

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of STEVEN D. YEAGER and U.S. POSTAL SERVICE,
POST OFFICE, Indianapolis, IN

*Docket No. 98-2579; Submitted on the Record;
Issued March 22, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant has established that he sustained a recurrence of disability on or about October 16, 1996 causally related to his December 18, 1995 employment injury; and (2) whether the Office of Workers' Compensation Programs properly denied payment for services provided by a chiropractor from March 19, 1996 onward.

On December 18, 1995 appellant, then a 35-year-old letter carrier, filed a claim for injuries sustained that date while involved in a motor vehicle accident during the performance of his duties. The Office accepted appellant's claim for a cervical strain, contusions to both knees and right elbow. The Office subsequently accepted subluxations of the spine at C2-4. Appellant worked limited duty until he was released to his regular job assignment on January 2, 1996. Appellant sought medical treatment on an intermittent basis.

In a letter dated March 7, 1996, appellant requested a change in physicians to Dr. Thomas E. Moran, his treating physician. Appellant additionally stated that he went to Dr. Sid L. Dyer, a chiropractor, because he could not get an appointment with Dr. John G. Peters, the spine specialist and a Board-certified orthopedist, referred by Dr. Moran. Appellant further stated that his work approved treatment with Dr. Dyer and attached copies of what he had forwarded to the employing establishment. These included: a "PI Insurance Verification" sheet, which appellant asserted was "used to verify, ok to start my treatment from Dr. Dyer's office January 29, 1996;" a list of appointments he had with Dr. Dyer from February 6 through June 4, 1996; and a February 6, 1996 letter from Dr. Dyer, which advised that appellant was under his care for injuries sustained in a motor vehicle accident on December 18, 1995 and recommended continuing treatment.

By letter dated March 19, 1996, the Office advised appellant that it authorized Dr. Moran as his designated physician and included a referral to Dr. Peters. In a separate letter of the same date, the Office advised appellant that it would not be responsible for treatment rendered by Dr. Dyer unless the employing establishment issued a Form CA-16. Appellant was further

informed of how a chiropractor's services were reimbursable and advised that Dr. Dyer's reports did not fall within the allowable limitations for chiropractor care.

On October 25, 1996 appellant filed a notice of recurrence of disability, Form CA-2a, indicating that he was still suffering from the effects of the original injury. Wage loss for the period October 16 through November 25, 1996 was also submitted along with additional evidence.

By letter dated November 5, 1996, the Office requested additional factual and medical information from appellant in reply to his notice of recurrence of disability, including medical bridging evidence. Appellant was advised that chiropractic care was previously unauthorized and remained unauthorized. The Office received factual and medical evidence from appellant.

Several medical reports from Dr. Moran were submitted. In an October 15, 1996 report, Dr. Moran stated that he had been treating appellant for injuries sustained in the work-related accident of December 18, 1995. He noted that he originally referred appellant to Dr. Peters, but now thinks that Dr. Steve James, a neurologist, would better benefit appellant's needs. In an October 21, 1996 report, Dr. Moran stated, appellant has severe back, neck and shoulder pain. He stated that he placed appellant off work October 17 until November 25, 1996 as he is totally disabled. He stated that he referred appellant to see a neurologist and that Dr. Troy D. Payner saw appellant on October 21, 1996 and referred appellant to physical therapy. In a November 22, 1996 report, Dr. Moran stated that appellant was unable to do his job because of his severe pain in his neck, back and shoulder and that appellant's medications alter his job performance. He further stated that appellant was unable to carry his mailbag due to the weight and is unable to sit or stand for any length of time.

In a January 30, 1996 report, Dr. Dyer stated that appellant was first seen on January 29, 1996 complaining of discomfort and injuries as a result of the December 18, 1995 motor vehicle accident. Chiropractic, orthopedic and neurological tests were performed and the results set forth. No diagnosis was provided, but a treatment plan was provided. Appellant's progress was reported in reports of February 6 and March 5, 1996. In an August 27, 1996 report, Dr. Dyer noted that appellant noticed that when he has to carry his mailbag on his shoulder for an extended period of time, it aggravates his upper back and lower neck area producing pain in those areas. He stated that he recommended that appellant not be required to carry his mailbag on his shoulder for extended periods of time throughout the day. Dr. Dyer further stated that appellant's ongoing neck and upper back stiffness and discomfort were real although there was no orthopedic or neurological data to support it. He opined that appellant's symptoms were musculature in origin as his symptoms appear to worsen with extended physical activities of daily living. A supportive treatment plan of adjustments was recommended. Dr. Dyer also opined that appellant sustained a five percent permanent impairment of his body as a whole as a direct result of the motor vehicle accident.

