



By letter dated September 28, 2004, the Office advised appellant that the evidence submitted was insufficient to establish her claim. It addressed the factual and medical evidence she needed to submit to establish her claim. Regarding the submission of medical evidence, the Office advised appellant that if she were receiving treatment from a chiropractor, she must either have a related diagnosis by a medical doctor referring her to a chiropractor or a diagnosis of subluxation by x-ray.

The Office received Dr. Fidel's treatment notes covering intermittent dates from June 25 to July 31, 2004. A June 26, 2004 report indicated that appellant sustained lumbar radiculopathy, muscle spasm and subluxation possibly due to a bulging disc.

Appellant provided a description of the June 24, 2004 incident. She denied that she delayed seeking medical attention. She received treatment from Dr. Fidel on the morning of June 25, 2004 after she awoke and was unable to stand up straight due to low back pain. Appellant described her condition between the date of injury and the date she first received medical treatment, as well as a prior nonwork-related lumbar subluxation for which 90-day treatment by Dr. Fidel was wrapping up at the time of the June 24, 2004 incident.

In an October 15, 2004 report, Dr. Fidel indicated that he performed three spinal manipulations to treat lumbar radiculopathy. He noted a muscle spasm caused by segmental joint dysfunction/subluxation secondary to a strain she sustained on June 24, 2004 that possibly caused a bulging disc. Dr. Fidel's treatment notes indicated that appellant's back conditions were evaluated on intermittent dates during the period April 3 to October 8, 2004.

By decision dated November 22, 2004, the Office found the evidence of record sufficient to establish that the June 24, 2004 incident occurred at the time, place and in the manner alleged. However, the medical evidence did not establish that appellant sustained an injury due to the accepted employment incident.

In a letter dated December 6, 2004, appellant requested reconsideration. She submitted Dr. Fidel's undated report which noted that she was initially treated on April 2, 2004 and diagnosed as having lumbar joint dysfunction/subluxation at L3-5 as demonstrated by x-ray. On June 25, 2004 appellant presented with acute lower back pain caused by lifting and bending while moving office's at work on June 23, 2004. Dr. Fidel indicated that this new injury was provoked by the physical stress of bending, lifting and twisting. He reiterated his prior diagnoses of lumbar radiculopathy, muscle spasm and subluxation possibly due to a bulging disc. Dr. Fidel related that, while appellant sustained a new injury, she had previously experienced symptoms in the same area of the spine and that she was examined and underwent x-rays less than three months prior to June 2004. He opined that additional x-rays were not necessary because recent films on file showed a spinal subluxation. Dr. Fidel stated that any imaging at that point would involve a magnetic resonance imaging (MRI) scan and not another lumbar x-ray. He concluded that appellant improved and returned to an asymptomatic state within a two-month period. She returned to work and had no permanent impairment related to the injury.

By decision dated January 6, 2005, the Office denied modification of its November 22, 2004 decision. It found that Dr. Fidel's undated report was sufficient to establish that he was a physician under the Federal Employees' Compensation Act as he diagnosed subluxation by

x-ray. The Office, however, found that Dr. Fidel's opinion that the diagnosed condition was caused by the accepted June 24, 2004 employment incident was insufficient to establish appellant's claim. It was not based on current x-rays and failed to explain how a subluxation diagnosed on x-rays three months prior to the June 24, 2004 employment incident was causally related to such incident.

In a letter dated February 21, 2005, appellant requested reconsideration. In a February 7, 2005 letter, Dr. Fidel explained why new x-rays of the lumbar spine were not necessary. He reiterated that appellant had previously sustained a subluxation as demonstrated by an April 24, 2004 x-ray and that the new incident produced the same pattern of symptoms which had previously resolved with chiropractic treatment. Dr. Fidel noted the risk of radiation exposure to patients and stated that films of the lumbar spine expose the reproductive organs and increased risks of cancer of the ovaries, uterus and colon. He indicated that routine treatment of lower back pain similar to appellant's without taking x-rays was an acceptable course of care by chiropractors, noting that he chose not to retake the same study within 10 weeks.

Appellant submitted a narrative statement and emails from employing establishment workers' compensation specialists regarding her request for approval of chiropractic treatment and the need to have a chiropractor diagnose subluxation by x-ray to receive reimbursement for chiropractic services.

In a September 6, 2005 decision, the Office denied modification of the January 6, 2005 decision. It found that the evidence submitted by appellant was insufficient to establish that she sustained an injury causally related to the June 24, 2004 employment incident. The Office found that Dr. Fidel did not take x-rays in conjunction with the treatment and diagnosis of a June 24, 2004 work injury. His opinion on causal relation was based on x-rays regarding a nonwork-related injury which occurred prior to the June 24, 2004 employment incident.

