

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

D.M., Appellant	)	
	)	
and	)	<b>Docket No. 25-0059</b>
	)	<b>Issued: December 13, 2024</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
Eau Claire, WI, Employer	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On October 24, 2024 appellant filed a timely appeal from an October 2, 2024 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 over the merits of this case.<sup>2</sup>

**ISSUE**

The issue is whether OWCP abused its discretion by denying appellant's request for authorization of chiropractic care.

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

<sup>2</sup> The Board notes that appellant submitted additional evidence on appeal to the Board. However, the Board's *Rules of Procedures* 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 additional evidence for the first time on appeal. *Id.*

## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>3</sup> The facts and circumstances of the case as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On March 21, 2014 appellant, then a 51-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that she injured her right shoulder on February 20, 2014, while performing continuous reaching and stretching in the course of her federal employment. She stopped work on March 8, 2014. OWCP accepted the claim for bilateral complete rotator cuff rupture, right sprain of shoulder, upper arm, and rotator cuff, left shoulder impingement, bilateral carpal tunnel syndrome (CTS), and cervical spine ligament sprain.<sup>4</sup>

On April 21, 2023 OWCP received a Congressional inquiry regarding an unpaid bill for Dr. Judy Soborowicz, a chiropractor.

By development letter dated April 27, 2023, OWCP advised appellant that the evidence submitted was insufficient to authorize chiropractic treatment. It advised her of the criteria for authorization of chiropractic treatment under FECA and noted that the "June 17, 2010" lumbar spine x-rays did not reveal a subluxation. OWCP further advised that the chiropractor should indicate whether the attending physician had referred appellant for chiropractic treatment and afforded 30 days to submit the necessary evidence.

OWCP received treatment notes from Dr. Joseph T. Hebl, a specialist in occupational medicine, dating from March 2014 to May 2023. In a report dated March 20, 2023, Dr. Hebl summarized appellant's medical treatment course, including physical therapy and chiropractic treatment since February 20, 2014. He noted that she reported overall worsening of her right shoulder and wrist symptoms with increased physical activity during her exercise program. Dr. Hebl advised that appellant should continue her physical therapy, chiropractic treatment, and deep tissue myofascial release treatments, to try to relieve her right upper extremity symptoms and ongoing neck spasm.

In a May 15, 2023 report, Dr. Hebl noted that appellant returned for reevaluation of her multiple musculoskeletal and neurologic conditions. He related that her neck symptoms continued to be problematic, and she had continued to attend chiropractic sessions with Dr. Soborowicz. Dr. Hebl noted that DOL had questioned appellant's chiropractic care for her work-related condition, and therefore he had ordered x-rays of the affected spinal areas.

A May 18, 2023 lumbar x-ray revealed that appellant had moderate-to-marked degenerative and hypertrophic changes to the posterior facet joints, most marked at L4-5 and L5-S1, which in turn resulted in grade 1 anterolisthesis at L5 on S1 that had progressed when compared

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<sup>3</sup> Docket No. 23-1099 (issued January 17, 2024); Docket No. 18-0305 (issued September 4, 2018).

<sup>4</sup> OWCP File No. xxxxxx214. The record indicates that five of appellant's claims have been combined with the instant case, OWCP File Nos. xxxxxx606, xxxxxx111, xxxxxx331, and xxxxxx289. OWCP File No. xxxxxx289 was accepted for cervical and lumbar ligament sprains with a November 4, 2015 date of injury.

with a June 17, 2010 x-ray. No fractures, dislocations, or osseous lesions were noted. Dr. Hebl wrote a note to the claims examiner on the x-ray report, relating that appellant had a subluxation at L5-S1, and therefore met the requirements for chiropractic care.

By decision dated May 31, 2023, OWCP denied authorization for chiropractic treatment. It explained that it had not received the required statement from the chiropractor that a referral for chiropractic treatment was made by appellant's physician, and that the x-ray findings were work related.

On August 2, 2023 appellant filed a timely appeal from the May 31, 2023 merit decision. By decision dated January 17, 2024, the Board affirmed the May 31, 2023 decision, finding that OWCP properly denied authorization for chiropractic care.<sup>5</sup> The Board noted that a May 18, 2023 report from Dr. Hebl contained a note to the claims examiner that the x-ray of appellant's lumbar spine revealed a subluxation at L5-S1; however, he failed to indicate that the chiropractor was treating appellant under his direction for her accepted conditions under this claim.

