

concussion, left hand laceration, left shoulder strain, right wrist sprain and face laceration. Appellant returned to full duty with no restrictions effective November 13, 2009.

Appellant filed a claim for compensation beginning December 12, 2009. Her chiropractor, Dr. Solomon Liburd, saw her on December 18 and 21, 2009 and reported that she was “unable to work at this time because due to back injury and she has been on bed rest since December 12, 2009.” He stated that appellant was diagnosed with lumbar intersegmental dysfunction.

In a decision dated March 25, 2010, OWCP denied appellant’s claim for compensation beginning December 12, 2009. It found that Dr. Liburd was not a “physician” as defined by FECA and that the medical evidence failed to establish that she was totally disabled for work beginning December 12, 2009. OWCP also terminated appellant’s medical treatment.

On April 5, 2010 Dr. Jacob Salomon, a surgeon, indicated on a form report that appellant was totally incapacitated since December 12, 2009. In a narrative report also dated April 5, 2010, he related that she fell at work on July 9, 2009. Dr. Salomon described appellant’s treatment, current complaints and findings on examination. He felt that her pain was currently so significant that she was unable to walk or lift any mailbag. Dr. Salomon continued appellant off work.

On April 14, 2010 Dr. Salomon addressed OWCP’s March 25, 2010 decision denying appellant’s recurrence claim. After noting her injury, he stated: “The problem is afterwards as [appellant] was seeing by a chiropractor and I did not obtain any relief of her symptoms.” Dr. Salomon indicated that appellant came to his office on February 12, 2010 complaining of continued pain in all the named areas “therefore I believe the recurrence that you are talking about.” He indicated that the chiropractor did not properly treat her injuries.

On April 15, 2010 appellant filed a recurrence of disability claim. She explained that she never fully healed from the original injury and that her chiropractor did not relieve her symptoms, which were getting worse. On July 28, 2010 appellant requested reconsideration of OWCP’s March 25, 2010 decision.

In an undated report, Dr. Salomon stated that appellant was being treated for work-related injuries to her left shoulder and to her cervical and lower back. He urged that acceptance of her be accelerated because she was in significant pain and discomfort requiring steroid injections and epidural pain relief. Dr. Salomon stated that appellant required treatment in order to get back to full duty.

In a decision dated October 14, 2010, OWCP reviewed the merits of appellant’s case and modified its March 25, 2010 decision in part. It found that the medical evidence was insufficient to establish whether or how the claimed recurrence of disability on December 12, 2009 was related to the accepted July 9, 2009 work injury. OWCP authorized medical treatment for the accepted work-related conditions.

LEGAL PRECEDENT

FECA pays compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.² “Disability” means the incapacity, because of an employment injury,³ to earn the wages the employee was receiving at the time of injury. It may be partial or total.³

A “recurrence of disability” means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.⁴ An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and who supports that conclusion with sound medical reasoning.⁵

Section 8101(2) of FECA⁶ provides that the term “physician,” as used therein, “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.” Without diagnosing a subluxation from x-ray, a chiropractor is not a “physician” under FECA and his opinion on causal relationship does not constitute competent medical evidence.⁷

ANALYSIS

On July 9, 2009 appellant sustained various soft-tissue injuries, lacerations and a concussion in the performance of duty. About four months later, on November 13, 2009, she returned to full duty. Appellant then stopped work on December 12, 2009 and claimed compensation for wage loss. She therefore has the burden of proof to establish that she sustained a recurrence of disability beginning December 12, 2009 causally related to her July 9, 2009 employment injury.

As part of this burden, appellant must submit a medical report from a physician who concludes that she was totally disabled for work beginning December 12, 2009 as a result of the accepted employment injury and who supports that conclusion with sound medical reasoning. Dr. Liburd, the chiropractor, is not a “physician” within the meaning of FECA, as it appears he did

² *Id.* at § 8102(a).

³ 20 C.F.R. § 10.5(f).

⁴ *Id.* at § 10.5(x).

⁵ *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956).

⁶ 5 U.S.C. § 8101(2).

⁷ *See generally Theresa K. McKenna*, 30 ECAB 702 (1979).

not diagnose a subluxation from x-ray.⁸ He is not competent therefore to address the issue raised by appellant's recurrence claim.

Dr. Salomon, the surgeon however is a physician within the meaning of FECA. In his April 5, 2010 reports, he indicated that appellant was totally incapacitated since December 12, 2009; but he did not explain why she became totally incapacitated for work on that date after returning to full duty one month earlier.

Dr. Salomon offered some explanation on April 14, 2010. He stated that appellant obtained no relief of her symptoms from Dr. Liburd. Moreover, Dr. Salomon indicated that Dr. Liburd did not properly treat her work injuries. He offered no medical basis for this assertion. Dr. Salomon did not explain how improper treatment was consistent with appellant's return to full duty on November 13, 2009. If Dr. Liburd's mistreatment of appellant caused her to become totally disabled for work beginning December 12, 2009, Dr. Salomon did not elaborate. If the accepted sprains and strains, lacerations or concussion worsened after November 13, 2009 such that appellant would become totally incapacitated by December 12, 2009, Dr. Salomon did not explain how those conditions worsened or what clinical findings confirmed the disability claimed. To discharge appellant's burden of proof, Dr. Salomon must support his conclusion with sound medical reasoning. Medical conclusions unsupported by rationale are of little probative value.⁹

For this reason, the Board finds that appellant has not met her burden of proof. The Board will affirm OWCP's October 14, 2010 decision denying her recurrence claim.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained a recurrence of disability beginning December 12, 2009 causally related to her July 9, 2009 employment injury.

⁸ OWCP did not accept that appellant suffered a subluxation as a result of the July 9, 2009 incident at work.

⁹ *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).

ORDER

IT IS HEREBY ORDERED THAT the October 14, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 9, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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