United States Department of Labor
Employees' Compensation Appeals Board

F.N., Appellant	)	
and	)	**Docket No. 06-1265**
	)	**Issued: September 15, 2006**
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, Duluth, MN, Employer	)	

Appearances:
F.N., pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On April 24, 2006 appellant filed a timely appeal from a March 28, 2006 merit decision of the Office of Workers' Compensation Programs which denied his claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained an employment-related injury. On appeal, he contends that he is entitled to reimbursement for chiropractic expenses.

FACTUAL HISTORY

On November 8, 2005 appellant, then a 42-year-old lead transportation security screener, filed a Form CA-1, traumatic injury claim. He alleged that on that day he sustained a sharp pain to his left lower back while lifting luggage. Appellant did not stop work. In support of his claim, he submitted unsigned treatment notes from Dr. Troy C. Bolen, a chiropractor. In a note dated November 8, 2005, Dr. Bolen reported the history of injury and stated that the L5 vertebral

segment was subluxed posteriorly. He noted examination findings of pain, swelling and decreased range of motion and deferred x-rays. Dr. Bolen diagnosed lumbar strain/sprain, lumbar segmental/somatic dysfunction, lumbago and muscle spasms. Appellant was to return twice weekly for treatment. In notes dated from November 10, 2005 to January 10, 2006, the chiropractor noted slow improvement and reiterated his diagnoses. In a December 22, 2005 report, he opined that lumbar intersegmental dysfunction was synonymous with lumbar subluxation.

By letter dated February 9, 2006, the Office informed appellant of the evidence needed to support his claim. It advised him that it would not reimburse his chiropractic services unless the chiropractor obtained an x-ray of the spine and certified that the x-ray showed that a subluxation existed.

In a February 14, 2006 report, Dr. Bolen advised that appellant had first presented on April 30, 2004 complaining of left lower back symptomatology and repeated a history of luggage handling at work. On that day, he took x-rays which demonstrated mild/moderate osteoarthritis of the bilateral hip joints, mild to moderate degenerative disc disease at T10-11, T11-12 and T12-L1 disc spaces with a mild left low pelvis and an eight millimeter left short leg. Dr. Bolen stated that he also noted subluxations at L5 posteriorly and in the posterior inferior left sacroiliac joint. He advised that appellant responded well to treatment and presented again on November 8, 2005 complaining that he felt a sharp twinge in the left lower back while lifting luggage at work. Dr. Bolen stated that he elected to defer lumbar x-rays at that time because he had done them 18 months previously and appellant had no radicular symptoms. He opined:

> "As a chiropractic physician when [appellant] presents into my office, has adequate range of motion, normal reflex responses in the lower extremities, and has no radicular symptoms[,] I do not feel that it was medically necessary nor ethical to take x-rays at that time. This does not mean that there was not a subluxation present as we can make the correct assumption with the past medical history, the past x-ray findings and the current range of motion and palpatory findings as well."

Appellant submitted treatment notes dated April 30 and May 3, 2004 in which Dr. Bolen noted x-ray findings. In February 7, 2006 reports, Dr. Bolen included an additional diagnosis of subluxation and advised that maximum medical improvement had been reached.

By decision dated March 28, 2006, the Office accepted that the lifting incident occurred but denied the claim. It found that appellant did not submit sufficient medical evidence to establish that his claimed back condition was caused by the November 8, 2005 lifting incident.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[1] 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

[1] 5 U.S.C. §§ 8101-8193.

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 and/or specific condition for which compensation is claimed are causally related to the employment injury. Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.[2]

Office regulations, at 20 C.F.R. § 10.5(ee) define a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents within a single workday or shift.[3] To determine whether an employee sustained a traumatic injury in the performance of duty, the Office must determine whether "fact of injury" is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed. An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.[4]

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.[5] Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician 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 specific employment factors identified by the claimant.[6] 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 causal relationship.[7]

Section 8103(a) of the Act provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances, and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation.[8] Section 8101(2) provides that the term "physician" includes

---

[2] *Gary J. Watling*, 52 ECAB 278 (2001).

[3] 20 C.F.R. § 10.5(ee); *Ellen L. Noble*, 55 ECAB ____ (Docket No. 03-1157, issued May 7, 2004).

[4] *Gary J. Watling, supra* note 2.

[5] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[6] *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

[7] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[8] 5 U.S.C. § 8103; *Robert S. Winchester*, 54 ECAB 191 (2002).

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.[9]

ANALYSIS

The Board finds that appellant did not establish that he sustained an employment-related injury and therefore is not entitled to reimbursement of his chiropractic expenses. It is accepted that appellant's job duties required that he lift luggage. However, he failed to submit competent medical evidence to establish that he sustained an employment-related injury on November 8, 2005. While Dr. Bolen advised that an x-ray taken on April 30, 2004 demonstrated a subluxation at L5 and of the inferior left sacroiliac joint, the claimed November 8, 2005 injury occurred more than 18 months later. The Board finds that, for the purposes of this claim, Dr. Bolen is not a physician as defined by the Act.[10] He did not obtain any x-ray contemporaneous to the November 8, 2005 incident. He did not explain how a subluxation diagnosed by x-ray on April 30, 2004 caused an injury to appellant's back on November 8, 2005. When Dr. Bolen began treating appellant in November 2005, his treatment notes did not include a diagnosis of subluxation until his note of February 7, 2006 when he opined that appellant had reached maximum medical improvement.[11]

In this case, appellant failed to submit a rationalized medical opinion by a physician that his claimed back condition was causally related to the accepted incident. He failed to meet his burden of proof to establish fact of injury.[12] Appellant is not entitled to reimbursement for medical expenses.[13]

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained an employment-related injury.

---

[9] 5 U.S.C. § 8101(2); *Robert S. Winchester, id.*

[10] *Id.*

[11] The Office's implementing federal regulation defines subluxation to mean an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae which must demonstrated on x-ray. 20 C.F.R. § 10.5(bb); *see Mary A. Ceglia*, 55 ECAB ____ (Docket No. 04-113, issued July 22, 2004).

[12] *Leslie C. Moore, supra* note 6.

[13] *Supra* note 8.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 28, 2006 be affirmed.

Issued: September 15, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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