United States Department of Labor
Employees' Compensation Appeals Board

M.P., Appellant	)	
and	)	**Docket No. 06-1388**
	)	**Issued: September 20, 2006**
DEPARTMENT OF THE NAVY, CORONADO NAVAL BASE, San Diego, CA, Employer	)	

Appearances:
M.P., pro se
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On May 30, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' December 13, 2005 and April 21, 2006 merit decisions denying her claim. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant's treating chiropractor is a "physician" for purposes of section 8101(2) of the Federal Employees' Compensation Act; and (2) whether appellant has established that she sustained a left shoulder/cervical/trapezoid injury while in the performance of duty on June 18, 2005.

FACTUAL HISTORY

Appellant, a 42-year-old firefighter, filed a claim for benefits on June 19, 2005, alleging that she sustained a left shoulder/trapezoid and cervical injury as a result of sleeping on a worn mattress on June 18, 2005. In a July 1, 2005 form report, Dr. Marc R. Gottlieb, a chiropractor, noted appellant's history of injury that she awakened one morning with pain in her neck running

down to her left arm. The complaints of pain had persisted for approximately one year. Dr. Gottlieb found that appellant had sustained a decreased cervical spine curve and phase two spondylosis and diagnosed vertebral subluxations at C1 to 6 and T3-4.

In a report dated July 18, 2005, Dr. Gottlieb indicated that appellant had received a chiropractic adjustment for a work-related left shoulder injury on July 5, 2005. He provided results of radiographic tests of the cervical region dated July 11, 2005.

On August 8, 2005 the Office advised appellant that it required additional factual and medical evidence to determine whether she was eligible for compensation benefits. It informed her that it required a diagnosis of her condition and a comprehensive medical report from her treating physician describing her symptoms and providing an opinion as to whether her claimed condition was causally related to her federal employment. The Office informed appellant that a report from a chiropractor does not constitute medical evidence unless it contains a diagnosis of subluxation as demonstrated by x-ray. The Office requested that appellant submit additional evidence within 30 days.

Dr. Gottlieb submitted a July 20, 2005 work restriction form; a form report dated August 16, 2005 noting complaints of severe pain in the neck and down the left arm and progress reports dated September 1 and October 13, 2005, which essentially reiterated his previous findings and conclusions. She also appellant submitted photostat copies of results of magnetic resonance imaging (MRI) scan results, of the cervical and thoracic regions, dated July 29, 2005. In the August 16, 2005 report, Dr. Gottlieb stated:

> "MRI scan test of cervical spine performed July 29, 2005 shows disc compromise, disc abnormality and spinal canal narrowing. This type of injury is consistent with the report of [appellant] that this injury is one of gradual onset from sleeping at work. She complains of pain after sleeping on the beds at work and not after sleeping at home."

Dr. Gottlieb indicated an "ICD-9" code for injury which stated 739.1 as a diagnosis. He asserted that this was a cervical subluxation code as determined by physical examination and x-rays tests.

By decision dated December 13, 2005, the Office denied appellant's claim, finding that Dr. Gottlieb was not a physician and that she, therefore, failed to submit sufficient medical evidence in support of her claim.

On January 23, 2006 appellant requested reconsideration. In a January 17, 2006 report, Dr. Gottlieb stated:

> "Please find a full, detailed (June 24, 2005) report from Spinal Imaging Inc[orporation] detailing the condition of [appellant's] x-ray taken in our office. We have sent this x-ray out for a detailed spinal report supporting a subluxation. Please note on page 3, there is detailed explanation of [appellant's] disc angle in comparison with normal disc angles. It clearly states 'flattening or reversal of the

> disc angles indicate failed spinal biomechanics and increased pressures on the vertebral motor units.' This report clearly indicates the presence of a subluxation…."

Dr. Gottlieb also submitted several charts and diagrams, indicating that the MRI scans and x-rays he submitted documented a cervical subluxation.

By decision dated April 21, 2006, the Office denied modification of the December 13, 2005 decision.

