U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RAYMOND J. KARAFFA and U.S. POSTAL SERVICE,
POST OFFICE, Syracuse, N.Y.

Docket No. 97-1769; Submitted on the Record;
Issued April 8, 1999

DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs properly denied payment for chiropractic treatment.

On August 15, 1994 appellant, then a 51-year-old window clerk, filed a notice of traumatic injury and claim for compensation, alleging that on August 2, 1994 he was lifting and turning with a parcel weighing approximately 30 pounds when he felt a stabbing pain in the lower left side of his back. Appellant was off work from August 2 through August 3, 1994 for which he received continuation of pay.

In support of his claim, appellant submitted an August 16, 1994 attending doctor's report signed by Dr. Vincent V. Sportelli, a chiropractor. He noted that he first treated appellant on August 12, 1994. Dr. Sportelli also noted appellant's description of the August 2, 1994 work injury and diagnosed intersegmental dysfunction-lumbar, sciatica and lumbosacral sprain/strain. He check marked a box "yes" to indicate that the August 2, 1994 incident caused appellant's condition. He left a portion of the form blank when asked whether appellant had any preexisting injuries and prescribed a course of chiropractic treatment to include electrical muscle stimulation to the lumbar spine and spinal manipulation. Dr. Sportelli stated that x-rays were taken. He continued to submit similar reports.

In a duty status report dated August 26, 1994, Dr. Sportelli advised that appellant was able to return to his regular work with a 50- to 70-pound weight lifting restriction.

Appellant also submitted an August 24, 1994 x-ray report which was interpreted by Dr. Robert A. Bornhurst, a radiologist, as showing spondylolisthesis at L4-5, osteoarthritis, prior bilateral surgical fusion and possible degenerative disc disease.

In a September 14, 1994 letter, the Office informed appellant of the circumstances, in which a chiropractor may be considered a physician under the Federal Employees' Compensation Act.

In a duty status report dated October 11, 1994, Dr. Sportelli noted the August 2, 1994 work injury and diagnosed intersegmental dysfunction-lumbar, sciatica and lumbosacral sprain/strain. He indicated that the prognosis was guarded but advised that appellant could return to work with no restrictions.

In a decision dated October 18, 1994, the Office denied compensation on the grounds that appellant failed to establish that he sustained an injury in the course of his federal employment.

By letter dated November 16, 1994, counsel for appellant requested a hearing. A hearing was held on April 26, 1995.

In a decision dated July 7, 1995, the Office hearing representative determined that the case needed further medical development to determine whether appellant received chiropractic treatment for a subluxation established by x-ray.

At the hearing, appellant submitted an April 4, 1995 report from Dr. Stephen P. Bogosian, a Board-certified orthopedist. He indicated that on August 2, 1994 appellant began experiencing lower back discomfort after twisting and lifting a 30- to 40-pound package. Dr. Bogosian indicated that appellant had been in chiropractic manipulation for his lower back since the work injury, and that appellant had lower back surgery in 1974 and 1977 from which time he has been asymptomatic except for a few instances of lower back pain. He specifically noted that appellant's symptoms related to the August 2, 1994 injury were almost completely resolved. According to Dr. Bogosian, an April 4, 1995 x-ray taken in conjunction with the examination revealed degenerative spondylolisthesis, unchanged from an August 24, 1994 film. He concluded his report with a diagnosis of "degenerative spondylolisthesis, S/P surgery 1974 and 1976, with recent aggravation of a preexisting condition." Appellant was advised to undergo an exercise program with muscle strengthening.

Prior to the hearing, appellant also submitted an April 25, 1995 note from Dr. Sportelli which stated "an x-ray evaluation reveals an L4-5 subluxation. This patient is progressing and further improvement with active care is anticipated." He did not address the cause of the diagnosed condition.

The Office referred appellant for a second opinion evaluation by Dr. Frank Bersani, a Board-certified orthopedic surgeon. In an August 28, 1995 report, he noted that appellant had two prior back surgeries for spondylolisthesis, the first in 1974 following an automobile accident and the second after a lifting injury at work on an unspecified date. Appellant was described having back pain on the average of twice a week prior to the August 2, 1994 injury. Dr. Bersani also noted that, by appellant's account, his back had returned to its status prior to August 2, 1994. On physical examination, he noted pain in the left sacroiliac area. Dr. Bersani's impression was status post fusion for spondylolisthesis, L4-5 and lumbosacral spine sprain/strain, August 2, 1994 subsided. He advised that appellant's condition on examination was related to his preexisting condition of spondylolisthesis, and that it could be considered that

the sprain/strain on August 2, 1994 caused a temporary aggravation from which appellant has recovered. Dr. Bersani concluded that appellant continued to have symptoms referable to his preexisting condition and recommended periodic evaluations by an orthopedic spine specialist.

In a letter dated October 5, 1995, the Office accepted appellant's claim for temporary aggravation of a preexisting back condition, identified as spondylolisthesis at L4-5, and awarded continuation of pay for the two days appellant was disabled from work. The Office, however, denied payment for appellant's chiropractic expenses, noting that appellant had not submitted his x-rays for review to establish a subluxation.