On September 15, 2023 OWCP received a document from Dr. Hebl dated September 5, 2023, wherein he summarized appellant's treatments and care since February 20, 2014, for her multiple employment injuries. Dr. Hebl related that he had referred appellant to the chiropractor for work-related subluxation at L5-S1, as confirmed by her May 25, 2023 x-rays. He also noted that he had reevaluated appellant on September 5, 2023 that she was continuing to struggle with bilateral shoulder impingement, neck pain and spasm, difficulties with range of motion (ROM), and that she continued to receive chiropractic treatment, once a week, with Dr. Soborowicz, as he had recommended.

On February 6, 2024 OWCP received a copy of Dr. Hebl's treatment summary. This summary also included a January 15, 2024 addendum, wherein he related that appellant had returned for follow-up, and that she continued to struggle with moderate-to-severe cervicgia, bilateral shoulder pain, impingement, loss of ROM, and bilateral wrist overuse tendinopathies. Dr. Hebl noted that appellant was not able to get into physical therapy, but that she continued with chiropractic treatment one to two times a week, and that he would recommend that she continue with chiropractic treatment.

On May 10, 2024 appellant requested reconsideration.

On May 30, 2024 OWCP referred the case record and a statement of accepted facts (SOAF) to Dr. Arthur S. Harris, Board-certified in orthopedic surgeon and serving as OWCP's district medical adviser (DMA), for review and an opinion on whether the procedures proposed by Dr. Hebl, to include authorization for treatment for the bilateral shoulders and CTS under procedure codes #98943 and #97124 and for the cervical spine under procedure codes #98940 and #98941, were medically warranted and causally related to the accepted, work-related medical conditions.

In a June 4, 2024 report, Dr. Harris noted appellant's history of injury and treatment, and explained that he was unable to locate any reports in the case file from Dr. Hebl with his

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<sup>5</sup> Docket No. 23-1099 (issued January 17, 2024).

recommendations for the requested procedure codes, and documenting the claimant's subjective complaints and objective findings on examination. He opined that there was insufficient information in the medical records to recommend certification for treatment, including procedure codes #98940 and #98941 for the cervical sprain, and procedure codes #98943 and #97124 for the bilateral rotator cuff tears, left shoulder impingement syndrome, and bilateral CTS.

By decision dated June 27, 2024, OWCP denied modification of its prior decision.

In a July 8, 2024 report, Dr. Hebl reiterated that he had previously authored a letter explaining the rationale and need for chiropractic services for her work-related conditions. He also noted that on even date he had written a letter to his U.S. Senator to try to obtain compensation for appellant's chiropractic services, which addressed her work-related conditions.

In a July 19, 2024 informational letter, OWCP explained it could not authorize chiropractic treatment as the evidence of record did not support that it was medically necessary to address the effects of a work-related injury or condition under FECA. It advised that appellant should submit a written request if she would like a formal decision with appeal rights.

On August 25, 2024 appellant requested reconsideration of the June 27, 2024 decision. She argued that new evidence was provided by the chiropractor, Dr. Soborowicz, and that Dr. Hebl's reports also supported the requested chiropractic treatment.

In a report dated September 25, 2023, Dr. Soborowicz noted appellant's history of injury and treatment and reviewed the x-rays. She opined that the x-rays revealed grade 1 anterolisthesis indicative of sacral subluxation and subluxation at L5-S1 that were work related and supported the chiropractic treatment recommended by Dr. Hebl. Dr. Soborowicz related that all treatments provided at her clinic were reasonable, necessary, and causally related to appellant's work injuries of February 20, 2014 and November 5, 2015. She further noted that appellant's symptoms may include periodic flare-ups due to the work injury negatively impacting the neuromusculoskeletal networks. Dr. Soborowicz opined that chiropractic treatment was precisely what appellant needed to address the work-related medical conditions.

On September 4, 2024 OWCP referred the case record and a statement of accepted facts (SOAF) to the DMA, Dr. Harris, for review and an opinion on whether the requested authorization for treatment for the bilateral shoulders and CTS to include procedure codes #98943 and #97124 and treatment for the cervical spine to include procedure codes #98940 and #98941; were medically warranted and causally related to the accepted work-related medical conditions.

In a September 11, 2024 report, Dr. Harris noted appellant's history of injury and treatment. He opined that there was sufficient information in the medical record to support authorization for chiropractic treatments for the cervical spine, bilateral shoulders, and bilateral wrists under codes #98940 and #98941. Dr. Harris related that based upon Dr. Hebl's July 8, 2024 report, he would agree that chiropractic treatments for the cervical spine, bilateral shoulders, and bilateral wrists would be a reasonable treatment option, consistent with the standard of orthopedic care. He also noted that a lumbar spine condition was accepted under File No. xxxxxx289 and that x-rays revealed L5-S1 spondylolisthesis (subluxation). Dr. Harris opined that there was sufficient information in the medical records to recommend authorization for chiropractic

treatment for the lumbar spine based on the subluxation at L5-S1 established by the x-rays, under OWCP File No. xxxxxx289.