LEGAL PRECEDENT -- ISSUE 1

Congress has imposed a limitation under the statute at section 8101(2), which defines the term "physician" to include 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."[1]

The Office's regulations define "subluxation" as follows:

> "*Subluxation* means an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae which must be demonstrable on any x-ray film to an individual trained in the reading of x-rays."[2]

ANALYSIS -- ISSUE 1

In this case, appellant obtained treatment from Dr. Gottlieb, a chiropractor, beginning on June 24, 2005 and continuing through August 8, 2005. Dr. Gottlieb provided a diagnosis of subluxation, based upon x-ray evidence. With regard to the June 24, 2005 report from Spinal Imaging Incorporation, the report documents cervical stenosis, with abnormal vertebral disc angle from C2 to 5, abnormal vertebral disc height from C2 to 4 and vertebra offset from C2 to 4. These measurements or calculations are documented clearly by x-rays and are sufficient to substantiate off-centering and abnormal spacing of the vertebrae, as required by regulation. Dr. Gottlieb is a physician for purposes of treatment of appellant's cervical C2 to 5 subluxations.

LEGAL PRECEDENT -- ISSUE 2

An employee seeking benefits under the Act[3] has the burden of establishing that 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 the Act, that the claim was timely filed within the applicable time limitation period of the Act, 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 are causally

[1] 5 U.S.C. § 8101(2).

[2] 20 C.F.R. § 10.5(bb).

[3] 5 U.S.C. §§ 8101-8193.

related to the employment injury.[4] 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.[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. 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.[6] 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.[7] The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. 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.[8]

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[9]

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 her condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.[10] Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

ANALYSIS -- ISSUE 2

In this case, it is uncontested that appellant experienced the employment incident at the time, place and in the manner alleged. However, the question of whether an employment incident caused a personal injury generally can be established by medical evidence.[11] Appellant has not submitted rationalized, probative medical evidence to establish that the employment

[4] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[5] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[6] *John J. Carlone*, 41 ECAB 354 (1989).

[7] *Id.* For a definition of the term "injury," *see* 20 C.F.R. § 10.5(a)(14).

[8] *Id.*

[9] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

[10] *Id.*

[11] *John J. Carlone*, *supra* note 6.

incident on June 18, 2005 caused a personal injury, which required medical treatment or caused disability.

The only medical evidence of record is from Dr. Gottlieb. The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.[12] Dr. Gottlieb did not discuss causal relation of the spinal subluxations to provide the necessary rationalized medical opinion to relate them to appellant's employment. In fact, Dr. Gottlieb only restated appellant's own opinion as to causation of his diagnosed spinal subluxations, but made no attempt to explain how pathologically the soft bed appellant slept in could have caused her alleged cervical injuries. His reports, therefore, are not fully rationalized on the issue of whether appellant sustained an occupational injury. Further, a chiropractic opinions as to conditions other than subluxations of the spine, are not considered to be medical evidence. Dr. Gottlieb's opinions regarding appellant's thoracic spine and shoulder are, therefore, of no probative medical value.

The Office advised appellant of the evidence required to establish her claim; however, appellant failed to submit such evidence. Appellant, therefore, did not provide a medical opinion to sufficiently describe or explain the medical process through which the June 18, 2005 work incident would have caused the claimed injury. Accordingly, as appellant has failed to submit any probative medical evidence establishing that she sustained a left shoulder/cervical/trapezoidal injury in the performance of duty, the Office properly denied appellant's claim for compensation.

CONCLUSION

The Board finds that appellant has established that Dr. Gottlieb is a "physician" under the Act, but has failed to establish that she sustained a cervical or left shoulder/trapezoidal injury in the performance of duty on June 18, 2005.

[12] *See Anna C. Leanza*, 48 ECAB 115 (1996).

ORDER

IT IS HEREBY ORDERED THAT the April 21, 2006 and December 13, 2005 decisions of the Office of Workers' Compensation Programs be affirmed as modified.

Issued: September 20, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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