

ground, part of it leaned toward him bending him backwards. Appellant did not stop work but was removed from employment on June 5, 2013. His supervisor, Terry Brewer, noted that no report of injury was filed while appellant was employed and he was unaware of this incident.

The employing establishment controverted the claim noting that appellant was terminated from employment for cause on June 5, 2013 and subsequently filed three workers' compensation claims. It indicated that he had a long history of nonoccupational incidents which caused back and buttocks injuries.

Appellant submitted various medical reports into the record. Employing establishment medical records from a registered nurse noted his treatment for back pain on September 21, 2011. Appellant reported improvement with chiropractic treatment. The nurse noted that appellant was released to work without limitations. On September 12, 2012 the nurse saw him for a fitness-for-duty examination and he presented with a backache. Appellant reported being off work since September 6, 2012 for low back pain and sought treatment from a chiropractor. The nurse returned him to work without restrictions. In reports dated October 9 and 17, 2012, the nurse treated appellant in follow-up for low back pain. Appellant reported being released to regular duty by his chiropractor.

Appellant was also treated by Dr. Jeremy Blackwood, a chiropractor, from September 13 to October 28, 2010. Dr. Blackwood diagnosed lumbosacral neuritis/radiculitis, subluxation, segmental dysfunction, lumbar region L1-5, sacroiliac segment dysfunction, subluxation, segmental dysfunction, pelvic region, muscle spasms, lumbalgia and segmental dysfunction of the ankle and foot. He noted that appellant was able to return to work without restrictions. In return to work with restrictions slips dated September 14 and 21, 2011, Dr. Blackwood diagnosed thoracic segmental dysfunction, subluxation, segmental dysfunction, lumbar region L1-5, sacroiliac segment dysfunction, sprains and strains to the lumbar region. He returned appellant to work on September 14, 2011 without restrictions.

Appellant was treated by Dr. Katherine L. Clark, a chiropractor, from September 12 to November 1, 2012, who noted on September 12, 2012 that he was fit to return to work without restrictions. In a certification of health care provider form dated April 17, 2013, Dr. Clark noted that appellant reported that his back condition commenced on October 24, 2009 and she treated him from September 11, 2012 to April 12, 2013. Appellant reported times when he has been unable to perform lifting and prolonged standing due to exacerbation. However, Dr. Clark noted that he was able to perform his job functions. Appellant reported acute low back pain after "moving the wrong way" and although he was not incapacitated he may be absent during flare-ups.

By letter dated July 3, 2013, OWCP advised appellant that his claim was originally received as a simple, uncontroverted case which resulted in minimal or no time loss from work. It indicated that his claim was administratively handled to allow medical payments up to \$1,500.00; however, the merits of the claim had not been formally adjudicated. OWCP advised that, because the medical bills exceeded \$1,500.00, appellant's claim would be formally adjudicated. It requested that he submit additional information including a comprehensive medical report from his treating physician which included a reasoned explanation as to how the specific work factors or incidents contributed to his claimed lumbar condition. OWCP noted that

medical evidence must be submitted by a qualified physician and that nurse practitioners are not considered physicians under FECA. Additionally, it indicated that medical reports signed by a chiropractor do not qualify as a physician unless there was a diagnosis of subluxation as demonstrated by an x-ray.

In a decision dated September 25, 2013, OWCP denied appellant's claim on the grounds that the medical evidence failed to provide a diagnoses in connection with the injury or events alleged.

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 of FECA, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed is causally related to the employment injury. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.²

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. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.³

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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.⁴

ANALYSIS

In the instant case, it is not disputed that appellant worked as a machinist and that on September 4, 2012 an overhead crane operator lowered a John Deere draft frame that he was guiding and that the frame leaned toward him. However, he has not submitted sufficient medical evidence to establish that his claimed left leg strain or other condition was caused or aggravated by the September 4, 2012 work incident. On July 3, 2013 OWCP advised appellant of the type of medical evidence needed to establish his claim. Appellant did not submit a rationalized

² *Gary J. Watling*, 52 ECAB 357 (2001).

³ *T.H.*, 59 ECAB 388 (2008).

⁴ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

medical report from a physician sufficiently explaining how the incident caused or aggravated a diagnosed medical condition.

Appellant submitted reports from Dr. Blackwood, a chiropractor, from September 13, 2010 to September 14, 2011, who noted diagnoses and appellant's status. However, these reports predate the claimed September 4, 2012 injury. Appellant was also treated by Dr. Clark, a chiropractor, from September 12, 2012 to April 17, 2013 for a back condition which commenced on October 24, 2009. Dr. Clark diagnosed lumbar subluxation, sacroiliac subluxation and pelvic instability. Section 8101(2) of FECA provides that chiropractors are considered physicians "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."⁵ Thus, where x-rays do not demonstrate a subluxation (a diagnosis of a subluxation based on x-rays has not been made), a chiropractor is not considered a "physician" and his or her reports cannot be considered as competent medical evidence under FECA.⁶ Drs. Blackwood and Clark are not physicians as they did not diagnose a spinal subluxation demonstrated by x-ray. Thus, Drs. Blackwood and Clark's opinions are not considered competent medical evidence under FECA.

The record also contains employing establishment medical records from a registered nurse who treated appellant from September 21, 2011 to October 17, 2012 for back pain. The Board has held that treatment notes signed by a nurse are not considered medical evidence as these providers are not physicians under FECA.⁷

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment sufficient to establish causal relationship. Causal relationships must be established by rationalized medical opinion evidence.⁸ Appellant failed to submit such evidence and OWCP therefore properly denied his claim for compensation.

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.

⁵ 5 U.S.C. § 8101(2).

⁶ See *Susan M. Herman*, 35 ECAB 669 (1984).

⁷ See *David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician's assistants, nurses and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law).

⁸ See *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that his claimed conditions were causally related to his employment.

ORDER

IT IS HEREBY ORDERED THAT the September 25, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 10, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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