By letter dated November 17, 2005, appellant requested reconsideration.

In a February 7, 2006 decision, the Office denied modification of its September 6, 2005 decision. The evidence of record failed to establish that appellant sustained an injury due to the June 24, 2004 employment incident.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Act<sup>1</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 filed within applicable time limitation; that an injury was sustained while 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

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

employment injury.<sup>2</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury of an occupational disease.<sup>3</sup>

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident or exposure, which is alleged to have occurred.<sup>4</sup> 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.<sup>5</sup>

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.<sup>6</sup> 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.<sup>7</sup> The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.<sup>8</sup>

Section 8101(2) of the Act<sup>9</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>10</sup> Without a diagnosis of a subluxation from x-ray, a chiropractor is not a physician under the Act and his or her opinion on causal relationship does not constitute competent medical evidence.<sup>11</sup>

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<sup>2</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *See Irene St. John*, 50 ECAB 521 (1999); *Michael I. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 2.

<sup>4</sup> *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

<sup>5</sup> *Linda S. Jackson*, 49 ECAB 486 (1998).

<sup>6</sup> *John J. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined).

<sup>7</sup> *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

<sup>8</sup> *Charles E. Evans*, 48 ECAB 692 (1997).

<sup>9</sup> 5 U.S.C. § 8101(2).

<sup>10</sup> *See* 20 C.F.R. § 10.311.

<sup>11</sup> *Jay K. Tomokiyo*, 51 ECAB 361 (2000).

## ANALYSIS

The record supports that on June 24, 2004, appellant lifted a box weighing 8 to 10 pounds from the floor to a counter while in the performance of duty. The Board finds, however, that the medical evidence of record is insufficient to establish that the accepted incident caused a back injury.

The record contains several treatment notes from appellant's chiropractor, Dr. Fidel. It reflects that appellant sustained a nonemployment-related injury on April 1, 2004, which predated the June 24, 2004 employment incident. As noted above, Dr. Fidel may only be considered a physician to the extent that he treated appellant for a spinal subluxation as demonstrated by x-ray to exist. While the record contains evidence noting a review of April 2004 x-rays and diagnosing a spinal subluxation, his treatment notes and reports are insufficient to establish appellant's claim. He has not provided sufficient rationale to explain how the June 24, 2004 employment incident caused or aggravated a spinal subluxation. Dr. Fidel indicated that appellant sustained lumbar radiculopathy, muscle spasm and subluxation due to a bulging disc but he failed to address whether the diagnosed conditions were caused by the accepted June 24, 2004 employment incident. Thus, the Board finds that this evidence is insufficient to establish appellant's claim.

Dr. Fidel's October 15, 2004 report stated that appellant's lumbar radiculopathy and muscle spasm were caused by segmental joint dysfunction/subluxation secondary to a strain she sustained on June 24, 2004 that possibly caused a bulging disc. In an undated report, he noted his April 2, 2004 diagnosis of lumbar joint dysfunction/subluxation at L3-5 as demonstrated by x-ray. Dr. Fidel stated that appellant sustained a new back injury due to the June 24, 2004 employment incident, provoked by the physical stress of bending, lifting and twisting. He stated that x-rays were not necessary at that time as she had previously experienced symptoms in the same area and x-rays were taken less than three months prior to June 24, 2004. Dr. Fidel stated that any imaging at that point would involve an MRI scan and not another lumbar x-ray. He concluded that appellant improved and returned to an asymptomatic state and within a two-month period she returned to work and had no permanent impairment related to the injury. Dr. Fidel's February 7, 2005 letter reiterated that appellant exhibited the same subluxation pattern as she exhibited in April 2004. He again opined that new x-rays of appellant's lumbar spine were not necessary. Dr. Fidel did not perform x-rays contemporaneous to the June 24, 2004 employment incident. Although he offered some medical rationale in support of his opinion that new x-rays of appellant's lumbar spine were not necessary, he did not adequately explain how a subluxation diagnosed by x-ray on April 2, 2004 caused an injury to appellant's back on June 24, 2004. The Board, therefore, finds that Dr. Fidel's reports and letter are insufficient to establish that appellant sustained a back injury causally related to the June 24, 2004 employment incident.

The Board finds that there is insufficient rationalized medical evidence of record to establish that appellant sustained a back injury in the performance of duty on June 24, 2004. Therefore she failed to meet her burden of proof.

**CONCLUSION**

The Board finds that appellant did not provide the necessary medical evidence to establish that she sustained an injury caused by the June 24, 2004 employment incident.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 7, 2006 and September 6, 2005 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 6, 2006  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board