



## **FACTUAL HISTORY**

On December 8, 2009 appellant, then a 60-year-old mail handler, filed a traumatic injury claim alleging that he sustained injury on December 2, 2009 as a result of his employment. He explained that he sustained left arm and wrist pain while pulling tow pins.

Appellant submitted records from Moses H. Cone Memorial Hospital dated December 6, 2009. They note that appellant was examined by Dr. Kevin Campos, an emergency medicine physician, for left upper arm pain and referred for further treatment. Appellant also submitted progress notes from Dr. James S. Kramer, a Board-certified orthopedic surgeon. In a December 7, 2009 note, Dr. Kramer stated that appellant had an insidious onset of neck pain and felt a crick in his neck a week prior. He stated that x-ray examination showed marked degenerative changes at C6-7. Dr. Kramer diagnosed degenerative disc disease at C6-7 and cervical radiculopathy, and recommended that appellant undergo a magnetic resonance imaging (MRI) scan evaluation of the cervical spine. In a December 7, 2009 form report, he stated that appellant would be totally disabled for work from December 7 through 21, 2009.

In a December 8, 2009 statement, appellant's supervisor explained that an investigation revealed that on December 2, 2009 appellant pulled on the OTR tow pin bar three times and experienced left arm pain. On December 8, 2009 the employing establishment issued a Form CA-16 to Dr. Kramer authorizing treatment of appellant's left arm radiculopathy.

OWCP thereafter received a December 12, 2009 MRI scan report from Dr. Mark Shogry, a Board-certified radiologist, who interpreted the MRI scan as revealing C2-4 disc herniation, C4-6 mild disc bulging, C6-7 spondylosis and C7-T1 mild facet degeneration.

Based on the radiology report, Dr. Kramer confirmed his assessment of degenerative disc disease at C6-7, cervical myofascial pain syndrome with cervical radiculopathy in a follow-up session with appellant on December 14, 2009.

Dr. Roosevelt Smith, a chiropractor, examined appellant on December 15, 2009. He noted a history of injury that appellant experience cervical pain after moving a bin containing 100 pounds of mail. Dr. Smith did not note a date of injury. He diagnosed appellant with cervical sprain/strain, cervical/brachial syndrome, torticollis, displacement of cervical intervertebral disc and cervical subluxation. In a follow-up report dated February 4, 2010, Dr. Smith discharged appellant from his care.

By letter dated April 21, 2010, OWCP requested that appellant submit further medical evidence in support of his claim. It explained the limited circumstances under which a chiropractor is considered a physician under FECA.

On June 21, 2010 OWCP accepted that the December 2, 2009 incident occurred as alleged, but denied the claim based upon the finding that appellant had not established that he sustained an injury resulting from the accepted incident.

## LEGAL PRECEDENT

An employee seeking benefits under FECA<sup>3</sup> has the burden to establish the essential elements of his 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, that an injury was sustained in the performance of duty as alleged and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>4</sup>

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. 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.<sup>5</sup> Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>6</sup>

To establish a causal relationship between a claimant's condition and any attendant disability claimed and the employment event or incident, he must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 claimant.<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 regulations by the Secretary.<sup>8</sup>

## ANALYSIS

OWCP accepted that on December 2, 2009 appellant engaged in pulling tow pins at work. The Board finds that appellant has not established that he sustained an injury as a result of this incident.

---

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>5</sup> *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

<sup>6</sup> *T.H.*, 59 ECAB 388 (2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

<sup>7</sup> *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404 (1997).

<sup>8</sup> *Paul Foster*, 56 ECAB 208 (2004).

Appellant was initially seen in the emergency room at Moses H. Cone Memorial Hospital on December 6, 2009 by Dr. Campos. However, Dr. Campos did not provide any history of injury and merely noted the complaint of left arm pain. Pain is generally considered a symptom, not a firm medical diagnosis.<sup>9</sup> Dr. Campos did not provide a history of injury, diagnosis or any medical opinion regarding the cause of appellant's complaint. Lacking these components, his report is of diminished probative medical value.

Appellant was referred to Dr. Kramer for further treatment. Dr. Kramer noted an insidious onset of cervical pain but did not provide a history of appellant's December 2, 2009 employment incident. He diagnosed degenerative disc disease at C6-7 and cervical myofascial pain syndrome with cervical radiculopathy. Dr. Kramer's opinion is of limited probative value because he failed to explain how the diagnosed conditions resulted from appellant pulling a tow pin at work. His reports are insufficient to establish causal relationship.

The Board notes, however, that the employing establishment issued a Form CA-16 to Dr. Kramer. A properly executed CA-16 form creates a contractual obligation, which does not involve the employee directly, to pay the cost of the examination or treatment regardless of the action taken on the claim.<sup>10</sup> On return of the case record, OWCP should adjudicate the issue of whether appellant should be reimbursed for incurred medical expenses.<sup>11</sup>

Appellant submitted a December 12, 2009 MRI scan from Dr. Shogry who diagnosed a number of cervical conditions from C2-T1. Dr. Shogry did not however provide a history of injury or any opinion regarding the cause of the diagnosed conditions. His report is also of limited value in establishing whether appellant sustained an injury on December 2, 2009 due to the accepted incident.

A chiropractor is not deemed a "physician" within the definition of FECA except for a diagnosis of cervical subluxation based on x-ray evidence. Because Dr. Smith did not diagnose subluxation based upon x-ray evidence, he is not a physician as defined by FECA. His reports are of no probative medical value.

### **CONCLUSION**

The Board finds that appellant failed to establish that she sustained a traumatic injury on December 2, 2009 while in the performance of duty.

---

<sup>9</sup> *Robert Broome*, 55 ECAB 339, 342 (2004).

<sup>10</sup> *See Elaine M. Kreyborg*, 41 ECAB 256 (1989).

<sup>11</sup> *See S.M.*, Docket No. 10-1592 (issued May 2, 2011); *E.K.*, Docket No. 09-1827 (issued April 21, 2010).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated June 21, 2010 is affirmed.

Issued: September 6, 2011  
Washington, DC

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

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

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