

**United States Department of Labor
Employees' Compensation Appeals Board**

T.W., Appellant

and

**DEPARTMENT OF HOMELAND SECURITY,
CUSTOMS & BORDER PROTECTION,
Tucson, AZ, Employer**

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**Docket No. 14-763
Issued: August 18, 2014**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 21, 2014 appellant filed a timely appeal from a December 12, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish an injury in the performance of duty on September 5, 2012.

FACTUAL HISTORY

On September 10, 2012 appellant, then a 48-year-old paralegal specialist, filed a traumatic injury claim (Form CA-1) alleging that she tripped off a ladder on September 5, 2012

¹ 5 U.S.C. § 8101 *et seq.*

and sustained injuries to her right leg, right ankle, lower back and neck. Her supervisor checked a box confirming that she had been injured in the performance of duty. Appellant stopped work on September 6, 2012 and returned on September 10, 2012.

An OWCP Form CA-16, authorization for examination and/or treatment, was issued by the employing establishment on September 6, 2012.² Appellant was authorized to visit Casa Grande Chiropractic.

In a clinical evaluation summary dated September 6, 2012, Dr. Timothy Hoyt, a chiropractor, examined appellant and stated his clinical impressions that she had cervicalgia, cervical myalgia/myofascitis, cervical nonallopathic lesions, cervical sprain/strain, thoracic spine pain, thoracic myalgia/myofascitis, thoracic nonallopathic lesions, thoracic sprain/strain, lumbago, lumbar myalgia/myofascitis, lumbar nonallopathic lesions and a lumbar sprain/strain. Appellant provided him with a history of injury, stating that she had used a ladder to file documents above her head, tripped, twisted her ankle and strained her back and neck in the fall. Dr. Hoyt stated that she was totally disabled from work from September 6 through 10, 2012.

In a radiographic evaluation dated September 6, 2012, received on January 2, 2013, Dr. Hoyt examined x-rays of appellant's cervical, thoracic and lumbosacral spine. He noted irregularities of a mildly reduced cervical curve, mild disc narrowing at L5-S1 and moderate lateral listing to the right of her lumbosacral spine.

In progress notes dated September 6 through November 7, 2012, Dr. Hoyt diagnosed appellant with a spinal subluxation. On September 6, 2012 he stated:

“The results from the palpatory examination of the spine and pelvic area are as follows: Subluxation is evident coupled with spastic and tender deep paraspinal musculatures overlying the left lower cervical area.... The presence of subluxation is noted coupled with spastic, inflamed and tender deep paraspinal musculatures in the left lower lumbar spine.”

On September 7, 2012 Dr. Hoyt stated, “subluxation is identified together with spasm and pain to palpation specific to the left upper and middle thoracic spine. Subluxation is apparent with associated spastic, inflamed and tender deep paraspinal musculatures located at the left lower lumbar range.” Dr. Hoyt reiterated his diagnosis of subluxations of appellant's spine in subsequent treatment notes.

In a revised September 6, 2012 clinical evaluation summary, Dr. Hoyt listed clinical impressions as lumbar subluxation, low back pain, thoracic subluxation, mid-back pain and cervical subluxations at C5 and C6 with neck pain. He subsequently added additional assessments of subluxations at C5, C6, T1, T2 and L5-S1.

² When the employing establishment properly executes a Form CA-16 which authorizes medical treatment as a result of an employee's claim for an employment-related injury, the Form CA-16 creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. See 20 C.F.R. § 10.300(c); *Tracy P. Spillane*, 54 ECAB 608, 610 (2003).

On May 6, 2013 OWCP notified appellant that her claim had been reopened for consideration because she had submitted medical evidence from a chiropractor. It stated that she needed to substantiate the factual and medical elements of her claim. OWCP noted that chiropractors were not physicians under FECA unless there was a diagnosed spinal subluxation demonstrated by x-ray.

On May 31, 2013 appellant stated that she was filing on a four-step ladder. When she was on the third step, reaching to place a file in a slot, the ladder moved. Appellant lost her balance and caught her foot on the ladder step. She grasped both ends of the ladder and while attempting to maintain her balance, tripped off the ladder and twisted her back and ankle. Appellant experienced pain in her right ankle, neck and lower back. She advised her supervisor of the incident. Appellant previously visited Dr. Hoyt several times a year for maintenance, but stated that she did not have chronic back issues that prevented her from living a carefree life or working in her current position. In a statement dated June 4, 2013, Lorena Ainza, a coworker, noted that she witnessed appellant trip while on a ladder in a file room. Appellant's ankle began to swell and that Ms. Ainza advised her to seek medical help. In an undated statement, Summer A. Vande Mheen, a coworker, advised that she had witnessed appellant limping from the file room and heard her say that her shoe had caught on the last rung of the ladder, causing her to fall.

By letter dated May 31, 2013, appellant enclosed a letter from Dr. Hoyt dated June 4, 2013. Dr. Hoyt stated that she had encountered injuries to her neck and back as a result of falling off a ladder at work.

By decision dated June 20, 2013, OWCP denied appellant's claim for compensation. It accepted the September 5, 2012 incident at work but found that Dr. Hoyt was not a physician under FECA because he did not provide a diagnosis of subluxation of the cervical or lumbar spine, as demonstrated by x-ray to exist.

On July 15, 2013 appellant requested a review of the written record by an OWCP hearing representative.

In a letter dated July 17, 2013, appellant stated that Dr. Hoyt had diagnosed spinal subluxations by x-ray and examination and that she had submitted medical evidence containing this diagnosis. She noted that while some of his treatment had been paid for, certain other aspects of care had not been paid, including adjustments of subluxations.

