

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHRISTOPHER SMITH and DEPARTMENT OF DEFENSE, DEFENSE
FINANCING & ACCOUNTING SERVICE, Cleveland, Ohio

*Docket No. 95-2631; Submitted on the Record;
Issued February 18, 1998*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs properly found that appellant's chiropractor was not a physician under section 8101(2) of the Federal Employees' Compensation Act; and (2) whether appellant has established that he was disabled for work on and after March 3, 1995 causally related to an accepted February 28, 1995 cervical sprain/strain.

On March 2, 1995 appellant, then a 37-year-old lead fiscal accounting technician, filed a claim for injuries sustained on February 28, 1995, when he struck his neck on a desk drawer, while stooping to pick up a pen under his desk. Appellant stopped work on March 2, 1995 and returned to work on April 18, 1995.

Appellant was taken to a hospital emergency room on February 28, 1995, for treatment, where x-rays were obtained. In a February 28, 1995 report, Dr. Howard S. Cahn, a Board-certified radiologist, stated that x-rays of appellant's cervical spine showed "no fracture or subluxation. The disc spaces are well maintained. No prevertebral soft tissue swelling is seen. There is mild anterior endplate spurring at the C6-7 level."

In a March 10, 1995 form report, Dr. William D. Weekley, a chiropractor, provided a history of injury, noted findings of a restricted range of cervical motion, a positive maximum foramina encroachment test, edema at C1 to C7 and paravertebral muscle spasms at C1 to T1 inclusive. Dr. Weekley diagnosed a cervical sprain/strain and checked a box "yes" supporting causal relationship, explaining that when appellant "struck neck on desk drawer, caused strain/sprain." Dr. Weekley noted providing manual manipulation and electromuscular stimulation therapy. He indicated that appellant was totally disabled for work through March 20, 1995.

Dr. Weekley submitted periodic form reports and chart notes through March 31, 1995, indicating that appellant was totally disabled for work through April 6, 1995.

In an April 6, 1995 letter, the Office advised appellant that under section 8101(2) of the Act¹ chiropractors are considered physicians, only to the extent that their reimbursable services consist of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist. The Office noted that the February 28, 1995 date of injury, x-rays reviewed by Dr. Cahn, showed no subluxation and that as Dr. Weekley did not diagnose a subluxation that he did not qualify as a physician under the Act. The Office noted that if Dr. Weekley reviewed the x-rays taken on February 28, 1995, or obtained his own and felt “that a subluxation within our definition exists he may submit a report to this effect. The physician, must clearly show the level of the subluxation; date of x-rays reviewed and if such is consistent with the injury suffered.”

By decision dated April 27, 1995, the Office denied appellant’s claim on the grounds that the evidence submitted failed to establish that an injury occurred as alleged. The Office found that Dr. Weekley’s reports, were insufficient to establish that appellant had sustained an injury, as alleged due to the Act’s limitations on chiropractors under section 8101(2) of the Act. Appellant disagreed with this decision and in a May 4, 1995 letter requested reconsideration and submitted new evidence.

In a February 28, 1995 emergency room report, Dr. J. Fernando, provided a history of injury, noted a negative examination of the scalp and head, “no tenderness of the cervical spine ... no ecchymosis or abrasion,” “minimal to moderate pain on palpation over the L[eft] sternomastoid border and minimal pain on palpation over the trapezius,” and no sensory or neurologic deficits. Dr. Fernando diagnosed a cervical strain and dispensed a soft cervical collar, noting that appellant reported that his pain was “almost resolved at the time of discharge.” Dr. Fernando held appellant off work for March 1 and 2, 1995.

In an April 20, 1995 report, Dr. Weekley noted first examining appellant on March 6, 1995 for complaints of neck pain, and noted forwarding the x-rays he obtained on March 6, 1995, along with those obtained for Dr. Fernando on February 28, 1995, to Dr. John Bengsten, a chiropractic roentgenologist.² Dr. Weekley stated that based on the x-rays, reports and findings on examination, “there is demonstrable subluxation which [Dr. Weekley] treat[ed] with manual manipulation and electrical muscle stimulation.” Dr. Weekley diagnosed a “sprain/strain to the cervical spine, with subluxation at the C2, C3 and C6, C7 levels.”

In April 20 and 21, 1995 form reports, Dr. Weekley noted treating appellant on April 3 and 6, 1995 and indicated that appellant was totally disabled for work from March 6 through April 17, 1995, and could resume work on April 18, 1995.

By decision dated June 2, 1995, the Office modified its April 27, 1994 decision. The Office accepted appellant’s claim as a cervical strain, denied chiropractic treatment and found that appellant submitted insufficient evidence to establish that he was totally disabled for work

¹ 5 U.S.C. § 8101(2).

