

shoulder pain. He did not stop work. The Office adjudicated appellant's claim as a minor, uncontroverted case without time lost from work and authorized medical expenses up to \$1,500.00.

Appellant submitted treatment records dated December 13, 2006 through July 26, 2007 from Dr. Sheldon M. Osvold, a chiropractor, who treated appellant for neck, jaw, upper and lower back and shoulder pain and headaches. On December 13, 2006 Dr. Osvold noted the history that appellant experienced pain while moving a computer monitor at work. He thereafter noticed pain in the right jaw, low back and shoulder aggravated by heavy lifting or twisting. Dr. Osvold diagnosed cervical, thoracic, lumbar and sacrum and sacroiliac joint subluxations and strains in the cervical, thoracic and lumbar back, sacroiliac region and rotator cuff. He opined that the incident at work agitated appellant's diagnosed conditions.

On February 9, 2007 Dr. Osvold determined that x-rays of the cervical, thoracic and lumbar regions were necessary. A March 2, 2007 x-ray of the cervical spine revealed a mild left list of the upper thoracic and cervical spines, mild head incline to the left, mild or moderately diminished cervical lordosis, mild anterior carriage of the head, moderate degenerative disc space narrowing from C4-5 through C6-7 with associated spondylosis and uncovertebral arthrosis and moderate facet arthrosis. An x-ray of the thoracic spine revealed mild left convexity of the mid to lower thoracic spine and mild right convexity of the upper thoracic spine and mild degenerative disc space narrowing with associated anterior spondylosis. An x-ray of the lumbar spine revealed approximately one centimeter discrepancy in the heights of the femoral heads with associated moderate pelvic unleveling, mild lateral deviations through the lumbar spine, a shifted thoracolumbar junction to the midline and mild facet arthrosis from L2-3 through L5-S1.

On June 24, 2008 Dr. Osvold stated that appellant was still experiencing regular shoulder and hip pain which has caused him to wake from sleep. He opined that, based on duration and intensity, appellant sustained permanent injuries. Dr. Osvold diagnosed subluxations of the cervical, thoracic, and lumbar spine and of the sacrum and sacroiliac joints. He also diagnosed sprain and strain of the cervical, thoracic and lumbar spine, sacroiliac region and bilateral rotator cuff. Dr. Osvold submitted a duty status report indicating that appellant could not perform regular work.

By letter dated September 8, 2008, the Office notified appellant that his claim was adjudicated as a minor injury with no lost time from work. However, it was now required to determine whether he sustained an employment injury on December 11, 2006. The Office advised appellant that the medical evidence of record was insufficient to support his traumatic injury claim and requested additional evidence.

In an October 3, 2008 report, Dr. Osvold described the December 11, 2006 incident reiterated appellant's complaint of pain to the low and mid back, neck and shoulders. He stated that on December 13, 2006 appellant underwent usual orthopedic, neurological and chiropractic tests indicating injuries consistent with the incident at work. Palpation of the cervical, thoracic and lumbosacral spine indicated deep and superficial muscle hypertonicity, loss of range of motion and palpatory tenderness. Dr. Osvold reported that in addition to the findings listed on the radiology report, appellant had structural changes in his cervical, thoracic and lumbar

vertebra which included left lateral flexion at C4 and right lateral flexion of C6, with ipsilateral rotation, T4-10 right lateral flexion with contralateral rotation and L1-2 left rotation, with pelvic unleveling. He concluded that these x-rays showed evidence of vertebral subluxation. Dr. Osvold attached a copy of the March 2, 2007 x-rays and a March 3, 2007 report which summarized the x-rays. Although appellant had complaints in the past, none were as substantial as those arising from the December 11, 2006 incident. Dr. Osvold diagnosed subluxations of the cervical, thoracic, and lumbar spine and of the sacrum and sacroiliac joints. Due to the duration of the pain following the injury, Dr. Osvold expected intermittent exacerbations of pain that may require future care. He was also currently treating appellant for injuries related to a June 2008 automobile accident that aggravated his work-related injuries and resulted in additional injuries.

In an October 17, 2008 decision, the Office denied the traumatic injury claim. It found that the December 11, 2006 incident occurred as alleged; however, appellant did not provide sufficient medical evidence to establish injury. The Office noted that, because there was not a diagnosis of a subluxation of the spine as demonstrated by x-ray, Dr. Osvold did not qualify as a physician as defined under the Federal Employees' Compensation Act.

