



By letter dated February 3, 2004, the Office requested that appellant submit medical evidence signed by a physician to support his claim.

In response, appellant submitted several treatment notes and physical therapy progress reports from Dr. Charles Childers, a chiropractor. In a report dated January 23, 2004, he noted appellant's history of lifting his service dog onto a tractor trailer, which caused pain and reported his physical examination results. Dr. Childers diagnosed lumbosacral facet syndrome, thoracolumbar facet syndrome, deep and superficial muscle spasms and myositis. He recommended that minimal radiographic studies be performed, that physical therapy be initiated and a sensory nerve conduction study be performed.

Appellant also answered some of the Office's questions, noting that his dog weighed 85 pounds and that he felt an immediate sharp pain in his back upon lifting the dog.

By letter dated February 3, 2004, the Office advised appellant that no diagnosis of any condition resulting from his alleged January 23, 2004 injury had been provided, no physician's opinion as to how his injury resulted in the conditions diagnosed had been provided and that reports signed by a physician needed to be provided.

By decision dated March 4, 2004, the Office found that, although the incident occurred as alleged, appellant failed to establish an injury resulting therefrom. The Office explained that Dr. Childers did not diagnose a subluxation as demonstrated by x-ray to exist and, therefore, he was not a physician under the Federal Employees' Compensation Act and his reports did not constitute probative medical evidence. The Office found that no medical evidence from a physician diagnosing appellant's condition and explaining causal relationship with his employment was provided.

Appellant requested a review of the written record by an Office hearing representative and he submitted electrodiagnostic and strength testing reports and physical therapy progress notes.

By decision dated August 23, 2004, an Office hearing representative affirmed the March 4, 2004 decision, finding that appellant was made aware that he needed to submit medical evidence from a physician. The Office hearing representative found that he had not submitted probative medical evidence as the only evidence was from Dr. Childers, a chiropractor. The Office found that he was not a physician as defined under the Act, as he only provided diagnoses of lumbosacral facet syndrome, thoracolumbar facet syndrome and deep superficial muscle spasms.

On September 3, 2004 appellant submitted a January 25, 2004 printed form history and examination results sheet, with signature unclear, which had been contemporaneously obtained following the alleged incident, but which left the part addressing x-ray results blank and which contained a diagnosis of left paravertebral thoracic muscular strain.

On January 3, 2005 appellant requested reconsideration and submitted Dr. Childers' revised January 23, 2004 report with the added diagnoses of "Lumbosacral subluxation,

according to x-rays - 839.20, specially levels L4-5, L5-S1, L1-2; amendment to initial history and physical diagnoses 2, 3, 4 and 5 are always 2<sup>nd</sup> subluxation” to the original report diagnoses of “lumbosacral facet syndrome, thoracolumbar facet syndrome, deep and superficial muscle spasms and myositis.”

By decision dated January 25, 2005, the Office denied modification of the August 23, 2004 decision. It found that, although Dr. Childers diagnosed a subluxation, neither the x-rays nor the x-ray report upon which he relied in making this diagnosis was submitted to the case record and that a subluxation had not been included in the initial diagnosis on January 23, 2004. The Office noted that the original January 23, 2004 report was already of record and contained no diagnoses of subluxation. The Office found that Dr. Childers’ two reports contradicted each other and, therefore, neither was dispositive of appellant’s injury-related diagnosis.

### **LEGAL PRECEDENT**

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a “fact of injury” has been established. Fact of injury generally consists of two components which must be considered in conjunction with each other. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place and in the manner alleged.<sup>1</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>2</sup>

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>3</sup>

Office regulations provide that a chiropractor may interpret his own x-rays to the same extent as any other physician.<sup>4</sup> To be given weight, the medical report must state that x-rays support the finding of spinal subluxation.<sup>5</sup> The Office will not necessarily require submittal of the x-ray or a report of the x-ray, but the report must be available for submittal on request.<sup>6</sup>

While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty, neither can such opinion be speculative or equivocal. The opinion must be one of reasonable medical certainty

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<sup>1</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>2</sup> *Id.* For a definition of the term “injury,” see 5 U.S.C. § 8101(5), 20 C.F.R. § 10.5 (ee) (defines traumatic injury).

<sup>3</sup> 5 U.S.C. § 8101(2); see also 20 C.F.R. § 10.311(a) and (b).

<sup>4</sup> 20 C.F.R. § 10.311(c).

<sup>5</sup> *Ronald Q. Pierce*, 53 ECAB 336 (2002).

<sup>6</sup> 20 C.F.R. § 10.311(c).

that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate factual and medical background.<sup>7</sup>

Physical therapist's reports are of no probative value as they are not considered to be physicians under the Act and are not competent to provide probative medical opinions.<sup>8</sup>

### ANALYSIS

The Board finds that Dr. Childers is a physician under the Act because he diagnosed subluxations based on x-rays obtained of the lumbar spine. He meets the criteria under 5 U.S.C. § 8101(3) and 20 C.F.R. § 10.311(b), to be considered as a physician. However, Dr. Childers' reports are insufficient to establish an injury causally related to the January 23, 2004 employment incident.

Dr. Childers initially reported on January 23, 2004 that appellant sustained a back lifting injury on January 23, 2004 and that that incident likely produced lumbosacral facet syndrome, thoracolumbar facet syndrome, deep and superficial muscle spasms and myositis. Dr. Childers, however, did not provide a rationalized opinion on causal relationship between the canine lifting incident and the diagnosed conditions. Although in the amended January 23, 2004 report received by the Office on January 3, 2005, he diagnosed subluxations as demonstrated by x-ray to exist, he provided insufficient medical rationale as to how lifting the dog caused appellant to sustain these spinal subluxations. Therefore, this report is insufficient to establish causal relationship of the subluxation conditions with the lifting incident on January 23, 2004.

The reports submitted from the physical therapist are of no probative value as physical therapists are not physicians as defined under the Act and, therefore, are not competent to render a medical opinion.<sup>9</sup>

As it is appellant's burden of proof to establish his claim of back injury, he must provide sufficiently rationalized medical evidence discussing the causal relationship and explaining how and why the dog lifting incident on January 23, 2004 caused the subsequently-identified back conditions. Therefore, appellant has failed to meet his burden or proof to submit rationalized medical evidence to establish his back injury claim.

### CONCLUSION

Appellant has not established that he sustained a back condition in the performance of duty on January 23, 2004, as alleged.

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<sup>7</sup> See *Thomas A. Faber*, 50 ECAB 566 (1999); *Samuel Senkow*, 50 ECAB 370 (1999); *Judith J. Montage*, 48 ECAB 292 (1997); *Barbara J. Williams*, 40 ECAB 649 (1989).

<sup>8</sup> *Jennifer L. Sharp*, 48 ECAB 209 (1996); *Thomas R. Horsfall*, 48 ECAB 180 (1996); *Barbara J. Williams*, *supra* note 7.

<sup>9</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated January 25, 2005 and August 23, 2004 are affirmed as modified.

Issued: February 14, 2006  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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