Upon receipt of appellant's August 24, 1994 x-ray, the Office had the film reviewed by Dr. J. George Teplick, a Board-certified radiologist, to determine whether a subluxation existed. In a November 11, 1995 report, he noted marked spondylolisthesis of L4-5 with spondylolysis. The doctor specifically stated:

> "[S]pondylolisthesis with spondylolysis is not due to acute trauma. The term spondylolisthesis refers to the anterior displacement of a vertebral body and this displacement could be called 'slippage' or 'subluxation.' This type of lesion is due to a congenital weakness in a certain portion (the interarticular) of a vertebra and the displacement becomes fully developed in adolescence."

According to Dr. Teplick, appellant would have been aware of his condition if he had any previous x-rays of the lumbar spine of low back symptoms commonly found in this long-standing condition. He concluded that there were no findings on the August 24, 1994 x-ray attributable to August 2, 1994 injury.

In a decision and corresponding memorandum dated December 5, 1995, the Office denied appellant's claim for chiropractic benefits on the grounds that the weight of the medical evidence established that appellant did not sustain a subluxation causally related to his accepted August 2, 1994 employment injury.

By letter dated December 12, 1995, appellant requested a hearing. A hearing was held on May 15, 1996.

In a decision dated July 29, 1996, an Office hearing representative affirmed the Office's December 5, 1995 decision denying appellant's claim for compensation.

The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.[1] As appellant filed his appeal on April 30, 1997, the only decision properly before the Board is the Office hearing representative's July 29, 1996 decision

The Board finds that the Office properly denied payment for chiropractic treatment as appellant failed to establish a subluxation causally related to his August 2, 1994 employment injury.

[1] *See* 20 C.F.R. § 501.3(d)(2).

In the instant case, the Office accepted, based on Dr. Bersani's report, that appellant sustained a temporary aggravation of a preexisting spondylolisthesis at L4-5, and that this condition disabled appellant for the two days that he missed work, August 2 and August 3, 1994. The Office, however, denied appellant's claim for reimbursement for chiropractic treatment on the grounds that he failed to establish a subluxation causally related to the August 2, 1994 work injury. Services rendered by chiropractors are generally not payable by the Office except 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.[2] Thus, where x-rays do not demonstrate a subluxation (a diagnosis of a subluxation based on x-rays has not been made), a chiropractor is not considered a "physician," and his or her reports cannot be considered as competent medical evidence under the Act.[3]

The Board finds that Dr. Sportelli's April 25, 1995 report together with Dr. Teplick's November 10, 1995 report are sufficient to establish that the August 12, 1994 x-rays showed subluxation. However, the medical evidence is insufficient to establish a subluxation by x-ray causally related to appellant's August 2, 1994 employment injury. Dr. Sportelli did not begin treating appellant until August 12, 1994, ten days after the employment injury, and the x-rays revealing subluxation were not taken until August 24, 1994. The only support for causal relationship provided by Dr. Sportelli are one-page informal reports where he checked a box "yes" indicating that appellant's condition was related to the August 2, 1994 injury. The Board has held that merely checking a box on an Office form, by a physician, is insufficient to establish causal relationship.[4] Dr. Sportelli has provided no medical rationale explaining how and why any spinal subluxation would be caused or aggravated by the August 2, 1994 injury, nor has he explained why any such subluxation would not be solely attributable to appellant's preexisting back condition.

Furthermore, although Dr. Bogosian noted in his April 4, 1995 report that appellant had been in chiropractic treatment for his lower back since the time of the August 2, 1994 work injury, he acknowledged that appellant's symptoms related to the August 2, 1994 injury had almost completely resolved by the time of his examination. Dr. Bogosian further stated that an April 4, 1995 x-ray taken in conjunction with his examination revealed degenerative spondylolisthesis unchanged from the August 24, 1994 x-ray. Inasmuch as his report fails to provide a rationalized explanation as to how appellant's work condition aggravated his

[2] *See* 5 U.S.C. § 8101(2).

[3] *See Susan M. Herman*, 35 ECAB 669 (1984).

[4] *Debra S. King*, 44 ECAB 203 (1992); *Robert J. Krstyen*, 44 ECAB 227 (1992).

preexisting back condition,[5] it is insufficient to establish that appellant sustained a subluxation related to the August 2, 1994 work injury.

In contrast, Dr. Teplick disputed that appellant's subluxation or spondylothesis was caused or aggravated by the August 2, 1994 employment injury. According to Dr. Teplick, there were no findings on the August 24, 1994 x-ray attributable to appellant's August 2, 1994 employment injury. Dr. Bersani likewise opined in his August 28, 1995 report that appellant had fully recovered from his work injury, and that any continuing symptoms were due to appellant's preexisting back condition.

Consequently, the Board finds that the weight of the medical evidence does not establish that appellant's subluxation was causally related to his August 2, 1994 work injury or that he had any continuing condition or disability beyond what had been accepted by the Office as causally related to that injury.

The decision of the Office of Workers' Compensation Programs dated July 29, 1996 is affirmed.

Dated, Washington, D.C.
April 8, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

[5] *See Victor J. Woodhums*, 41 ECAB 345 (1989) (The opinion of a 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 claimant).