



On appeal appellant contends that she has a right to seek care from any licensed physician, including a chiropractor, and that she has cervical x-rays denoting a spinal subluxation. She also requests that OWCP pay outstanding medical bills for medical services rendered by a chiropractor and a massage therapist.

### **FACTUAL HISTORY**

On May 17, 2011 appellant, then a 46-year-old animal health technician, filed a traumatic injury claim (Form CA-1) alleging that she sustained a head and right shoulder injury as a result of being hit by a sheep while drawing blood in the performance of duty on May 17, 2011.

By letter dated June 17, 2011, OWCP requested additional factual and medical evidence. It afforded appellant 30 days to submit additional evidence and respond to its inquiries.

Subsequently, appellant submitted reports dated June 15 and 23 and July 1, 2011 by an unidentified physician.

By decision dated July 27, 2011, OWCP accepted that the May 17, 2011 incident occurred as alleged but denied appellant's claim finding that she failed to submit evidence containing a medical diagnosis in connection with the injury or events. Thus, it concluded that she had not established fact of injury.

On August 31, 2011 appellant requested reconsideration and submitted reports by Dr. Thomas M. Crevar, a chiropractor, dated June 15 to September 12, 2011. In a July 22, 2011 report, he indicated that appellant was having a lot of crepitus and pain in the right shoulder and right jaw popping. On August 8 and September 12, 2011 Dr. Crevar opined that appellant's right shoulder had resolved. Appellant also submitted notes from Juanita Rodriguez, a licensed massage therapist, dated June 20 to August 30, 2011.

By decision dated November 30, 2011, OWCP denied modification of its July 27, 2011 decision finding that the evidence submitted failed to establish fact of injury.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</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 FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury<sup>4</sup> was sustained in the performance of duty, as alleged,

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> OWCP's regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>5</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. A fact of injury determination is based on two elements. 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. An employee may establish that the employment incident occurred as alleged but fail to show that his or her condition relates to the employment incident.<sup>6</sup>

### ANALYSIS

OWCP has accepted that the incident of May 17, 2011 occurred at the time, place and in the manner alleged. The issue is whether appellant’s head and right shoulder conditions resulted from the May 17, 2011 employment incident. The Board finds that appellant did not meet her burden of proof to establish that her conditions are related to the May 17, 2011 employment incident.

On appeal appellant contends that she has a right to seek care from any licensed physician, including a chiropractor, and that she has cervical x-rays denoting a spinal subluxation. First, the Board finds that the record does not contain a cervical x-ray revealing a spinal subluxation. Second, in assessing the probative value of chiropractic evidence, the initial question is whether the chiropractor is considered a physician under 5 U.S.C. § 8101(2). The Board has held that a chiropractor is a physician as defined under FECA 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.<sup>7</sup> Although Dr. Crevar indicated that appellant was having a lot of crepitus and pain in the right shoulder and right jaw popping, his reports are of no probative value. There is no indication in his reports that he diagnosed a subluxation as demonstrated by x-ray to exist. Dr. Crevar is not a physician as defined under FECA and thus his reports do not constitute competent medical opinion evidence.

The notes dated June 20 to August 30, 2011 from Ms. Rodriguez, a licensed massage therapist, are of no probative value as she is not a physician under FECA.<sup>8</sup> As such, the Board finds that appellant did not meet her burden of proof with these submissions.

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<sup>5</sup> *T.H.*, 59 ECAB 388 (2008). See *Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>6</sup> *Id.* See *Shirley A. Temple*, 48 ECAB 404 (1997); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>7</sup> 20 C.F.R. § 10.311(a). *Cf.*, *D.S.*, Docket No. 09-860 (issued November 2, 2009).

<sup>8</sup> 5 U.S.C. § 8101(2). Section 8101(2) of FECA provides as follows: “(2) ‘physician’ includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law.” See also *Paul Foster*, 56 ECAB 208, 212 n.12 (2004); *Joseph N. Fassi*, 42 ECAB 677 (1991); *Barbara J. Williams*, 40 ECAB 649 (1989).

As appellant has not submitted any medical evidence to support her claim that she sustained an injury related to the May 17, 2011 employment incident, she has failed to meet her burden of proof to establish the medical component of fact of injury.

OWCP, however, did not adjudicate the issue of appellant's incurred medical expenses. On appeal appellant requested that OWCP pay outstanding medical bills for medical services rendered by a chiropractor and a massage therapist. Ordinarily, the employing establishment will authorize treatment of a job-related injury by providing the employee a properly executed Form CA-16 within four hours.<sup>9</sup> In this case, the record does not contain a Form CA-16 or any other authorization from OWCP for medical treatment. Additionally, there is no evidence of an emergency or other unusual circumstance.<sup>10</sup> Therefore, the Board finds the evidence does not support reimbursement for the medical expenses.

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 established that she sustained an injury in the performance of duty on May 17, 2011, as alleged. Therefore, appellant has failed to meet her burden of proof to establish a claim for compensation.

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<sup>9</sup> *Val D. Wynn*, 40 ECAB 666 (1989); *see also* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Authorizing Examination and Treatment*, Chapter 3.300.3(a)(3) (August 2011).

<sup>10</sup> Under section 8103 of FECA, OWCP has broad discretionary authority to approve unauthorized medical care which it finds necessary and reasonable in cases of emergency or other unusual circumstances. 5 U.S.C. § 8103; 20 C.F.R. § 10.304. *See L.B.*, Docket No. 10-469 (issued June 2, 2010); *see also* Federal (FECA) Procedure Manual, at Chapter 3.300.3(a)(3).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 30 and July 27, 2011 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 15, 2012  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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