

**United States Department of Labor  
Employees' Compensation Appeals Board**

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L.C., Appellant )

and )

**DEPARTMENT OF DEFENSE, DEFENSE  
FINANCING & ACCOUNTING SERVICE,  
Columbus, OH, Employer** )

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**Docket No. 07-1659  
Issued: February 22, 2008**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On June 6, 2007 appellant filed a timely appeal from a May 3, 2007 merit decision by a hearing representative of the Office of Workers' Compensation Programs that affirmed the denial of her occupational disease claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

**ISSUE**

The issue is whether appellant met her burden of proof in establishing that she developed an occupational disease in the performance of duty.

**FACTUAL HISTORY**

On March 2, 2006 appellant, then a 38-year-old lead accounting technician, filed an occupational disease claim alleging that she developed spinal subluxation in the performance of duty. She first became aware of her condition on February 10, 2006 and related it to her employment on February 20, 2006. Appellant explained that her job required her to sit at her

desk for long periods of time, leaning forward and straining her neck and spine. She stopped work on March 10, 2006 and returned about six months later. The employing establishment controverted appellant's claim. In an October 25, 2005 e-mail notice, appellant's supervisor informed her that she would have new job duties and confirmed that her job entailed keying throughout the day. She recommended that appellant "plan your work to key part of the day then do some other duties on your desk in an attempt to avoid the pain in your wrist and arms."

With her claim, appellant provided an undated report from Dr. Gene S. Harrison, a chiropractor, who diagnosed spinal subluxation at C5-6 as seen on x-ray, which he explained had caused forward head posture, a reversed cervical curve, muscle guarding, hypertonicity of the cervical musculature and nerve interference. In a March 16, 2005 report, Dr. Harrison explained that appellant first had symptoms, including neck pain, in 2004. He noted treating her on July 19, 2004 and that x-rays showed multiple subluxations of appellant's cervical spine. Dr. Harrison opined that appellant's job responsibilities, which included sitting at a desk and looking down at her keyboard while engaged in repetitive stress activities, caused her condition. He also stated that appellant's job interfered with her ability to recover fully from her conditions. In a handwritten report dated May 2005, Dr. Harrison reiterated that appellant's neck posturing at work caused a reversed cervical curve, posterior subluxation of C5 on C6, anterior-superior subluxation and forward head posture, all of which were revealed on x-rays. He explained that her forward head posture caused a posterior subluxation at C5-6, while overcompensation from looking upwards in the forward postural position caused anterior and superior subluxations at C1. Dr. Harrison indicated that appellant's condition had developed over a period of years, explaining, "the longer a person is subject to this postural stress, the easier it is for their soft tissue structures to change by conforming to the altered biomechanics thus giving rise to a chronic condition that is easily exacerbated."

In a June 1, 2006 report, he diagnosed carpal tunnel syndrome, shoulder tendinitis, elbow tendinitis and subluxations at C2 and C5, but noted that appellant had improved since her May 24, 2006 treatment. Dr. Harrison noted examination findings and concluded that appellant's condition was related to her repetitive duties and head position at her job. In a June 22, 2006 report, he obtained updated x-ray findings. Dr. Harrison stated that x-rays showed "complete reversal of the normal lordotic curvature of [appellant's] cervical spine." He also noted moderate subluxations at C5-6 and anterior and superior subluxations at C1. Dr. Harrison stated that the subluxations had altered appellant's spinal biomechanics, pressuring her nerves and causing radicular and upper extremity problems which were related to her employment. He noted that the x-rays to which he referred had been taken in his office and that he had personally reviewed them.

By decision dated July 18, 2006, the Office denied the claim, noting that the medical evidence established that appellant had been treated for the claimed condition since 2004. It found that she failed to provide sufficient evidence to show that her condition was related to her work duties and not to prior or external causes.

