



On appeal, appellant contends that medical evidence establishes that she had a diagnosed medical condition causally related to her work-related motor vehicle accident.

### **FACTUAL HISTORY**

On August 21, 2012 appellant, then a 59-year-old national bank examiner, filed a traumatic injury claim alleging that on August 16, 2012 she sustained whiplash and neck, shoulder and upper back injuries as a result of a motor vehicle accident. She was on her way home from a bank examination when she was rear-ended. John A. Vivian, appellant's supervisor, stated that appellant did not lose any time from work and that she was injured in the performance of duty.

In a September 17, 2012 letter, OWCP advised appellant that the evidence submitted was insufficient to establish her claim. It requested that she submit factual and medical evidence, including a medical report containing a diagnosis of her condition and rationale explaining how the condition was caused or aggravated by the work incident. OWCP requested that the employing establishment submit any medical evidence regarding treatment appellant received at its medical facility and an accident report regarding the August 16, 2012 incident.

In an attending physician's report dated August 22, 2012, Dr. Terry A. Ward, a chiropractor, obtained a history of the August 16, 2012 incident. He advised that appellant had a history of neck and upper back pain. Dr. Ward listed examination findings and diagnosed cervical spine capsular injury with cervical and thoracic spine sprain and strain and suboccipital headache. He advised that the diagnosed conditions were not caused or aggravated by an employment activity. Dr. Ward stated that appellant's injury was status post the motor vehicle accident. He related that there was a possibility of ongoing spinal pain and dysfunction resulting from a soft tissue injury postrear impact of the motor vehicle accident. Dr. Ward advised that acceleration-deceleration cervical spine injuries had a high incidence of residual spinal dysfunction.

Appellant submitted a vehicle accident report forms.

In an October 11, 2012 decision, OWCP accepted that the August 16, 2012 incident occurred as alleged. It denied appellant's claim, finding insufficient medical evidence to establish that she sustained a diagnosed medical condition causally related to the accepted employment incident.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence<sup>4</sup> including that he or she sustained an injury in the performance of duty and that any

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.<sup>5</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established.<sup>6</sup> 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>7</sup> Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.<sup>8</sup>

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence providing a diagnosis or opinion as to causal relationship.<sup>9</sup> 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.<sup>10</sup> The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>11</sup>

### ANALYSIS

The Board finds that appellant did not meet her burden of proof. OWCP accepted that the August 16, 2012 motor vehicle accident occurred, as alleged. In order for appellant to establish that she sustained an employment-related injury, she must submit a medical report from a physician with an accurate history of injury, a diagnosis of her condition and rationalized medical opinion that explains how her medical condition was caused by the accepted motor vehicle accident.<sup>12</sup>

Appellant submitted an August 22, 2012 attending physician's report from her chiropractor, Dr. Ward. Section 8101(2) of FECA 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

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<sup>5</sup> *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>6</sup> *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

<sup>7</sup> *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

<sup>8</sup> *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>9</sup> *See J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

<sup>10</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

<sup>11</sup> *James Mack*, 43 ECAB 321 (1991).

<sup>12</sup> *Supra* notes 8 and 9.

to exist and subject to regulation by the Secretary.<sup>13</sup> Dr. Ward diagnosed cervical spine capsular injury with cervical and thoracic spine sprain and strain, and suboccipital headache status post the accepted August 16, 2012 motor vehicle accident. As he did not diagnose spinal subluxation based on an x-ray, Dr. Ward is not a physician as defined under FECA and his opinion regarding causal relationship lacks any probative medical value.<sup>14</sup> No other medical evidence was submitted.

Appellant has the burden to submit medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed and medical evidence establishing that the diagnosed condition is causally related to the implicated employment factors. The Board finds that she failed to submit any competent medical evidence pertaining to her claim of injury. On September 17, 2012 OWCP informed appellant of the deficiencies in the evidence, but she did not submit any medical evidence to establish her claim. Appellant did not establish a claim for compensation.<sup>15</sup>

On appeal, appellant contended that previously submitted medical evidence and newly submitted medical evidence, established that she had a diagnosed medical condition causally related to her work-related motor vehicle accident. As noted, while the record supports the incident occurred on August 16, 2012, the record contains no medical evidence of record at the time of OWCP's October 11, 2012 decision to establish that the accepted employment incident caused or aggravated a diagnosed medical condition.<sup>16</sup>

### CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained an injury on August 16, 2012 while in the performance of duty.

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<sup>13</sup> 5 U.S.C. § 8102(2); *see also E.W.*, Docket No. 09-6 (issued February 17, 2009); *Sean O Connell*, 56 ECAB 195 (2004).

<sup>14</sup> *See T.B.*, Docket No. 12-244 (issued June 8, 2012); *Michelle Salazar*, 54 ECAB 523 (2003).

<sup>15</sup> *See Donald W. Wenzel*, 56 ECAB 390 (2005).

<sup>16</sup> *See supra* note 12.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 11, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 26, 2013  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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