By decision dated December 12, 2013, an OWCP hearing representative affirmed the June 20, 2013 decision. He found that Dr. Hoyt had provided two radiographic evaluations dated September 6, 2012. The reports differed only insofar as the latter contained diagnoses of subluxation at C5, C6, T1, T2 and L5-S1. The hearing representative noted that Dr. Hoyt had not provided a rationalized medical explanation as to why his initial interpretation of appellant's x-ray findings did not indicate the presence of subluxations of her spine, but the subsequent interpretation did.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁴ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁵

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.⁶ 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.⁷ 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.⁸

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.⁹ An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.¹⁰

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.¹¹ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and

³ *Supra* note 1.

⁴ *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364, 366 (2006).

⁵ *S.P.*, 59 ECAB 184, 188 (2007); *Joe D. Cameron*, 41 ECAB 153, 157 (1989).

⁶ *B.F.*, Docket No. 09-60 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 4.

⁷ *D.B.*, 58 ECAB 464, 466 (2007); *David Apgar*, 57 ECAB 137, 140 (2005).

⁸ *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734, 737 (2008); *Bonnie A. Contreras*, *supra* note 4.

⁹ *Roma A. Mortenson-Kindschi*, 57 ECAB 418, 428 n.37 (2006); *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

¹⁰ *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

¹¹ *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149, 155-56 (2006); *D'Wayne Avila*, 57 ECAB 642, 649 (2006).

compensable employment factors.¹² 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.¹³

ANALYSIS

OWCP accepted that appellant was a federal civilian employee who filed a timely claim and that the evidence supported that the incident of September 5, 2012 occurred as described. The issue is whether appellant submitted evidence from a qualified physician. The Board finds that Dr. Hoyt is a physician under FECA because he diagnosed subluxations based on x-rays obtained of appellant's lumbar spine. However, this case is not in posture for decision as to whether appellant sustained lumbar subluxation causally related to her September 5, 2012 fall.

Section 8101(2) of FECA¹⁴ provides that the term physician, as used therein, 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.¹⁵ Without a diagnosis of a spinal subluxation from x-ray, a chiropractor is not a physician under FECA and his opinion does not constitute competent medical evidence.¹⁶

Dr. Hoyt initially provided diagnoses of subluxation in his progress notes, but based the diagnoses on palpatory examination, clinical examination and biomechanical evaluation, not by x-ray. He submitted two versions of the same clinical evaluation, one that listed the diagnoses of subluxations and one that contained no such diagnoses, but neither of which based its diagnoses on examination of an x-ray. In the September 6, 2012 radiographic evaluation, Dr. Hoyt noted irregularities of a mildly reduced cervical curve, mild disc narrowing at L5-S1 and moderate lateral listing to the right of appellant's lumbosacral spine. He later revised the September 6, 2012 radiographic evaluation and added additional diagnoses of subluxations at C5, C6, T1, T2 and L5-S1.

The Board finds that Dr. Hoyt diagnosed spinal subluxations in his revised September 6, 2012 radiographic report, received on April 9, 2013. The evidence is sufficient to establish that he qualifies as a physician under FECA.¹⁷ A chiropractor may interpret his or her x-rays to the same extent as any other physician. To be given any weight, the medical report must state that x-rays support the finding of spinal subluxation.¹⁸ In *Pedro Gutierrez*, the Board

¹² *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379, 384 (2006).

¹³ *I.J.*, 59 ECAB 408, 415 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹⁴ 5 U.S.C. § 8101(2).

¹⁵ See 20 C.F.R. § 10.311.

¹⁶ See *Jay K. Tomokiyo*, 51 ECAB 361, 367-68 (2000).

¹⁷ See *Pedro Gutierrez*, Docket No. 05-950 (issued February 14, 2006).

¹⁸ See 20 C.F.R. § 10.311(c).

noted that a chiropractor initially submitted a report which initially did not contain a diagnosis of spinal subluxation. On reconsideration, however, he revised his report and provided a diagnosis of spinal subluxation based on x-rays. The Board found that the chiropractor met the criteria under FECA to be considered a physician.¹⁹ In this case, Dr. Hoyt's original examination report did not list a diagnosis of spinal subluxation, but he provided such diagnosis in revised reports. Based on his radiological report received on April 9, 2013, he meets the criteria of 5 U.S.C. § 8101(3) and 20 C.F.R. § 10.311(b) to be considered a physician.

OWCP has issued procedures which explain the role of a district medical adviser once medical evidence has been submitted in support of a claim.²⁰ These procedures state that the functions of the medical adviser include interpretation of medical reports and providing guidance or instruction to claims staff regarding general medical issues. The medical adviser can provide advice to the claims examiner on how to proceed with developing or weighing the medical evidence where the report from the attending physician is not clear and well rationalized. In this capacity, the medical adviser may advise whether a claimant's condition is employment related, whether the claimant is receiving appropriate medical care, including whether recommended procedures or treatment are useful or necessary.

This case will be remanded to OWCP for referral of the case record to the district medical adviser for review of Dr. Hoyt's reports of record. The medical adviser should address whether the evidence supports spinal subluxations causally related to the accepted incident and if so what treatment was necessary for the diagnosed condition. After such further development as necessary, OWCP shall issue an appropriate decision on appellant's claim for compensation.

CONCLUSION

The Board finds that this case is not in posture for decision.

¹⁹ *Supra* note 17.

²⁰ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Function of the Medical Unit*, Chapter 3.200.4(b) (October 1990).

ORDER

IT IS HEREBY ORDERED THAT the December 12, 2013 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development consistent with this opinion.

Issued: August 18, 2014
Washington, DC

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

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

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