

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of KATHERN A. GETMAN-RUSSELL and DEPARTMENT OF THE  
INTERIOR, BUREAU OF LAND MANAGEMENT, Billings, MT

*Docket No. 99-2109; Submitted on the Record;  
Issued October 6, 2000*

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DECISION and ORDER

Before MICHAEL E. GROOM, A. PETER KANJORSKI,  
VALERIE D. EVANS-HARRELL

The issues are: (1) whether the Office of Workers' Compensation Programs properly denied appellant's claim for chiropractic expenses; (2) whether appellant has met her burden of proof in establishing periods of intermittent disability from September 12, 1996 to January 31, 1998 and from September 17, 1998 through December 22, 1998 for which the Office did not authorize leave buy back; and (3) whether the Office abused its discretion by refusing to reopen appellant's claim for consideration of the merits on January 15, 1999.

The Board has duly reviewed the case on appeal and finds that the Office properly denied appellant's claim for chiropractic expenses.

Appellant, a procurement technician, filed an occupational disease claim on January 21, 1998 alleging that she developed an emotional condition due to factors of her federal employment. The Office accepted appellant's claim for a single episode of major depressive disorder in partial remission and anxiety disorder on September 2, 1998. The Office denied appellant's claim for chiropractic expenses by decision dated September 18, 1998. Appellant requested reconsideration of this decision on January 14, 1999. By decision dated January 15, 1999, the Office declined to reopen appellant's claim for review of the merits.

Appellant filed a claim for compensation requesting compensation from September 1, 1996 through January 1, 1998 for 269.5 hours of sick leave. By decision dated December 30, 1998, the Office approved appellant's claim for sick leave buy back from December 18, 1996 to January 8, 1998 for 50 hours. Appellant filed a second request for leave buy back from September 17 through December 22, 1998 for 18 hours. By decision dated May 5, 1998, the Office denied appellant's claim for 223.5 intermittent hours of sick leave buy back for the period September 12, 1996 through January 31, 1998 finding that it was not supported by the medical evidence. In a separate decision dated May 5, 1998, the Office found that appellant had established an additional three hours of compensable leave on July 2 and December 22, 1997 as actual appointment dates for Dr. Robert Bakko, appellant's attending physician.

The Office issued a decision on May 5, 1999 denying appellant's claim for six intermittent hours of sick leave buy back. In a separate decision dated May 5, 1999, the Office accepted appellant's claim for 12 hours of leave buy back September 17 through December 22, 1998.<sup>1</sup>

Section 8101(2) of the Federal Employees' Compensation Act<sup>2</sup> 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. In this case, the evidence included in the record establishes that appellant sought chiropractic treatment for stress and headaches. There is no evidence that Dr. Randall S. Hultgren, a chiropractor, took x-rays of appellant's spine nor that he diagnosed a spinal subluxation. Therefore, Dr. Hultgren is not a physician for the purposes of the Act and his services are not reimbursable.

The terms of the Act are specific as to the method and amount of payment of compensation.<sup>3</sup> Neither the Office nor the Board has the authority to enlarge the terms of the Act nor to make an award of benefits under any terms other than those specified in the status unless a claimant's contentions are in keeping with the scope or intent of the Act, *i.e.*, unless the statute authorizes payment of the kind demanded, the Office's denial of such demands must be affirmed.<sup>4</sup> As appellant has not submitted any evidence establishing that Dr. Hultgren, a chiropractor, treated her for a subluxation of the spine as demonstrated by x-ray, his services are not reimbursable and the Office's September 18, 1998 decision must be affirmed.

The Board further finds that the Office did not abuse its discretion by refusing to reopen appellant's claim for chiropractic services for review of the merits on January 15, 1999.

The Office's regulations provide that a timely request for reconsideration in writing may be reviewed on its merits if the employee has submitted evidence or argument which shows that the Office erroneously applied or interpreted a specific point of law; advances a relevant legal argument not previously considered by the Office, or constitutes relevant and pertinent new evidence not previously considered by the Office.<sup>5</sup>

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<sup>1</sup> Appellant requested that the Board review the May 5, 1999 decisions on June 2, 1999. Appellant requested reconsideration of the leave buy back denials before the Office on June 7, 1999. By decision dated August 4, 1999, the Office declined to reopen appellant's claim for consideration of the merits. As the Office must review its May 5, 1999 decisions in order to determine whether appellant's June 7, 1999 request for reconsideration warranted merit review, the Board finds that this decision addresses an issue before the Board at the time of appellant's appeal. As the Office and the Board may not have concurrent jurisdiction over the same issue at the same time, the August 4, 1999 decision of the Office is null and void. *Arlonia B. Taylor*, 44 ECAB 591, 597 (1993).