LEGAL PRECEDENT

An employee seeking compensation under the Act¹ has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence,² including that he is an "employee" within the meaning of the Act³ and that he filed his claim within the applicable time limitation.⁴ The employee must also establish that he sustained an injury in the performance of duty as alleged and that his disability for work, if any, was causally related to the employment injury.⁵

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. The employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at

¹ 5 U.S.C. §§ 8101-8193.

² *J.P.*, 59 ECAB ____ (Docket No. 07-1159, issued November 15, 2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

³ *See M.H.*, 59 ECAB ____ (Docket No. 08-120, issued April 17, 2008); *Emiliana de Guzman (Mother of Elpedio Mercado)*, 4 ECAB 357, 359 (1951); *see* 5 U.S.C. § 8101(1).

⁴ *R.C.*, 59 ECAB ____ (Docket No. 07-1731, issued April 7, 2008); *Kathryn A. O'Donnell*, 7 ECAB 227, 231 (1954); *see* 5 U.S.C. § 8122.

⁵ *G.T.*, 59 ECAB ____ (Docket No. 07-1345, issued April 11, 2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

the time, place and in the manner alleged.⁶ The employee must also submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁷

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.⁸

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.⁹

ANALYSIS

The Office accepted that, on December 11, 2006, appellant lifted a computer monitor from a cart at work and experienced pain. The issue is whether appellant established that he sustained an injury causally related to the incident.

Appellant submitted treatment records from Dr. Osvold, a chiropractor. The Board notes that a chiropractor is a physician as defined under the Act to the extent that the reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.¹⁰ Under the Office's implementing federal regulations, a chiropractor may interpret his or her x-rays to the same extent as any other physician.¹¹ To be given any weight, the report must state that x-rays support the finding of spinal subluxation.¹²

Dr. Osvold noted that he first treated appellant on December 13, 2006 and provided a history of the December 11, 2006 incident accepted in this case. On February 9, 2007 he noted that x-rays were necessary which were obtained on March 2, 2007. Based on x-rays of the

⁶ *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

⁷ *T.H.*, 59 ECAB ____ (Docket No. 07-2300, issued March 7, 2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

⁸ *I.J.*, 59 ECAB ____ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁹ *Paul Foster*, 56 ECAB 208 (2004). See 5 U.S.C. § 8101(2).

¹⁰ See 20 C.F.R. § 10.311(a).

¹¹ *Id.* at § 10.311(c).

¹² The Office will not necessarily require submittal of the x-rays but the report must be made available on request. *Id.*

cervical, thoracic and lumbar regions, the chiropractor's subsequent reports diagnosed spinal subluxations. He diagnosed off-centering and misalignments in each of the regions for which x-rays were obtained. The Office's implementing federal regulations define subluxation as an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae which must be demonstrable on any x-ray film.¹³ For this reason, the Office improperly determined that Dr. Osvold did not qualify as a physician under the Act.¹⁴ The October 17, 2008 decision merely stated that the "chiropractor's report did not diagnose a spinal subluxation." It is apparent that the Office did not conduct a thorough review of the evidence submitted by Dr. Osvold. Based on the evidence as submitted, appellant has submitted a *prima facie* claim of injury. There is no contradictory medical evidence of record.¹⁵ For this reason, the case will be remanded to the Office for further development and a determination as to whether appellant sustained an injury in the performance of duty on December 11, 2006.

CONCLUSION

The Board finds that the case is not in posture for decision.

¹³ 20 C.F.R. § 10.5(bb).

¹⁴ See *Mary A. Ceglia*, 55 ECAB 626 (2004) (as the chiropractor qualified as a physician under the Act, the question was whether he provided sufficient evidence to establish the causal relationship between the diagnosed subluxation and the accepted incident).

¹⁵ Compare *Kathryn Haggerty*, 45 ECAB 383 (1994).

ORDER

IT IS HEREBY ORDERED THAT the October 17, 2008 decision of the Office of Workers' Compensation Programs be set aside. The case is remanded to the Office for further action in conformance with this decision.

Issued: November 2, 2009
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