

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

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**M.B., Appellant**

**and**

**FEDERAL AVIATION ADMINISTRATION,  
Rapid City, SD, Employer**

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**Docket No. 07-672  
Issued: June 12, 2007**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On January 16, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated November 29, 2006 finding that she failed to establish an injury as alleged. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the issue in this case.

**ISSUE**

The issue is whether appellant has met her burden of proof in establishing that she sustained an injury in the performance of duty on October 11, 2006.

**FACTUAL HISTORY**

On October 12, 2006 appellant, then a 47-year-old airway transportation services specialist, filed a traumatic injury claim alleging that on October 11, 2006 she was struck on the driver's side by another motor vehicle while in the performance of duty. She alleged that she injured her neck and had backaches and headaches with tingling in her arms and hands. Appellant did not stop work.

By letter dated October 25, 2006, the Office advised appellant and the employing establishment that additional factual and medical evidence was needed. The Office allotted 30 days within which to submit the requested information.

On October 27, 2006 the Office received a diagram and accident report which contained a drawing and representation of how appellant's injury occurred.

In an October 31, 2006 disability certificate, a chiropractor, whose signature is illegible, recommended chiropractic treatments and physical therapy.

In a November 1, 2006 statement, the employing establishment confirmed that appellant was on official duty at the time of the accident.

In a November 8, 2006 statement, Carrol Hansen, a program analyst, noted that the November 1, 2006 employing establishment statement was signed by Mrs. Larson, the acting manager at the time of appellant's accident. She submitted an updated form to reflect Mrs. Larson's signature.

By decision dated November 29, 2006, the Office denied appellant's claim. The Office found that the evidence of file supported that the claimed motor vehicle accident occurred as alleged. However, there was no medical evidence that provided a diagnosis connected to the incident.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> 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 the Act, that the claim was timely filed within the applicable time limitation period of the Act<sup>2</sup> and that an injury was sustained in the performance of duty.<sup>3</sup> These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>4</sup>

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office 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. An employee

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>3</sup> *James E. Chadden Sr.*, 40 ECAB 312 (1988).

<sup>4</sup> *Delores C. Ellyet*, 41 ECAB 992 (1990).

has the burden of establishing the occurrence of an injury at the time, place and in the manner alleged by a preponderance of the reliable, probative and substantial evidence.<sup>5</sup>

The second component is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.<sup>6</sup> The employee must also submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>7</sup> 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.<sup>8</sup>

### ANALYSIS

Appellant alleged that on October 11, 2006 she was injured in an automobile accident in the performance of duty. There is no dispute that she was in an automobile accident while in the performance of duty on that date. The incident occurred while appellant was on official time and was not disputed by the employing establishment.

However, the medical evidence is insufficient to establish that the October 11, 2006 automobile accident caused an injury. Appellant has not submitted any medical evidence which establishes that the accident caused a personal injury.

Appellant provided a disability certificate from a chiropractor. In assessing the probative value of chiropractic evidence, the initial question is whether the chiropractor is considered a physician under section 8101(2) of the Act.<sup>9</sup> A chiropractor cannot be considered a physician under the Act unless it is established that there is a subluxation as demonstrated by x-ray to exist.<sup>10</sup> Where x-rays do not demonstrate a subluxation, a chiropractor is not considered a "physician," and his or her reports cannot be considered as competent medical evidence under the Act.<sup>11</sup> In this case, the record does not establish that x-rays were obtained or that subluxation

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<sup>5</sup> *Charles B. Ward*, 38 ECAB 667 (1987).

<sup>6</sup> *See John J. Carlone*, 41 ECAB 354, 357 (1989).

<sup>7</sup> *Id.* For a definition of the term "traumatic injury," see 20 C.F.R. § 10.5(ee).

<sup>8</sup> *Id.*

<sup>9</sup> 5 U.S.C. § 8101(2).

<sup>10</sup> *Thomas R. Horsfall*, 48 ECAB 180 (1996).

<sup>11</sup> *See Thomas W. Stevens*, 50 ECAB 288(1999); *see also Susan M. Herman*, 35 ECAB 669 (1984). *George E. Williams*, 44 ECAB 530, 534 (1993).

of the spine was diagnosed. Therefore, the chiropractor is not considered a physician as defined and his report is of no probative value.

Appellant did not submit any medical evidence to support that she sustained an injury on October 11, 2006. Absent medical evidence to establish that her medical condition was causally related to the October 11, 2006 work-related incident, appellant failed to carry her burden of proof.

**CONCLUSION**

The Board finds that appellant has not met her burden of proof in establishing that she sustained an injury in the performance of duty on October 11, 2006.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs' hearing representative dated November 29, 2006 is affirmed.

Issued: June 12, 2007  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

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