<sup>2</sup> 5 U.S.C. §§ 8101-8193, 8101(2).

<sup>3</sup> 5 U.S.C. § 8101(12) defines "compensation" as "the money allowance payable to an employee or his dependents and any other benefits paid for from the Employees' Compensation Fund, but this does not in any way release the amount of the monthly compensation payable for disability or death."

<sup>4</sup> *Edward Schoening*, 48 ECAB 326, 327 (1997).

<sup>5</sup> 5 U.S.C. §§ 10.609(a) and 10.606(b).

In this case, appellant attempted to submit relevant and pertinent new evidence. She resubmitted bills for chiropractic services as well as office notes. These office notes do not include an x-ray report. Therefore, the records are not relevant to the issue for which the Office denied appellant's chiropractic expenses, that there was no evidence that appellant was treated for a spinal subluxation as demonstrated by x-ray. Appellant did not present any legal argument or point of law. As appellant did not comply with the provisions of section 10.606(b), the Office did not abuse its discretion by refusing to reopen her claim for consideration of the merits.

The Board further finds that appellant has not met her burden of proof in establishing periods of intermittent disability from September 12, 1996 to January 31, 1998 and from September 17 through December 22, 1998 for which the Office did not authorize leave buy back.

An employee seeking benefits under the Act<sup>6</sup> has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an "employee of the United States" within the meaning of the Act and that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>7</sup>

In this case, the Office accepted appellant's claim for an emotional condition on September 2, 1998. Appellant requested leave buy back for intermittent periods of disability from September 1, 1996 through January 1, 1998 for a total of 269.5 hours and from September 17 through December 22, 1998 for a total of 18 hours.

In support of her request for leave buy back from September 1, 1996 through January 1, 1998, appellant submitted leave analyses. As previously noted, appellant was not entitled to compensation for treatment by the chiropractor, Dr. Hultgren. Appellant also submitted sick leave requests for headaches and stomachaches. There was no medical evidence in support of these absences.

The medical evidence from Drs. Stephen R. Shaub, an osteopath, and Bakko, a physician, establishes that appellant used sick leave for medical appointments for a total of 54 hours. The Office granted appellant's leave buy back for 53 hours, which included rounding up from the total of 49.75 hours to 50 hours in the December 30, 1998 decision and the additional 3 hours granted in the May 5, 1999 decision. However, the Office failed to provide appellant with approval for 1.5 hours on December 8, 1997. Dr. Bakko stated that she had an appointment on this date. As this time is medically documented appellant is entitled to leave buy back for an additional 1.5 hours during the period December 18, 1996 through January 22, 1998.

In regard to the period September 17 to December 22, 1998, appellant claimed a total of 18 hours of sick leave due to medical appointments with her counselor as recommended by the second opinion physician. The Office authorized a total of 12 hours of leave buy back for this

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<sup>6</sup> 5 U.S.C. §§ 8101-8193.

<sup>7</sup> *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

period. In granting this payment, the Office relied on bills submitted by Tom J. Ferro, appellant's counselor. The Office noted that there was no evidence submitted supporting treatment on October 2, November 17 and December 9, 1998. The Board finds that there is no evidence establishing that appellant received treatment on these dates. As appellant has not submitted the necessary evidence to establish that she received treatment as approved by the Office, she failed to meet her burden of proof and the Office properly denied leave buy back for the dates in question.

The May 5, 1999 decisions of the Office of Workers' Compensation Programs are affirmed with the modification of 1.5 additional hours of leave buy back for the period December 18, 1996 through January 22, 1998. The January 15, 1999 and September 18, 1998 decisions are hereby affirmed.

Dated, Washington, DC  
October 6, 2000

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

Valerie D. Evans-Harrell  
Alternate Member