² In an April 17, 1995 report, Dr. Bengsten stated an impression of “[s]light anterior shift of weight bearing in the neutral lateral position” of the cervical lordosis, markedly reduced flexion and extension of the cervical spine, “[I]ndication of anterolateral disc bulge and/or protrusion at the C6 level,” and “[m]ild indication of posterior joint arthrosis C2-3.” Dr. Bengsten did not use the term “subluxation” in this report.

after March 2, 1995 due to the accepted injury. The Office found that although Dr. Bengsten and Dr. Weekley diagnosed spinal subluxations, there was no evidence of spinal subluxation according to the definition of subluxation used by the Office. The Office noted that February 28, 1995 x-rays taken soon after the injury did not demonstrate a spinal subluxation. The Office concluded that while appellant had submitted sufficient evidence to establish that he sustained a cervical strain on February 28, 1995 in the performance of duty, there was no evidence supporting “chiropractic treatment and disability for all work” on and after March 3, 1995, causally related to the accepted injury.³

The Board finds that the Office improperly found that Dr. Weekley, a chiropractor, was not a physician under section 8101(2) of the Act for the purposes of this case.

Section 8101(2) of the Act 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...”⁴ The definition of “subluxation” used by the Office appears in the Act’s implementing regulations: “an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae anatomically which must be demonstrable on any x-ray film to individuals trained in the reading of x-rays.”⁵

In this case, Dr. Weekley, appellant’s chiropractor, diagnosed a spinal subluxation by x-ray in an April 20, 1995 report. Therefore, he is considered a physician, under the Act for the purposes of this case. Thus, further development is required to determine which, if any, treatments provided by Dr. Weekley qualify for reimbursement under the Act and the period for which such treatments were necessitated by the effects of the March 2, 1995 injury. Following such development, the Office shall issue any appropriate reimbursement for treatment by Dr. Weekley causally related to the accepted March 2, 1995 injury.⁶

Regarding the second issue, the Board finds that appellant has not established that his claimed disability for work on and after March 3, 1995, was causally related to the February 28, 1995 cervical sprain or other factors of his federal employment.

³ The record indicates that appellant voluntarily separated from the employing establishment effective June 2, 1995.

⁴ 5 U.S.C. § 8101(2); *see also Linda Holbrook*, 38 ECAB 229 (1986).

⁵ 20 C.F.R. § 10.400(e) (incorporating the definition of “subluxation” of the *Medicare Carriers Manual*).

⁶ The Board notes that Dr. Bengsten, the chiropractic roentgenologist, does not qualify as either a physician or a “person trained in the reading of x-rays” under the Act. The term “chiropractic roentgenologist” is assumed to denote a chiropractor who has received some training in the diagnostic interpretation of x-ray films. “Roentgenologist” is defined as a “physician who specializes in diagnosis and treatment by roentgen rays; radiologist.” *Dorland’s Illustrated Medical Dictionary*, 1471 (27th ed., 1988). The Board has found that a chiropractic roentgenologist’s interpretation of an x-ray as revealing a spinal subluxation was not entitled to equal weight with a Board-certified radiologist, recognizing that the Act does not distinguish between one level of chiropractic training and another. In this case, as Dr. Bengsten did not diagnose a subluxation by x-ray, he does not qualify as a physician, under the Act. *Arlene F. Dougherty*, 37 ECAB 359 (1986); *Christine L. Kielb*, 35 ECAB 1060 (1984); *Charles Delbert Ray*, 35 ECAB 449 (1983).

Dr. Fernando, the emergency room physician, opined in his February 28, 1995 report, that appellant should be off work until March 3, 1995, noting that appellant's symptoms had largely resolved by the time appellant left the emergency room. Dr. Fernando did not indicate that appellant would be disabled for work after March 3, 1995.

Dr. Weekley submitted periodic reports, indicating that appellant was totally disabled for work from March 2 to April 18, 1995. However, Dr. Weekley did not provide medical rationale explaining how and why the accepted February 28, 1995 cervical sprain would continue to totally disable appellant for all work through April 18, 1995. The Board has held that medical evidence regarding causal relationship is of little probative value without such explanatory, supportive rationale.⁷

Consequently, appellant has not established that he was disabled for work on and after March 3, 1995, due to factors of his federal employment, as he submitted insufficient rationalized medical evidence, to substantiate that the claimed period of disability was related to the accepted February 28, 1995 cervical sprain or other work factors.

The decision of the Office of Workers' Compensation Programs dated June 2, 1995 is hereby affirmed in part regarding the issue of whether appellant was disabled for work on and after March 3, 1995 due to employment factors, and reversed in part regarding whether the Office erred in finding that Dr. Weekley was not a physician under the Act. The case is returned to the Office for appropriate payment of chiropractic expenses.

Dated, Washington, D.C.
February 18, 1998

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁷ *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).