



By letter dated June 8, 2005, the Office informed appellant of the evidence needed to support her claim including an explanation as to why she waited until May 4, 2005 to seek medical treatment. It requested that she submit such evidence within 30 days.

In a report dated May 4, 2005, Dr. David D. Draeger, appellant's treating chiropractor, stated that appellant complained of lower back pain and headaches that day. He noted appellant's history of back pain starting when she was a youth. Appellant related that her back had been symptomatic for years and related recent symptoms while exercising at a fitness center.<sup>1</sup> She stated that, while performing a specific exercise, she took a step causing sharp pain along the lower back. Appellant also noted intermittent headaches which she believed were caused by the motor vehicle accident at work. Dr. Draeger diagnosed subluxations in the lumbar, thoracic and cervical spine. He opined that the thoracic subluxation caused appellant's headache. Dr. Draeger also noted taking x-rays that day.

In a medical history form filled out for Dr. Draeger, appellant stated that she had previously seen Dr. Curtis Welnetz, a chiropractor, for low back pain. She exercised five times a week, her headaches were not frequent and prior falls caused her low back pain. Appellant did not check any boxes addressing neck pain.

On May 6, 2005 Dr. Draeger reviewed x-rays and found no evidence of fracture, dislocation or osseous neoplasm. He noted the left S1 to be marked internally and spina bifida occulta at L5. Dr. Draeger noted left rotation from C1 to C4, left lateral flexion from C1 to C3 and C7 to the right, left rotation and mild arthritis at L4 and L5, mild degeneration at L5-S1 and L4-5. He determined that appellant had arthritis and severe left rotation in the thoracic region. Dr. Draeger also related loss of cervical curve and degeneration at C6-7, C5-6, C3-4 and C2-3 to an "old whiplash injury." Other findings were within normal limits. Dr. Draeger began treatment that day, three times a week for the next four weeks. The record includes chiropractic treatment notes from May 9 to June 6, 2005. In a report dated June 17, 2005, Dr. Draeger diagnosed cervical and lumbar subluxation, cervical ligament instability complicated by muscle spasms, S1 subluxation causing lumbago, thoracic subluxation causing headaches and lumbalgia/lumbago of the low back.

On June 27, 2005 appellant indicated that she had no immediate pain after the motor vehicle accident but her neck and abdomen were sore for the following week. She stated that it was only later that her headaches became frequent enough to seek medical attention. Appellant stated that her first examination was on May 4, 2005 with Dr. Draeger for headaches. She noted a previous incident of low back pain when in March 2003 she felt back pain when she bent down. Dr. Welnetz treated her on that occasion. Appellant included the August 23, 2003 accident report. Also submitted was a March 17, 2003 report from Dr. Welnetz noting that he treated appellant for back pain that day which began several days earlier when she reached inside a car. Appellant advised that she had periodic back pain since childhood.

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<sup>1</sup> Appellant stated that she had been exercising at the fitness center for two years.

On July 8, 2005 the Office determined that the incident of August 23, 2003 occurred as alleged but that appellant had not established that she sustained an employment-related medical condition due to the accepted incident.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of proof to establish 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 is causally related to the employment injury.<sup>2</sup> When an employee claims a traumatic injury sustained in the performance of duty, he or she must submit sufficient evidence to establish a specific event, incident or exposure occurring at the time, place and in the manner alleged, and that such event, incident or exposure caused an injury.<sup>3</sup>

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.<sup>4</sup> An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.<sup>5</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.<sup>6</sup>

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<sup>2</sup> *Robert Broome*, 55 ECAB \_\_\_\_ (Docket No. 04-93, issued February 23, 2004); *see also Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *See Paul Foster*, 56 ECAB \_\_\_\_ (Docket No. 04-1943, issued December 21, 2004). *See also Betty J. Smith*, 54 ECAB 174 (2002); *Tracey P. Spillane*, 54 ECAB 608 (2003). 5 U.S.C. § 8101(5). *See* 20 C.F.R. § 10.5(ee).

<sup>4</sup> *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

<sup>5</sup> *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

<sup>6</sup> *John W. Montoya*, 54 ECAB 306 (2003).

## ANALYSIS

The Board finds that appellant has failed to meet her burden of proof in establishing that she sustained a traumatic injury on August 23, 2003. The record establishes that the motor vehicle accident occurred as appellant alleged. However, appellant has not submitted sufficient medical evidence to establish that this incident caused or aggravated a particular medical condition.

Appellant's burden of proof includes submitting rationalized medical evidence establishing that her medical condition on May 22, 2005 was causally related to the August 23, 2003 incident, two years prior to treatment. The evidence consists of reports from Dr. Draeger, a chiropractor, who noted taking x-rays on May 4, 2005 and rendered multiple diagnoses including a loss of cervical curve and degeneration at C6-7, C5-6, C3-4, and C2-3 which he attributed to "old whiplash injury." Dr. Draeger also diagnosed subluxations of the lumbar, thoracic and cervical spine. Under section 8101(2) of the Act, "[t]he 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 of the spine as demonstrated by x-ray to exist and subject to regulation by the Secretary."<sup>7</sup> As Dr. Draeger diagnosed spinal subluxations based on x-rays, he is considered a "physician" as defined under the Act.

However, Dr. Draeger did not provide a rationalized medical opinion addressing the causal relationship between these diagnosed conditions and the accepted incident. He opined that appellant's thoracic subluxation caused her headache which appellant attributed to the employment incident. However, Dr. Draeger did not provide his own opinion on causal relationship between the employment incident and a spinal subluxation. He did not explain how the August 23, 2003 accident caused a spinal subluxation, nor did he explain why appellant would have remained symptomatic over a two-year period due to this incident in view of her history of periodic back symptoms since childhood.

Appellant did not submit any other medical reports that specifically supported and explained why the August 23, 2003 incident caused or aggravated a particular medical condition.

An award of compensation may not be made on the basis of surmise, conjecture or speculation or on appellant's unsupported belief of causal relation.<sup>8</sup>

## CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained an injury in the performance of duty.

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<sup>7</sup> 5 U.S.C. § 8101(2); *Carmen Gould*, 50 ECAB 504 (1999).

<sup>8</sup> *Calvin E. King*, 51 ECAB 394 (2000).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 8, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 8, 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