

July 17, 2012.² Appellant submitted notes dated October 15 and 22, 2012 from Dr. Matthew Thacker, a chiropractor, indicating that she should be excused from work from October 12 to 22, 2012. By letter dated December 7, 2012, OWCP requested that she submit additional evidence with respect to her claim.

In a statement received on December 31, 2012, appellant related that her work duties included repetitive throwing of mail into slots for several hours a day. She also stated that her work involved bending and lifting of mail.

With respect to medical evidence, appellant submitted reports from Dr. Tina DiGiovanni, a chiropractor. In a report dated August 14, 2012, Dr. DiGiovanni stated that appellant was being treated for shoulder and low back problems. In a report dated August 27, 2012, she diagnosed sciatic neuritis, muscle weakness, cervical, thoracic and lumbar stiffness, shoulder rotator cuff syndrome, cervical and lumbar spine segmental dysfunction.

The record contains an October 25, 2012 magnetic resonance imaging (MRI) scan report with a diagnosis of L4 disc herniation and L5-S1 disc bulging. In a report dated December 21, 2012, Dr. DiGiovanni stated that due to repetitive lifting and pulling activities at work, appellant had developed low back musculature weakness and the activity may have contributed to the disc stresses noted on the MRI scan. She diagnosed low back discopathy without myelopathy, sciatic neuritis, lumbar radiculopathy, muscle weakness and lumbosacral segmental dysfunction.

In a report (Form CA-20) dated January 13, 2013, Dr. Thacker checked a box “yes” that the conditions were caused or aggravated by employment activity.

By decision dated January 29, 2013, OWCP denied the claim for compensation. It found that the chiropractors were not established as physicians under FECA.

LEGAL PRECEDENT

A claimant seeking benefits under FECA³ has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.⁴

To establish that an injury was sustained in the performance of duty, a claimant must submit: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;

² The record also contains a recurrence of disability claim (Form CA-2a) identifying a date of injury as April 9, 2009 and the date of recurrence as July 27, 2012. That claim is not before the Board on this appeal.

³ 5 U.S.C. §§ 8101-8193.

⁴ 20 C.F.R. § 10.115(e)(f) (2005); see *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁵

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 to exist.”⁶ A spinal subluxation is an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae.⁷ If the diagnosis of a subluxation as demonstrated by x-ray is not established, the chiropractor is not a physician under FECA and the report of the chiropractor is of no probative value to the medical issue presented.⁸

ANALYSIS

In the present case, appellant alleged that she sustained a low back condition as a result of her federal employment as a mail carrier. She identified her job duties as repetitive lifting of mail, bending and casing mail. As the employment factors have been identified and accepted by OWCP, the issue becomes whether the medical evidence is sufficient to establish a diagnosed condition as casually related to the employment factors.

Appellant submitted evidence from chiropractors Dr. DiGiovanni and Dr. Thacker. Before the evidence can be considered for its probative value, the chiropractor must be established as a physician under FECA. As noted above, 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. Dr. Thacker did not refer to x-rays or provide a diagnosis of a subluxation. There is no evidence of record establishing Dr. Thacker as a physician under 5 U.S.C. § 8101(2).

Dr. DiGiovanni provided diagnoses that included lumbosacral segmental dysfunction,⁹ without providing any reference to x-ray results. In the December 21, 2012 report, he referred to MRI scan results. An MRI scan would not be sufficient to establish a subluxation, as FECA specifically provides the diagnosis must be demonstrated by x-ray.¹⁰ In this case, the Board notes that the MRI scan of record did not provide a diagnosis of a subluxation.

The Board accordingly finds that based on the evidence of record, neither Dr. Thacker nor Dr. DiGiovanni are physicians under FECA. The reports submitted are of no probative medical value to the causal relationship issue presented. In the absence of any probative medical

⁵ *Ruby I. Fish*, 46 ECAB 276-79 (1994).

⁶ 5 U.S.C. § 8101(2).

⁷ *See* 20 C.F.R. § 10.5(bb).

⁸ *See Jack B. Wood*, 40 ECAB 95, 109 (1988).

⁹ Segmental dysfunction is defined as a focal misalignment-subluxation of the vertebra. McGraw-Hill Concise Dictionary of Modern Medicine (2002).

¹⁰ *See Jay K. Tomokiyo*, 51 ECAB 361 (2000).

evidence, appellant has not met her burden of proof to establish a diagnosed condition casually related to the identified employment factors.

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 a back injury casually related to her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 29, 2013 is affirmed.

Issued: June 25, 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