In an undated report, Dr. Dyer stated that appellant has subluxations throughout his spine demonstrated by x-ray. He stated that initial radiographs were done on January 30, 1996 and reevaluation radiographic were done on April 18, 1996. Dr. Dyer diagnosed chronic subluxation at L4-5, C5-6, an acute recent moderate subluxation at C2 and C4, C2 being worse and acute moderate rotational subluxation of T2. He opined that appellant had prior chronic subluxations

at C5-6 and L4-5 due to the type of subluxations they were. Dr. Dyer found that C5-6 had a total loss of movement in both flexion and extension and L4-5 showed chronic inflammatory evidence verified by a recent diagnostic ultrasound report. He noted that chronic subluxations were a severe loss of flexion/extension at a motor unit (C5-6) and spinal spondylosis takes time (years) to manifest. Dr. Dyer stated that appellant was asymptomatic for years prior to his work-related motor vehicle accident of December 18, 1995 and that when his medication for his injury wore off, his pain returned due to the damage of the supportive ligaments, worse at C2 and mildly present at C4. He opined that this was directly related to the motor vehicle accident. Dr. Dyer further stated that appellant's rotational subluxation at T2 was causing his upper back pain in addition to his anterior translation of the cervical spine. He stated that the initial evaluation revealed a moderate anterior translation, which caused a continuing strain to the posterior neck muscles and the upper back muscles because the skull has translated anteriorly. Spinal adjustments with rehabilitative strengthening exercises were noted to fix such a problem.

By decision dated January 28, 1997, the Office rejected appellant's recurrence of disability claim on the basis that the medical evidence of record failed to explain how appellant's current condition was related to his original work injury. The Office accepted the condition of an acute subluxation in the C2-4 region, but not in the T2, C5-6, or L4-5 regions. The Office further found that appellant was not entitled to chiropractic care after March 19, 1996.

Appellant requested a hearing before an Office hearing representative and submitted additional medical evidence, which included medical evidence relating to the original injury of December 18, 1995, physical therapy notes, disability notes and copies of medical bills.

In a February 23, 1997 report, Dr. Nancy P. Lipson, a Board-certified physiatrist, noted appellant's history of injury, subjective complaints and performed a physical examination. Her impression was myofascial pain to the upper to mid thoracic region on the left secondary to remote injury of December 18, 1995. A mild cervical and thoracic spine degenerative disc disease was also diagnosed. She recommended a referral for a functional capacity evaluation. Copies of disability slips and work releases with restrictions were provided.

In a February 24, 1997 report, Dr. Peters stated that appellant has a very complex pattern of pain, which appears to be primarily located around the upper thoracic spine, perhaps in the T3 distribution. It was further noted that appellant has pain through his mid low back and significant discomfort in his neck. Dr. Peters noted the history of injury and appellant's treatment, reviewed the various objective tests brought to him and related his examination findings and appellant's subjective complaints of pain. Dr. Peters diagnosed chronic spinal pain, status post motor vehicle accident. He advised that appellant's symptoms were quite significant and may keep him from his occupation. Dr. Peters recommended a home exercise program or water aerobics on a daily basis and to obtain pain management help and psychological assistance to cope with his symptoms.

In a March 12, 1997 report, Dr. Gary Wright, who is Board-certified in preventive medicine, provided a history of appellant's injury along with a treatment history. Appellant's subjective complaints were noted and the results of the physical examination along with a spinoscopy were set forth. Dr. Wright stated that after reviewing appellant's medical records, having performed his physical examination and obtaining additional objective diagnostic studies,

he opined that appellant had 10 conditions, which were the direct result of the December 18, 1995 work-related motor vehicle accident. A recommendation for a functional restoration program was provided.

In a March 31, 1997 report, Dr. Dyer stated that all the injuries appellant was treated for were totally and wholly related to his motor vehicle accident.

In an October 21, 1996 report, Dr. Troy D. Paynor, a neurologist, provided the results of his examination and stated that he strongly suspected appellant's clinical symptoms were consistent with a cervical muscle spasm. Physical therapy was recommended.

