U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LARRY P. STANFIELD and U.S. POSTAL SERVICE,
BULK MAIL CENTER, Kansas City, Kans.

Docket No. 97-1348; Submitted on the Record;
Issued April 1, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issues are: (1) whether the Office of Workers' Compensation Programs properly denied payment for services provided by a chiropractor; and (2) whether the Office abused its discretion by refusing to reopen appellant's claim for consideration of the merits.

The Board has duly reviewed the case on appeal and finds that the Office properly denied payment for services provided by a chiropractor.

In this case, appellant filed a claim for epicondylitis, which the Office accepted for temporary aggravation on April 18, 1991. Appellant filed a claim for recurrence of disability on July 28, 1995 and the Office accepted this claim on March 8, 1996. Appellant requested payment for chiropractic treatment. By decision dated May 9, 1996, the Office denied this request. Appellant requested reconsideration of this decision on May 20, 1996. The Office refused to reopen appellant's claim for consideration of the merits on July 8, 1996. Appellant requested reconsideration on September 2, 1996 and by decision dated November 18, 1996, the Office denied modification of its prior decisions. Appellant requested reconsideration on January 12, 1997 and the Office refused to reopen appellant's claim for consideration of the merits on January 23, 1997.

Section 8103 of the Federal Employee's Compensation Act[1] provides that the Office shall provide a claimant with the service, appliances, and supplies prescribed or recommended by a qualified physician which are likely to cure, give relief, reduce the degree or period of disability, or aid in lessening the amount of monthly compensation. In interpreting section 8103, the Board has recognized that the Office has broad discretion in approving services provided under the Act. The Office has the general objective of ensuring that an employee recovers from his injury to the fullest extent possible in the shortest amount of time. The Office, therefore, has

[1] 5 U.S.C. §§ 8101-8193, 8103.

broad administrative discretion in choosing means to achieve this goal. The only limitation on the Office's authority is that of reasonableness.[2]

The Board notes that congress has imposed a limitation under the statute at section 8101(2)[3] which 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 demonstrated by x-ray to exist. The Act at section 8101(3) defines "medical, surgical and hospital services and supplies" as including service by a chiropractor, but 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."[4] Under this authority, the Director has promulgated regulations which specify:

> "Reimbursable chiropractic services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-rays to exist. Also included for payment or reimbursement are physical examination (and related laboratory tests) and x-rays performed by or required by a chiropractor to diagnose a subluxation of the spinal column…. A chiropractor may interpret his or her x-rays to the same extent as any other physician defined in this section."[5]

In this case, appellant submitted a report dated May 7, 1996, from Dr. Robert E. Patterson, Jr., a chiropractor, diagnosing tennis elbow and a cervical condition. Dr. Patterson stated that he had cervical x-rays taken on August 3, 1993 which demonstrated a cervical subluxation.

The diagnosis of subluxation must, however, also be established as employment-related in order for chiropractic treatment to be reimbursable.[6] Dr. Patterson did not offer any explanation of how appellant sustained a cervical subluxation as a result of his accepted employment activities in his May 7, 1996 report.

In a report dated August 22, 1996, Dr. Patterson noted that appellant had extensive medical history relating to treatment of his elbow and noted appellant's employment factors of repetitive motion. He argued that appellant's elbow condition was attributable to his cervical spine. Dr. Patterson stated that treating appellant's cervical spine with chiropractic manipulation would treat the elbow condition.

This report is also insufficient to establish that appellant developed a cervical subluxation as a result of his accepted employment factors or condition. Dr. Patterson did not provide an

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[2] *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

[3] 5 U.S.C. § 8101(2).

[4] 5 U.S.C. § 8101(3).

[5] 20 C.F.R. § 10.400(e).

[6] *Theresa M. Fitzgerald*, 47 ECAB 689 (1996).

opinion that appellant's cervical condition was causally related to his accepted employment injury or factors and did not provide any medical rationale in support of this opinion.

As there is no medical evidence in the record that Dr. Patterson is treating appellant for an employment-related subluxation of the spine, the Office did not abuse its discretion by denying payment for chiropractic services in this case.

The Board further finds that the Office did not abuse its discretion by refusing to reopen appellant's claim for consideration of the merits on January 23, 1997.

Appellant requested reconsideration of the Office's November 18, July 8 and May 9, 1996 decisions on January 12, 1997. In support of his reconsideration request appellant alleged that he had received physical therapy as well as chiropractic treatment at Dr. Patterson's office. Appellant stated that the physical therapy was performed by a physical therapist and not a chiropractor and that the Office should reimburse these services.

Section 10.138(b)(1) of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a point of law; or (2) advancing a point of law or a fact not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.[7] Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.[8]

In support of his claim for reconsideration, appellant attempted to advance a fact not previously considered by the Office, that he received physical therapy as well as chiropractic treatment from the chiropractic clinic and that the physical therapy was performed by a therapist rather than a chiropractor. Appellant's statement, without corroborating evidence in the record of treatment received is not sufficient to establish a fact not previously considered and is not sufficient to require the Office to reopen appellant's claim for consideration of the merits.

[7] 20 C.F.R. § 10.138(b)(1).

[8] 20 C.F.R. § 10.138(b)(2).

The decisions of the Office of Workers' Compensation Programs dated January 23, 1997, November 18, July 8 and May 9, 1996 are hereby affirmed.

Dated, Washington, D.C.
April 1, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member