



In an October 29, 2013 report, Dr. Aki Oshita, a treating chiropractor, reported that appellant sought treatment on October 28, 2013 for middle and lower back pain. He provided appellant with work restrictions.

By letter dated November 15, 2013, OWCP informed appellant that the evidence of record was insufficient to support his claim. Appellant was advised that a chiropractor did not qualify as a physician under FECA unless he diagnosed a spinal subluxation as demonstrated by x-ray to exist. He was further instructed on the medical and factual evidence needed and provided 30 days to respond.

In an October 30, 2013 attending physician's report (Form CA-20), Dr. Oshita reported that on October 24, 2013 appellant was lifting letter trays and gradually began to feel middle and lower back pain. He noted findings of myospasm of the thoracic muscle and subluxation. Dr. Oshita diagnosed dorsalgia, lumbalgia and hypertonicity and checked the box marked "yes" when asked if he believed appellant's condition was caused by his employment activity. In an October 30, 2013 duty status report (Form CA-17), he noted clinical findings of hypertonicity and diagnosed dorsalgia, lumbalgia and myospasm. Appellant was provided with work restrictions. Neither report made reference to whether x-rays were obtained. In a November 15, 2013 note, Dr. Oshita released appellant back to work without restrictions.

By decision dated December 16, 2013, OWCP denied appellant's claim. It found that the medical evidence of record failed to provide a firm medical diagnosis which could be attributed to the accepted October 24, 2013 employment incident.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA 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 or specific condition for which compensation is claimed are causally related to the employment injury.<sup>2</sup> 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.<sup>3</sup>

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.<sup>4</sup> The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

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<sup>2</sup> Gary J. Watling, 52 ECAB 278 (2001); Elaine Pendleton, 40 ECAB 1143, 1154 (1989).

<sup>3</sup> Michael E. Smith, 50 ECAB 313 (1999).

<sup>4</sup> Elaine Pendleton, *supra* note 2.

To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.<sup>5</sup> The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 claimant. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of 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>6</sup>

### ANALYSIS

OWCP accepted that the October 24, 2013 incident occurred as alleged. The issue is whether appellant submitted sufficient medical evidence to establish that the employment incident caused a middle or low back injury. The Board finds that he did not submit sufficient medical evidence to support that he sustained an injury causally related to the October 24, 2013 employment incident.<sup>7</sup>

In support of his claim, appellant submitted reports dated October 29 through November 15, 2013 from Dr. Oshita, a treating chiropractor. In an October 20, 2013 Form CA-20, Dr. Oshita reported findings of myospasm of the thoracic muscle and subluxation. He diagnosed dorsalgia, lumbalgia and hypertonicity and checked the box marked "yes" when asked if he believed appellant's condition was caused by his employment activity. Dr. Oshita did not state that the diagnosis of subluxation was based on x-rays of the spine.

In assessing the probative value of chiropractic evidence, the initial question is whether the chiropractor is a physician as defined under 5 U.S.C. § 8101(2). A chiropractor is not considered a physician under FECA unless it is established that there is a spinal subluxation as demonstrated by x-ray to exist.<sup>8</sup> The evidence does not reflect that Dr. Oshita diagnosed subluxation based on an x-ray. There is no indication in the record that he obtained or reviewed x-rays when diagnosing a subluxation.<sup>9</sup> While Dr. Oshita provided a diagnosis of dorsalgia,

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<sup>5</sup> See 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

<sup>6</sup> *James Mack*, 43 ECAB 321 (1991).

<sup>7</sup> See *Robert Broome*, 55 ECAB 339 (2004).

<sup>8</sup> See *Kathryn Haggerty*, 45 ECAB 383 (1994). See 20 C.F.R. § 10.311(c). 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.

<sup>9</sup> 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. 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 the Secretary." See *Merton J. Sills*, 39 ECAB 572, 575 (1988).

lumbalgia and hypertonicity, this does not constitute probative medical evidence as he does not meet the statutory definition of physician.<sup>10</sup>

In the instant case, the record is without rationalized medical evidence from a physician establishing a diagnosed medical condition causally related to the accepted October 24, 2013 employment incident. OWCP advised appellant of the medical evidence required to establish his claim; however, he failed to submit such evidence.

An award of compensation may not be based on surmise, conjecture, speculation or on the employee's own belief of causal relation.<sup>11</sup> To establish a firm medical diagnosis and causal relationship, appellant must submit a physician's report in which the physician reviews those factors of employment alleged to have caused his condition and, taking these factors into consideration, as well as findings upon examination and appellant's medical history, explain how these employment factors caused or aggravated any diagnosed condition, and present medical rationale in support of his opinion.<sup>12</sup> Thus, appellant has failed to meet his burden of proof.

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 and 10.607.

### **CONCLUSION**

The Board finds that appellant failed to meet his burden of proof to establish that he sustained a back injury in the performance of duty on October 24, 2013.

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<sup>10</sup> *L.S.*, Docket No. 07-560 (issued June 22, 2007). *See also Alberta S. Williamson*, 47 ECAB 569 (1996) (the Board has held that an opinion on causal relationship which consists only of a physician checking "yes" on a medical form report without further explanation or rationale is of diminished probative value).

<sup>11</sup> *D.D.*, 57 ECAB 734 (2006).

<sup>12</sup> *Supra* note 3.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 16, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 7, 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