sup>

In a report dated April 19, 2004, Dr. William Lichter, a chiropractor, related that he treated appellant “as needed for injuries to his cervical and thoracic spine.” Dr. Lichter stated that on April 16, 2004 appellant experienced “an acute exacerbation. He received treatment and was advised to rest, use ice and avoid activity that would require movement of the head, neck and arms.”

In a duty status report dated May 7, 2004, Dr. Lichter opined that appellant could work with restrictions on lifting and reaching above the shoulder.

By letter dated June 9, 2004, the Office informed appellant of the definition of a recurrence of disability and requested additional factual and medical information, including a rationalized report from his attending physician.

Appellant did not submit any additional evidence.

In a decision dated July 14, 2004, the Office denied appellant’s claim on the grounds that the evidence was insufficient to establish that he sustained a recurrence of disability due to his May 5, 2001 employment injury.

### **LEGAL PRECEDENT**

A “recurrence of disability” means an inability to work after an employee has returned to work caused by a spontaneous change in a medical condition, which resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.<sup>2</sup>

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence a causal relationship between his recurrence of disability and his employment injury.<sup>3</sup> This burden includes the necessity of furnishing medical evidence from a physician, who on the basis of a complete and accurate factual and medical history concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.<sup>4</sup>

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<sup>1</sup> The name of the physician is not legible.

<sup>2</sup> 20 C.F.R. § 10.5(x).

<sup>3</sup> *Carmen Gould*, 50 ECAB 504 (1999).

<sup>4</sup> *Alfredo Rodriquez*, 47 ECAB 437 (1996).

Section 8101(2) of the Federal Employees' Compensation Act<sup>5</sup> provides that the term "physician" as used therein, "includes 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."<sup>6</sup> Without diagnosing a subluxation from x-ray, a chiropractor is not a "physician" under the Act and his opinion on causal relationship does not constitute competent medical evidence.<sup>7</sup> Chiropractors constitute "physicians" under the Act only when providing treatment and opinions within the scope of their practice as defined by State law.<sup>8</sup>

### ANALYSIS

In this case, the Office accepted appellant's claim for cervical and thoracic strain. He continued to work his regular employment duties following his employment injury. On May 13, 2004 he filed a recurrence of disability claim on July 15, 2003 due to his May 1, 2001 employment injury. Appellant maintained that his neck and upper shoulder pain was "getting progressively worse" and that he was unable to train for triathalons.

Appellant has not submitted rationalized medical evidence supporting that his condition beginning July 15, 2003 was causally related to his May 1, 2001 employment injury. He submitted a report dated March 31, 2004 from a physician who related that he missed work intermittently due to cervical arthritis. The signature of the physician, however, is not legible and thus does not constitute probative medical evidence as it lacks proper identification.<sup>9</sup>

Appellant further submitted reports from Dr. Lichter, a chiropractor. In a report dated April 19, 2004, Dr. Lichter noted that he treated appellant on April 16, 2004 for an exacerbation of cervical and thoracic spine problems. In a duty status report dated May 7, 2004, Dr. Lichter listed work restrictions. Section 8101(2) of the Act provides that the term "physician" "includes 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."<sup>10</sup> Dr. Lichter did not diagnose a subluxation.<sup>11</sup> In the absence of a diagnosis of subluxation based on x-rays, he is not a "physician" under the Act. Further, a chiropractor

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<sup>5</sup> 5 U.S.C. §§ 8101-8193.

<sup>6</sup> 5 U.S.C. § 8101(2); 20 C.F.R. § 10.311.

<sup>7</sup> *Jay K. Tomokiyo*, 51 ECAB 361 (2000).

<sup>8</sup> *Cheryl L. Veale*, 47 ECAB 607 (1996).

<sup>9</sup> *Merton J. Sills*, 39 ECAB 572 (1988).

<sup>10</sup> 5 U.S.C. § 8101(2).

<sup>11</sup> The Office's implementing federal regulations define subluxation to mean an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae which must be demonstrated on x-ray. *See* 20 C.F.R. § 10.5(bb).

providing an opinion on conditions other than subluxations of the spine, is not considered to be a physician under the Act.<sup>12</sup> His reports, therefore, have no probative value.<sup>13</sup>

As appellant failed to submit rationalized medical evidence establishing that his claimed condition after July 15, 2003 was causally related to his accepted employment injury, the Office properly denied his claim.

**CONCLUSION**

The Board finds that appellant has not established that he sustained a recurrence of disability on July 15, 2003 causally related to his May 1, 2001 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated July 14, 2004 is affirmed.

Issued: April 8, 2005  
Washington, DC

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

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<sup>12</sup> *Jay K. Tomokiyo, supra* note 7.

<sup>13</sup> *Michelle Salazar*, 54 ECAB \_\_\_ (Docket No. 03-623, issued April 11, 2003).