Appellant requested an oral hearing, which was held on January 9, 2007. In a November 14, 2006 report, Dr. Harrison noted first examining and treating her for neck problems in 2004, at which time he recommended that she take leave from work. Dr. Harrison reported that appellant's condition improved when she took leave from work and received

treatment. Appellant's symptoms returned in February 2006 and her job duties of "data entering and constant looking down at the computer with the repetitive motion of her wrist prevented [him] from being able to correct [appellant's] symptoms faster than she was irritating them at work." Dr. Harrison stated that when appellant returned to work she was required to do more work than anticipated, which caused continued exacerbation. He concluded that appellant's condition was related to the forward posture in which she held her head while working at her computer. In a February 20, 2007 report, Dr. Harrison reiterated his x-ray findings and opinion that appellant's spinal subluxations were caused by altered spinal biomechanics due to repetitive stress and forward head posturing at work. He explained that he examined appellant on July 19, 2004 and that, after the examination, "x-rays were performed in order to evaluate these conditions radiographically and determine the presence of subluxation." Dr. Harrison stated that he was trained to read and interpret x-rays and that he had personally reviewed appellant's x-rays.

By decision dated May 3, 2007, the hearing representative affirmed the denial of appellant's occupational disease claim. She found that the evidence established that x-rays were taken on July 19, 2004 and sometime in May 2005. The hearing representative noted that Dr. Harrison's reports did not establish that the x-rays were taken contemporaneously with the claim in 2006. As there was no evidence that Dr. Harrison obtained x-rays in 2006, he was not a "physician" as defined under the Federal Employees' Compensation Act. The claim was denied based on the insufficiency of the medical evidence.

### **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 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 disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.<sup>2</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>3</sup>

An occupational disease or injury is one caused by specified employment factors occurring over a longer period than a single shift or workday.<sup>4</sup> The test for determining whether appellant sustained a compensable occupational disease or injury is three-pronged. To establish the factual elements of the claim, appellant must submit: "(1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying the factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the factors

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>4</sup> *D.D.*, 57 ECAB \_\_\_\_ (Docket No. 06-1315, issued September 14, 2006).

identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the factors identified by the claimant.”<sup>5</sup>

The medical evidence required to establish causal relationship generally is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factors.<sup>6</sup> The opinion of the physician must be based on a complete factual and medical background of the claimant<sup>7</sup> and must be one of reasonable medical certainty<sup>8</sup> explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>9</sup>

### ANALYSIS

The evidence establishes that appellant’s job duties required sitting with her neck in a forward position. In its initial decision the Office determined that Dr. Harrison’s reports were insufficiently rationalized to support causal relationship. Appellant requested an oral hearing. The hearing representative found that there was no evidence that he obtained x-rays contemporaneously with the onset of appellant’s symptoms in 2006. Therefore, his reports did not constitute competent medical evidence.

The Act provides that a chiropractor’s reports constitute competent medical evidence in the limited circumstance involving a chiropractor’s diagnosis of subluxation of the spine, based on x-ray testing.<sup>10</sup> Pursuant to section 10.311(c) of the Act’s implementing regulation: “A chiropractor may interpret his or her x-rays to the same extent as any other physician. To be given any weight, the medical report must state that x-rays support the finding of spinal subluxation. 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>11</sup> The hearing representative determined that the evidence failed to support a subluxation of the spine as confirmed by x-rays, because Dr. Harrison did not note the dates on which he performed x-ray testing. The hearing representative determined that Dr. Harrison was not a physician under the Act. However, the Board notes that, under section 10.311(c), he was entitled to interpret his own x-rays and is not

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<sup>5</sup> *Michael R. Shaffer*, 55 ECAB 386, 389 (2004); citing *Lourdes Harris*, 45 ECAB 545 (1994); *Victor J. Woodhams*, *supra* note 3.

<sup>6</sup> *Conard Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>7</sup> *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>8</sup> *John W. Montoya*, 54 ECAB 306 (2003).

<sup>9</sup> *Judy C. Rogers*, 54 ECAB 693 (2003).

<sup>10</sup> 5 U.S.C. § 8101(2); see also *Jay K. Tomokiyo*, 51 ECAB 361 (2000).

<sup>11</sup> 20 C.F.R. § 10.311(c).

required to submit the x-rays, or reports of the x-rays, unless requested.<sup>12</sup> The record does not reflect that the Office ever requested Dr. Harrison's x-ray films or otherwise requested information on the dates on which the x-rays were taken. The Board notes that Dr. Harrison specifically stated in several reports that his spinal subluxation findings were based on x-ray testing. Accordingly, the Board finds that Dr. Harrison reviewed x-rays in diagnosing a subluxation and is a physician as defined under the Act.<sup>13</sup> The weight of his medical opinion, however, is not sufficient to establish appellant's cervical condition as employment related.