By decision dated October 2, 2024, OWCP denied modification of its prior decision.

### **LEGAL PRECEDENT**

Section 8103(a) of FECA<sup>6</sup> provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances, and supplies prescribed by or recommended by a qualified physician, which OWCP considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation.<sup>7</sup> While OWCP is obligated to pay for treatment of employment-related conditions, the employee has the burden of proof to establish that the expenditures were incurred for treatment of the effects of an employment-related injury or condition.<sup>8</sup>

Section 10.310(a) of OWCP's implementing regulations provide that an employee is entitled to receive all medical services, appliances, or supplies which a qualified physician prescribes or recommends and which OWCP considers necessary to treat the work-related injury.<sup>9</sup>

In interpreting this section of FECA, the Board has recognized that OWCP has broad discretion in approving services provided, with the only limitation on OWCP's authority being that of reasonableness.<sup>10</sup> OWCP has the general objective of ensuring that an employee recovers from his or her injury to the fullest extent possible, in the shortest amount of time. It therefore has broad administrative discretion in choosing means to achieve this goal.<sup>11</sup>

Abuse of discretion is shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.<sup>12</sup>

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<sup>6</sup> 5 U.S.C. § 8103(a).

<sup>7</sup> *Id.*; see *J.K.*, Docket No. 20-1313 (issued May 17, 2021); *Thomas W. Stevens*, 50 ECAB 288 (1999).

<sup>8</sup> *M.P.*, Docket No. 19-1557 (issued February 24, 2020); *R.M.*, Docket No. 19-1319 (issued December 10, 2019); *J.T.*, Docket No. 18-0503 (issued October 16, 2018); *Debra S. King*, 44 ECAB 203, 209 (1992).

<sup>9</sup> 20 C.F.R. § 10.310(a); see *D.W.*, Docket No. 19-0402 (issued November 13, 2019).

<sup>10</sup> *B.I.*, Docket No. 18-0988 (issued March 13, 2020); see also *Daniel J. Perea*, 42 ECAB 214, 221 (1990) (holding that abuse of discretion by OWCP is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or administrative actions which are contrary to both logic, and probable deductions from established facts).

<sup>11</sup> *Id.*

<sup>12</sup> See *B.A.*, Docket No. 22-0401 (issued July 1, 2022); *P.L.*, Docket No. 18-0260 (issued April 14, 2020); *E.L.*, Docket No. 17-1445 (issued December 18, 2018); *L.W.*, 59 ECAB 471 (2008); *P.P.*, 58 ECAB 673 (2007); *Daniel J. Perea*, *supra* note 10.

In assessing the probative value of chiropractic evidence, the initial question is whether the chiropractor is considered a physician under section 8101(2) of FECA. A chiropractor is not considered a physician under FECA unless 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.<sup>13</sup> Chiropractors, however, are only considered physicians for purposes of FECA if they diagnose spinal subluxation based upon x-ray evidence.<sup>14</sup>

OWCP's implementing regulations provide 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. These exceptions are for physical therapy rendered by a chiropractor under the direction of an authorized physician and for chiropractic treatment authorized without limitations by OWCP or the employing establishment.<sup>15</sup>

### ANALYSIS

The Board finds that OWCP abused its discretion by denying appellant's request for authorization of chiropractic care.

Preliminarily, the Board notes that findings made in prior Board decisions are *res judicata* absent further merit review by OWCP under section 8128 of FECA.<sup>16</sup> It is, therefore, unnecessary for the Board to consider the evidence appellant submitted prior to the issuance of OWCP's May 31, 2023 decision, as the Board considered that evidence in its January 17, 2024 decision.<sup>17</sup>

OWCP received a number of voluminous reports from Dr. Hebl in which he summarized appellant's medical condition and treatment since her February 20, 2014, and November 4, 2015 employment injuries. In his reports, Dr. Hebl related her overall worsening of her right shoulder and wrist symptoms, as well as her lumbar subluxation at L5-S1. He advised that appellant should continue her physical therapy, chiropractic treatment, and deep tissue myofascial release treatments to try to relieve her right upper extremity symptoms and ongoing neck spasm. On September 15, 2023 OWCP received a 52-page document from Dr. Hebl dated September 5, 2023, wherein he summarized appellant's treatments and care since February 20, 2014, for her multiple employment injuries. Dr. Hebl related that he had referred appellant to the chiropractor for work-

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<sup>13</sup> 5 U.S.C. § 8101(2); 20 C.F.R. § 10.311. See *P.G.*, Docket No. 23-0195 (issued August 15, 2023); *Mary A. Ceglia*, 55 ECAB 626 (2004); *Sean O Connell*, 56 ECAB 195 (2004); see also *W.D.*, Docket No. 12-968 (issued November 2, 2012).