By decision dated March 13, 1998 and finalized on March 16, 1998, an Office hearing representative affirmed the denial of benefits, finding that appellant failed to establish that his recurrence of disability on and after October 16, 1996 was causally related to the work-related injury of December 18, 1995. The hearing representative further found that there was no basis for finding that the Office should be responsible for appellant's ongoing chiropractic treatment after March 19, 1996.

The Board finds that appellant has failed to establish that he sustained a recurrence of disability causally related to his December 18, 1995 employment injury.

Under the Federal Employees' Compensation Act,¹ an employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the recurrence of the disabling condition for which compensation is sought is causally related to the accepted employment injury.² As part of this burden the employee must submit rationalized medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the current disabling condition is causally related to the accepted employment-related condition³ and supports that conclusion with sound medical reasoning.⁴

The Board notes that in this case the medical reports of record are not sufficient to meet appellant's burden of proof as there is no rationalized medical opinion, which establishes that appellant was disabled during the period claimed. Although Drs. Wright, Peters and Lipson relate their diagnoses to the accepted injury, none of the medical reports provide an opinion supported by medical rationale as to how and why appellant's current condition is related to the accepted work injury. In his October 21, 1996 report, Dr. Paynor finds appellant's symptoms to be consistent with a cervical muscle spasm but does not offer an opinion as to causal relation. As each physician fails to cite objective evidence or to support their opinion with a rationalized

¹ 5 U.S.C. §§ 8101-8193.

² *Dennis J. Lasanen*, 43 ECAB 549, 550 (1992).

³ *Kevin J. McGrath*, 42 ECAB 109, 116 (1990).

⁴ *Lourdes Davila*, 45 ECAB 139, 142 (1993).

medical opinion establishing a causal relationship between appellant's current condition and his employment-related injury, appellant has not met his burden of proof in establishing his claim.

The Board further finds that the Office properly denied payment for services rendered by a chiropractor.

Section 8103 of the Act states in pertinent part, "the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of monthly compensation."⁵ Section 8101(3) of the Act, defining services and supplies," states:

"Reimbursable chiropractic 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."⁶

In the present case, it was only after Dr. Dyer diagnosed lumbar subluxations based on his review of the January 30 and April 18, 1996 radiographs that the Office properly considered his report to be that of a physician. As Dr. Dyer related appellant's subluxation at C2-4 to his December 18, 1995 work injury, the Office accepted the condition of a C2-4 subluxation. Subluxations at L4-5 and C5-6 were found to be chronic conditions. The T2 subluxation was related to appellant's biomechanics. However, as Dr. Dyer did not relate those subluxations to appellant's December 18, 1995 work injury, his treatment of appellant for those conditions is not reimbursable.

The Board notes that it has created exceptions to the general rule that services rendered by a chiropractor are not payable when they do not consist of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.⁷ These exceptions include physical therapy rendered by a chiropractor under the direction of an authorized physician,⁸ and chiropractic treatment authorized without limitations by the Office or the employing establishment.⁹

The Board finds, however, that the evidence in this case fails to establish that the treatment provided by Dr. Dyer was under the direction of Dr. Moran or any other authorized physician or through the employing establishment. The Board notes that appellant's request to have Dr. Moran as his treating physician was approved by the Office on March 19, 1996. The Office had advised appellant of the limitations concerning chiropractic care and told him that

⁵ 5 U.S.C. § 8103(a).

⁶ 5 U.S.C. § 8101(3).

⁷ *Edward Schoening*, 41 ECAB 977 (1990).

⁸ *Eleanor B. Loomis*, 37 ECAB 792 (1986).

⁹ *Beverly A. Scott*, 37 ECAB 838 (1986).

chiropractic care was unauthorized for his accepted medical conditions unless his agency issued a Form CA-16 to Dr. Dyer. The record is devoid of such form. Moreover, the evidence of file fails to establish that a qualified physician prescribed, recommended or directed physical therapy or any other services by Dr. Dyer as required under section 8103 of the Act. Inasmuch as the Office authorized Dr. Moran as appellant's treating physician on March 19, 1996, the Office could properly disapprove of chiropractic services of Dr. Dyer after March 19, 1996.

The decision of the Office of Workers' Compensation Programs dated March 13, 1998 and finalized on March 16, 1998 is affirmed.

Dated, Washington, D.C.
March 22, 2000

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member