



mat, striking her left wrist and left knee and injuring her neck and low back. A coworker corroborated appellant's account of the incident.

In a January 25, 2008 letter, the Office advised appellant of the additional medical and factual evidence needed to establish her claim. It emphasized the importance of submitting a rationalized report from her attending physician explaining how and why the identified incident would cause the claimed conditions.

In a December 26, 2007 report, Dr. John G. Miller, an attending Board-certified radiologist specializing in family practice, related that appellant fell at work on December 22, 2007 and sustained a lumbar strain, left hip contusion and a left knee injury with possible collateral ligament tear. Appellant was instructed to keep the leg elevated.

In a January 18, 2008 note, Dr. Douglas A. Di Siena, an attending chiropractor, held appellant off work through February 15, 2008. He submitted reports through February 12, 2008 diagnosing a lumbar sprain cervical and thoracic strains and lumbar disc syndrome.

In a February 20, 2008 report, Dr. Bijan Zardouz, an attending Board-certified neurologist, stated that appellant had findings indicative of left cervical and left ulnar neuropathy. He requested authorization for electrodiagnostic testing.

By decision dated February 27, 2008, the Office denied the claim on the grounds that causal relationship was not established. It accepted that the December 22, 2007 incident occurred at the time, place and in the manner alleged. However, appellant submitted insufficient rationalized medical evidence to establish that the incident caused the claimed injuries.

In a May 2, 2008 letter, appellant requested reconsideration. She submitted additional evidence.

In a February 22, 2008 report, Dr. Zardouz provided a detailed history of injury and treatment. He related appellant's account of lumbar weakness and left upper and lower extremity pain. On examination, Dr. Zardouz found a positive Tinel's sign at the left wrist and elbow. He obtained electromyography and nerve conduction velocity testing showing moderate left carpal tunnel syndrome and bilateral S1 sensory root dysfunction. Dr. Zardouz diagnosed status post fall, landing on the left elbow, left knee and left side of the body, musculoligamentous sprain/strain of the left cervical, shoulder and lumbar regions, possible C8-T1 sensory root dysfunction causing dysesthesias in the left hand and left median and ulnar nerve dysfunction.

In a March 5, 2008 report, Dr. John D. Dorsey, an attending Board-certified orthopedic surgeon, provided a history of injury and treatment and reviewed the medical record. On examination he found pain with cervical range of motion, paracervical spasm and a positive compression test, normal range of motion of all joints of the left upper extremity, normal lumbar range of motion but with complaints of pain. Dr. Dorsey obtained x-rays showing degenerative disc disease at C4-5, C5-6 and L5-S1. He diagnosed cervical sprain/strain with aggravation of degenerative disc disease, C6-7 dysfunction in the left upper extremity, left elbow and wrist contusions with electrodiagnostic evidence of carpal tunnel syndrome, lumbosacral sprain/strain with aggravation of degenerative disc disease, radiculopathy in the left lower extremity and a

resolving left knee contusion. Dr. Dorsey opined that the December 22, 2007 fall was the direct cause of all the diagnosed conditions. He found appellant disabled for work due to her injuries.

Dr. Di Siena released appellant to full duty on a part-time basis as of June 24, 2008. He found appellant permanent and stationary as of July 29, 2008.

By decision dated August 6, 2008, the Office denied modification on the grounds that causal relationship was not established. It found that appellant submitted insufficient rationalized medical evidence establishing that the December 22, 2007 incident caused the claimed injuries. The Office further found that Dr. Di Siena did not qualify as a physician under the Federal Employees' Compensation Act as he failed to diagnose a spinal subluxation by x-ray.

### **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 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.<sup>2</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>3</sup>

In order to determine whether an employee sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether "fact of injury" has been established. Generally, fact of injury consists of two components that must be considered jointly. First, the employee must submit sufficient evidence to establish that he or she actually experienced the alleged employment incident.<sup>4</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>5</sup>

### **ANALYSIS**

The Office accepted as factual that, on December 22, 2007, appellant tripped and fell on a floor mat, striking her left arm, leg and the left side of her body. It denied appellant's claim for neck, low back, left arm and left knee injuries on the grounds that causal relationship was not established. The Board notes, however, that the medical evidence submitted by appellant generally supports that she sustained cervical, lumbar, left arm and left leg injuries in the December 22, 2007 fall.