<sup>14</sup> Section 8101(2) of FECA provides that the term physician includes 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 regulations by the Secretary. 5 U.S.C. § 8101(2); see *W.J.*, Docket No. 21-0846 (issued July 17, 2023); *T.F.*, Docket No. 21-0384 (issued August 25, 2021); *K.W.*, Docket No. 20-0230 (issued May 21, 2021); *J.D.*, Docket No. 19-1953 (issued January 11, 2021); *George E. Williams*, 44 ECAB 530 (1993).

<sup>15</sup> 20 C.F.R. § 10.311(d); see *D.J.*, Docket No. 19-1494 (issued March 11, 2020); *W.D.*, *supra* note 13.

<sup>16</sup> *A.A.*, Docket No. 20-1399 (issued March 10, 2021); *Clinton E. Anthony, Jr.*, 49 ECAB 476 (1998).

<sup>17</sup> See *R.B.*, Docket No. 22-0954 (issued December 29, 2022); *M.S.*, Docket No. 20-1095 (issued March 29, 2022); *C.D.*, Docket No. 19-1973 (issued May 21, 2020); *M.D.*, Docket No. 20-0007 (issued May 13, 2020).

related subluxation at L5-S1, as confirmed by her May 25, 2023 x-rays. Dr. Hebl also noted that he had reevaluated appellant on September 5, 2023, that she was continuing to struggle with bilateral shoulder impingement, neck pain and spasm, difficulties with ROM and that she continued to receive chiropractic treatment, once a week, with Dr. Soborowicz, as he had recommended.

In a report dated September 25, 2023, Dr. Soborowicz opined that appellant's x-rays revealed grade 1 anterolisthesis indicative of sacral subluxation and subluxation at L5-S1 that were work related and supported the chiropractic treatment recommended by Dr. Hebl. She related that all treatments provided at her clinic were reasonable, necessary, and causally related to appellant's work injuries of February 20, 2014 and November 5, 2015. Dr. Soborowicz concluded that chiropractic treatment was precisely what appellant needed to address the work-related medical conditions.

On September 4, 2024 OWCP referred the case record to the DMA, Dr. Harris, for review. In a September 11, 2024 report, Dr. Harris opined that he had reviewed the medical record, including Dr. Hebl's reports, and that there was sufficient information in the medical records to authorize chiropractic treatment for the cervical spine, bilateral shoulders, and bilateral wrists. He further opined that the medical evidence supported authorization for chiropractic treatment for the lumbar spine condition accepted under OWCP File No. xxxxxx289. Dr. Harris explained that the x-rays supported a diagnosis of L5-S1 spondylolisthesis (subluxation).

As previously noted, services rendered by a chiropractor are generally payable when they consist of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist. However, chiropractic services are also reimbursable if physical therapy is rendered by a chiropractor under the direction of an authorized physician.

The only limitation on OWCP's approving or disapproving service under FECA is one of reasonableness.<sup>18</sup> As the DMA opined that chiropractic treatment for appellant's accepted conditions under OWCP File No. xxxxxx214, and the combined OWCP File No. xxxxxx289<sup>19</sup> was supported by the medical evidence of record, the Board finds that the medical evidence is sufficient to support the request for authorization for chiropractic treatment in both of these accepted claims. OWCP abused its discretion in denying authorization for chiropractic care.<sup>20</sup>

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<sup>18</sup> *B.I.*, Docket No. 18-0988 (issued March 13, 2020); *see also Daniel J. Perea*, 42 ECAB 214, 221 (1990) (holding that an abuse of discretion by OWCP is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or administrative actions which are contrary to both logic, and probable deductions from established facts).

<sup>19</sup> The Board notes that OWCP File No. xxxxxx289 has not been updated since January 5, 2022 and no decisions have issued in OWCP File No. xxxxxx289 denying chiropractic care.

<sup>20</sup> *H.L.*, Docket No. 16-0920 (issued January 9, 2017); *D.K.*, Docket No. 13-230 (issued June 17, 2013).

**CONCLUSION**

The Board finds that OWCP abused its discretion by denying appellant's request for authorization of chiropractic care.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 2, 2024 decision of the Office of Workers' Compensation Programs is reversed.

Issued: December 13, 2024  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board