

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

A.R., Appellant	)	
	)	
and	)	Docket No. 18-1126
	)	Issued: December 7, 2018
DEPARTMENT OF DEFENSE, DEFENSE	)	
SERVICES, NAVAL AIR STATION	)	
COMMISSARY, Meridian, MS, Employer	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On May 14, 2018 appellant filed a timely appeal from a March 14, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.<sup>2</sup>

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that following the March 14, 2018 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this evidence for the first time on appeal. *Id.*

## ISSUE

The issue is whether appellant has met her burden of proof to establish a diagnosed medical condition causally related to the accepted December 29, 2017 employment incident.

## FACTUAL HISTORY

On January 31, 2018 appellant, then a 49-year-old store worker, filed a traumatic injury claim (Form CA-1) alleging that, on December 29, 2017, she pulled a muscle in her back unloading incoming shipments and lifting boxes while in the performance of duty. She did not stop work.

By development letter dated February 9, 2018, OWCP requested that appellant provide additional factual and medical evidence supporting her traumatic injury claim. Specifically, it requested that she submit a rationalized medical opinion which explained how a diagnosed medical condition was causally related to the alleged incident. OWCP noted that the medical evidence submitted must be from a qualified physician and notified appellant of the circumstances under which a chiropractor can be considered a physician under FECA. It afforded appellant 30 days to respond.

Appellant provided a series of notes from Dr. Arthur J. Hall, a chiropractor, beginning January 31, 2018, indicating that he examined appellant due to a back injury from a work-related incident. He diagnosed subluxation of L4-5 lumbar vertebra, sprain of ligaments of the lumbar spine, radiculopathy lumbar region, and low back pain.

By decision dated March 14, 2018, OWCP denied appellant's traumatic injury claim, finding that she had not submitted medical evidence containing a medical diagnosis causally related to the accepted employment incident. It noted that as the evidence submitted from a chiropractor did not include a diagnosis of subluxation of the spine based on review of x-rays, it is not considered medical evidence.

## LEGAL PRECEDENT

An employee seeking benefits under FECA<sup>3</sup> has the burden of proof to establish 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 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.<sup>4</sup>

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

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<sup>3</sup> *Supra* note 1.

<sup>4</sup> *A.D.*, Docket No. 17-1855 (issued February 26, 2018); *Gary J. Watling*, 52 ECAB 357 (2001).

sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged.<sup>5</sup> Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.<sup>6</sup>

Causal relationship is a medical question, which requires rationalized medical opinion evidence to resolve the issue.<sup>7</sup> A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background.<sup>8</sup> Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors.<sup>9</sup>

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.<sup>10</sup> Consequently, their medical findings and/or opinions which are not based on x-rays will not suffice for purposes of establishing entitlement to FECA benefits.<sup>11</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a diagnosed medical condition causally related to the accepted December 29, 2017 employment incident.

Appellant's chiropractor, Dr. Hall, diagnosed spinal subluxations at L4-5. The case record, however, does not contain x-rays of appellant's spine and Dr. Hall did not indicate that he relied on x-rays to establish his diagnosis of spinal subluxations. As such, the Board finds that Dr. Hall is not considered a physician within the meaning of FECA and his reports do not constitute probative medical evidence.<sup>12</sup> As appellant did not submit probative medical evidence, she has

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<sup>5</sup> *A.L.*, Docket No. 18-0420 (issued August 21, 2018).

<sup>6</sup> *A.D.*, *supra* note 4; *T.H.*, 59 ECAB 388 (2008).

<sup>7</sup> *See Robert G. Morris*, 48 ECAB 238 (1996).

<sup>8</sup> *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>9</sup> *Id.*

<sup>10</sup> 5 U.S.C. § 8101(2); *see A.L.*, *supra* note 5; *T.W.*, Docket No. 17-1819 (issued March 14, 2018); *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

<sup>11</sup> *A.L.*, *supra* note 5; *R.M.*, Docket No. 17-1656 (issued January 16, 2018); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

<sup>12</sup> 5 U.S.C. § 8101(2); *see A.L.*, *supra* note 5; *R.M.*, *id.*; *Kathryn Haggerty*, 45 ECAB 383, 389 (1994). 20 C.F.R. § 10.5(bb); *see Bruce Chameroy*, 42 ECAB 121, 126 (1990).

not met her burden of proof to establish a diagnosed medical condition causally related to the accepted employment incident.<sup>13</sup>

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 her burden of proof to establish a diagnosed condition causally related to the accepted December 29, 2017 employment incident.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 14, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 7, 2018  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>13</sup> *Supra* note 6.