

ankles and feet. Appellant sought medical treatment and tried to treat his pain to the best of his ability. These conditions persisted on and off. Appellant persevered and continued to work in spite of the pain. But it became more intense in January 2013, and finally, on March 22, 2013 he came to the realization that he could no longer perform his duties as a city carrier. In addition to the pain, this caused appellant to experience mental anguish and depression.

OWCP asked appellant to submit a report from a medical doctor containing: (1) a description of his work injury; (2) a medical diagnosis; and (3) an explanation of how his medical condition was caused by the claimed work events. OWCP advised that this medical evidence was crucial to his claim.

Dr. Derrick W. Denman, a chiropractor, reported that appellant's back and right leg "just started hurting on his job." His findings included curvature of the spine, progressing and getting worse and disc degeneration. Dr. Denman diagnosed chronic strain and degeneration with sciatica. He indicated with an affirmative mark that this condition was caused or aggravated by employment activity.

On April 25, 2013 Dr. Denman noted that he had been seeing appellant since 2007. X-rays were performed at that time. Appellant had been in several automobile accidents, and in 1999 he picked up his brother and started having pain. "With activity, the pain comes and goes." Appellant had another flareup in December 2010 and again in August 2012. Dr. Denman treated appellant twice in October 2012. X-rays were taken in April 2013 showing a progression of spinal degeneration in the disc and further scoliosis with further bending to the left lateral listing.²

It was Dr. Denman's opinion that this was caused by carrying a mailbag and holding the mail in his left arm. The x-rays also showed a leg deficiency on the right with a corresponding low right pelvis and right listing of the sacrum. "This forces L5 into a right lateral listing and a compensation at L2, L3 and L4 to bring his spine back into neutral and actually overcompensating, not giving a left lateral listing." Dr. Denman noted a loss of the lumbar curve, causing more pressure and stress on the spine. It was his opinion that appellant's job aggravated his condition.

In a decision dated June 24, 2013, OWCP denied appellant's injury claim. It accepted that work events occurred as alleged, but the evidence from Dr. Denman did not establish a medical diagnosis in connection with these events. Dr. Denman was not considered a physician under FECA because he did not diagnose a subluxation of the spine demonstrated by x-ray.

On appeal, appellant explains that his physical and mental condition rendered him incapable of performing his duties.

² Dr. Denman noted that x-rays taken in April 2013 revealed the following diagnoses: 739.5 (nonallopathic lesions, pelvic region); 724.6 (disorders of the sacrum); 739.3 (nonallopathic lesions of the lumbar region); 724.4 (thoracic or lumbosacral neuritis or radiculitis, unspecified); 719.45 (pain in joint, pelvic region and thigh); and 719.46 (pain in joint, lower leg).

LEGAL PRECEDENT

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.³ An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim. When an employee claims that he or she sustained an injury in the performance of duty, he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He or she must also establish that such event, incident or exposure caused an injury.⁴

Causal relationship is a medical issue,⁵ and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant,⁶ must be one of reasonable medical certainty,⁷ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.⁸

Under FECA, 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 OWCP. A chiropractor who does not diagnose a spinal subluxation from x-ray is not a “physician” under FECA. His opinion on causal relationship does not constitute competent medical evidence.⁹

A subluxation means an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae which must be demonstrable on any x-ray film to an individual trained in the reading of x-rays.¹⁰

ANALYSIS

There is no dispute that appellant performed the duties of a city carrier. OWCP accepts that he performed his duties as alleged. Appellant has thus met his burden to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. The question that remains is whether these duties caused an injury

³ 5 U.S.C. § 8102(a).

⁴ *John J. Carlone*, 41 ECAB 354 (1989).

⁵ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁶ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁷ *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁸ *See William E. Enright*, 31 ECAB 426, 430 (1980).

⁹ *See generally Theresa K. McKenna*, 30 ECAB 702 (1979).

¹⁰ 20 C.F.R. § 10.5(bb).

Causal relationship is a medical issue, one that requires, in this case, rationalized medical opinion evidence to establish. The only medical opinion submitted to support appellant's injury claim comes from Dr. Denman, a chiropractor, who took x-rays, but he did not explicitly diagnose a subluxation of the vertebrae. Consequently, he is not a "physician" under FECA, and his opinion on causal relationship is not considered competent medical evidence.

As the record contains no rationalized medical opinion from a qualified physician, with respect to any physical or psychological condition, the Board finds that appellant has not met his burden to establish the critical element of causal relationship. The Board will therefore affirm OWCP's June 24, 2013 decision denying his injury 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 his burden of proof to establish that his duties caused an injury.

ORDER

IT IS HEREBY ORDERED THAT the June 24, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 18, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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