



indicated that she had picked up heavy cords and wires when she heard a pop in her left shoulder and developed a sharp shooting pain. The other notes indicated treatment for left shoulder and neck pain. Certain of the physical therapy notes contained an illegible signature in the space provided for a physician's signature. Other physical therapy notes appear to be signed by Dr. Bryan Tilghman, a chiropractor. The physical therapy notes signed by him did not diagnose a spinal subluxation as demonstrated by x-ray.

Dr. Louise Lamarre, an emergency medicine specialist, treated appellant on several occasions between January 16 and February 6, 2008. She noted appellant's complaint of nonradiating cervical and left shoulder pain. Dr. Lamarre diagnosed cervical and thoracic segmental dysfunction, nonallopathic lesion of the upper extremities and internal derangement of the shoulder. She found restricted range of motion due to cervical pain and indicated the date of onset was January 10, 2008. Dr. Lamarre also referred appellant for range of motion and muscle strength diagnostic testing. In a January 18, 2008 diagnostic report, Dr. Tilghman compared images of appellant's cervical spine to a standard cervical spine. The report did not note a diagnosis of spinal subluxation.

On February 13, 2008 the Office advised appellant of the factual and medical evidence necessary to establish her claim and allowed her 30 days to submit additional information. In particular, it requested medical evidence describing the history of injury, detailed findings and a physician's opinion regarding how the work incident caused or aggravated the claimed injury.

Appellant submitted several progress notes from Dr. Lamarre dated between February 8 and March 17, 2008. Dr. Lamarre reiterated that appellant complained of left shoulder and neck pain. She also reiterated her diagnosis of cervical and thoracic segmental dysfunction, nonallopathic lesion of the upper extremities and internal derangement of the shoulder. In the progress reports dated February 18 and 20, 2008, Dr. Lamarre indicated that the onset of appellant's condition was January 16, 2008. Appellant also submitted the results of muscle strength and range of motion evaluations performed by Dr. Tilghman between February 8 and March 12, 2008. Additional physical therapy notes from the Integrative Medical Clinic dated between February 8 and March 14, 2008, were also submitted indicating physical therapy for appellant's left shoulder.

In a March 24, 2008 decision, the Office denied appellant's claim for compensation finding that the medical evidence did not provide a physician's opinion regarding the causal relationship between appellant's left shoulder condition and the claimed work factors.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing the essential elements of 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 the 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 employment injury. These are the essential elements of each

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>2</sup>

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. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged. 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>3</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 which includes a physician’s rationalized opinion on whether there is a causal relationship between the employee’s diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.<sup>4</sup>

### ANALYSIS

The record supports that appellant was unwrapping a power cord on January 10, 2008 as alleged; however, she has not submitted sufficient medical evidence to establish that this employment incident caused an injury to the left shoulder.

Dr. Lamarre submitted several reports that noted appellant’s complaint of left shoulder and neck pain and diagnosed cervical and thoracic segmental dysfunction, nonallopathic lesion of the upper extremities and internal derangement of the shoulder. She also noted that the date of onset of appellant’s condition was January 10, 2008. However, Dr. Lamarre did not specifically note the January 10, 2008 incident involving the unwrapping of a power cord. She also did not offer an opinion regarding whether that incident caused or aggravated an injury to appellant’s left shoulder.<sup>5</sup> Thus, Dr. Lamarre’s opinion is of little probative value as she did not demonstrate complete and accurate knowledge of appellant’s factual and medical background<sup>6</sup> nor did she

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<sup>2</sup> *S.P.*, 59 ECAB \_\_\_ (Docket No. 07-1584, issued November 15, 2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>3</sup> *Id.*

<sup>4</sup> *I.J.*, 59 ECAB \_\_\_ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>5</sup> *See A.D.*, 58 ECAB \_\_\_ (Docket No. 06-1183, issued November 14, 2006) (medical evidence that does not offer any opinion regarding the cause of an employee’s condition is of limited probative value on the issue of causal relationship).

<sup>6</sup> *See K.E.*, 60 ECAB \_\_\_ (Docket No. 08-1461, issued December 17, 2008) (a medical opinion must be based on a complete factual and medical background with an accurate history of the claimant’s employment injury and must explain from a medical perspective how the current condition is related to the injury); *see also Michael R. Shaffer*, 55 ECAB 386 (2004).

offer a specific opinion on causal relationship between the January 10, 2008 work incident and a diagnosed medical condition.

Reports from Dr. Tilghman are also insufficient to establish appellant's claim. 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>7</sup> A chiropractor is not considered a physician under the Act unless it is established that there is a spinal subluxation as demonstrated by x-ray to exist.<sup>8</sup> The Board notes that Dr. Tilghman did not diagnose a spinal subluxation based on x-ray. Therefore, his reports were of no probative medical value.<sup>9</sup>

Furthermore, the physical therapy notes are of no probative value as physical therapists are not considered physicians under the Act and as a result, they are not competent to provide a medical opinion.<sup>10</sup>

Consequently, the medical evidence of record fails to establish that appellant's work incident on January 10, 2008 caused or aggravated her left shoulder condition.

### **CONCLUSION**

The Board finds that appellant did not meet her burden of proof in establishing that she sustained a left shoulder injury on January 10, 2008 in the performance of duty.<sup>11</sup>

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<sup>7</sup> 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 and subject to regulation by the Secretary. 5 U.S.C. § 8101(2); *see also Jack B. Wood*, 40 ECAB 95 (1988).

<sup>8</sup> *Mary A. Ceglia*, 55 ECAB 626 (2004).

<sup>9</sup> *See Michelle Salazar*, 54 ECAB 523 (2003).

<sup>10</sup> *See Barbara Williams*, 40 ECAB 649 (1989). *See also* 5 U.S.C. § 8101(2).

<sup>11</sup> Following issuance of the Office's March 24, 2008 decision, appellant submitted additional evidence to the Office. The Board may not consider this evidence on appeal as its review is limited to the evidence that was before the Office at the time of its March 24, 2008 decision. *See* 20 C.F.R. § 501.2(c).

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' decision dated March 24, 2008 is affirmed.

Issued: April 13, 2009  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board