In *Linda L. Mendenhall* the Board explained the effects of delayed diagnostic testing on the probative value of medical evidence:

“When the physician conducts diagnostic testing immediately after an alleged injury, the physician is better able to determine whether that testing documents the injury described by the employee's history. It must of course be acknowledged that even immediate testing carries with it a degree of uncertainty. Such testing does not by reason of its promptness, necessarily document the injury claimed by the employee, who might well have sustained the condition before the date of the alleged injury and under circumstances not covered by the Act. When the physician delays diagnostic testing, the uncertainty mounts and a question arises as to whether that testing in fact documents the injury claimed by the employee. When the delay becomes so significant that it calls into question the validity of an affirmative opinion based at least in part on that testing, such a delay diminishes the probative value of the opinion offered.

“The Board does not, however, wish to impose an inflexible time limitation within which physicians must conduct diagnostic testing. How to examine a patient and when to conduct diagnostic testing are matters properly left to the physician in the exercise of his or her professional judgment.... To discharge an employee's burden of proof, however, the physician must nevertheless provide sufficient medical rationale to support the affirmative opinion offered.”<sup>14</sup>

The record indicates that x-rays were obtained in 2004 and 2005. In a March 16, 2005 report, Dr. Harrison stated that appellant's job duties, which included sitting at a desk and looking down at a keyboard while engaged in repetitive activities, caused a C5-6 subluxation and interfered with her ability to recover. However, he did not adequately explain how appellant's job duties would cause or contribute to the diagnosed cervical condition. In a May 2005 report, Dr. Harrison reiterated that appellant's condition was the result of her forward neck posturing at work. He noted that she first had symptoms in 2004 and on July 19, 2004 he reviewed x-rays showing subluxations of the cervical spine. Dr. Harrison stated that the condition had developed over a period of years. On June 1, 2006 he again stated that appellant's conditions were related to her repetitive activities and head posturing at her job, but did not provide a full explanation of

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<sup>12</sup> *Id.*

<sup>13</sup> *See supra* note 10.

<sup>14</sup> 41 ECAB 532 (1990) (internal citations omitted).

how her physical condition evolved in relation to her job duties.<sup>15</sup> In a June 22, 2006 report, Dr. Harrison reiterated that appellant's head posturing had caused subluxations of her cervical spine, which altered her spinal biomechanics, causing her condition. However, he again did not explain how head posturing could cause or contribute to a cervical a subluxation. Dr. Harrison did not provide a full, detailed explanation of how appellant's spinal biomechanics were altered by her employment activities.

In a November 14, 2006 report, Dr. Harrison stated that appellant's symptoms improved during a leave of absence in 2004 and 2005 and worsened when she returned to work in February 2006. The Board has held that the mere fact that a condition manifests itself or worsens during a period of employment<sup>16</sup> or that work activities produce symptoms revelatory of an underlying condition<sup>17</sup> does not raise an inference of causal relationship between the condition and the employment factors. Dr. Harrison stated that when appellant returned to work she was required to do more work than anticipated, which he believed caused an exacerbation of her condition. He did not support this statement with further explanation or rationale regarding how specific work duties would cause an exacerbation of the diagnosed cervical subluxations. Dr. Harrison merely restated that appellant's forward head posturing caused her spinal subluxations.

Accordingly, the Board finds that appellant did not meet her burden of proof to establish that she developed a cervical condition in the performance of duty. Although Dr. Harrison is a physician pursuant to the Act, his reports are insufficiently rationalized. He did not provide adequate rationale for his stated conclusion that appellant's spinal condition was related to her employment.

### CONCLUSION

The Board finds that appellant did not meet her burden of proof in establishing that she developed an occupational disease in the performance of duty.

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<sup>15</sup> The Board notes that Dr. Harrison diagnosed conditions other than cervical subluxations in this report. As a chiropractor may qualify as a physician in the diagnosis and treatment of spinal subluxations his opinion is not considered competent medical evidence in the evaluation of other disorders including those of the extremities, although they originate in the spine. *See Pamela K. Guersford*, 53 ECAB 726 (2002).

<sup>16</sup> *William Nimitz, Jr.*, 30 ECAB 567 (1979).

<sup>17</sup> *Richard B. Cissel*, 32 ECAB 1910 (1981).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 3, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 22, 2008  
Washington, DC

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

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

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