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>3</sup> *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>4</sup> *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>5</sup> *Deborah L. Beatty*, 54 ECAB 340 (2003).

Dr. Miller, an attending Board-certified radiologist specializing in family practice, submitted a December 26, 2007 report noting the December 22, 2007 incident. He opined that appellant sustained a lumbar strain, left hip contusion and a left knee injury as a result of the fall.

Dr. Zardouz, an attending Board-certified neurologist, submitted February 20 and 22, 2008 reports providing a detailed account of the December 22, 2007 incident and subsequent treatment. He opined that the December 22, 2007 fall caused left cervical, shoulder and lumbar sprains and left median and ulnar nerve dysfunction.

Dr. Dorsey, an attending Board-certified orthopedic surgeon, provided a March 5, 2008 report noting a history of injury and treatment and reviewing the medical record. He performed a detailed clinical examination and obtained x-rays. Dr. Dorsey diagnosed cervical and lumbar strains with aggravation of degenerative disc disease, C6-7 dysfunction in the left upper extremity, left elbow and wrist contusions, left carpal tunnel syndrome, radiculopathy in the left leg and a left knee contusion. He opined that all diagnosed conditions directly resulted from the December 22, 2007 fall.

Appellant also submitted reports from Dr. Di Siena, a chiropractor, who did not diagnose a spinal subluxation by x-ray. Therefore, Dr. Di Siena does not qualify as a physician under the Act for the purpose of this case. His opinion carries no medical weight.<sup>6</sup>

Although the opinions of Dr. Dorsey, Dr. Miller and Dr. Zardouz are not sufficiently rationalized<sup>7</sup> to meet appellant's burden of proof in establishing her claim, they stand uncontroverted in the record and are, therefore, sufficient to require further development of the case by the Office.<sup>8</sup> In particular, Dr. Dorsey and Dr. Zardouz both evinced a detailed knowledge of the December 22, 2007 incident and reviewed the medical record. They performed extensive clinical examinations and obtained test results showing objective pathologies. However, the Office did not undertake further development of the medical record, such as referring the record to an Office medical adviser or referring appellant for a second opinion examination. In view of the above evidence, the Board finds that the Office should have referred the matter to an appropriate medical specialist to determine whether appellant sustained neck, low back, left arm, left leg or other injuries as a result of the accepted December 22, 2007 incident.

Proceedings under the Act are not adversarial in nature and the Office is not a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence. It has the obligation to see

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<sup>6</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. 5 U.S.C. § 8101(2). See *Thomas W. Stevens*, 50 ECAB 288 (1999); *George E. Williams*, 44 ECAB 530 (1993).

<sup>7</sup> See *Frank D. Haislah*, 52 ECAB 457 (2001); *Jimmie H. Duckett*, 52 ECAB 332 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

<sup>8</sup> *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 280 (1978).

that justice is done.<sup>9</sup> Accordingly, once the Office undertakes to develop the medical evidence further, it has the responsibility to do so in a proper manner. Therefore, the Board finds that the case must be remanded to the Office for preparation of a statement of accepted facts concerning appellant's working conditions and referral of the matter to an appropriate medical specialist, consistent with Office procedures, to determine whether appellant may have developed right carpal tunnel syndrome as a result of performing his employment duties. Following this and any other development deemed necessary, the Office shall issue an appropriate decision in the case.

### **CONCLUSION**

The Board finds that the case is not in posture for a decision. The case will be remanded to the Office for further development of the medical evidence.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated August 6 and February 27, 2008 are set aside and the case remanded for further development consistent with this decision.

Issued: February 24, 2009  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

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<sup>9</sup> *Jimmy A. Hammons*, 51 ECAB 219 (1999); *Marco A. Padilla*, 51 ECAB 202 (1999); *John W. Butler*, 39 ECAB 852 (1988).