U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALEX M. NAGY and U.S. POSTAL SERVICE,
POST OFFICE, Pittsfield, MA

Docket No. 01-1066; Submitted on the Record;
Issued November 22, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly denied authorization of chiropractic services.

On July 13, 1999 appellant, then a 60-year-old letter carrier, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1), alleging that on that date he hurt his back when he was turning to put a "flat into case" and "hit edge of desk." By letter dated August 5, 1999, the Office accepted appellant's claim for a lumbar strain.

On July 14, 1999 appellant commenced treatment with a chiropractor, Dr. Ronald J. Piazza. In a report dated July 22, 1999, he requested that appellant be "permitted to regulate the manner in which he bends, lifts and twists while performing duties related to his position at the employing establishment."

In an x-ray report dated July 16, 1999, Dr. Jerome M. Auerbach, a Board-certified radiologist, stated that the x-ray of that date indicated degenerative disc disease. In an "addendum/corrected report of July 16, 1999," dated August 17, 1999, Dr. Auerbach noted: "mild asymmetry of vertebral body and posterior element spacing is present at several levels. This is felt to be due to the noted degenerative disc disease."

In a note dated August 22, 1999, Dr. Piazza argued that Dr. Auerbach's report should satisfy the definition of subluxation, as a subluxation is "an incomplete dislocation, off-centering, misalignment fixation or abnormal spacing of vertebrae." In a second addendum, dated December 31, 1999, Dr. Auerbach noted: "The addendum on August 17, 1999 noted mild asymmetry of vertebral body and posterior element spaces. This is best seen at L4, which is minimally displaced anterior to L3. This minimal displacement is consistent with minimal subluxation and is most likely due to hypertrophic degenerative disease."

In a letter to the employing establishment dated January 3, 2000, Dr. Piazza notes that, as Dr. Auerbach specifically used the word "subluxation," the requested payment for his services should be approved.

Meanwhile, the employing establishment submitted an October 6, 1999 medical report by Dr. Murray Watnick, a Board-certified radiologist, wherein he reviewed the July 16, 1999 x-ray and found that it showed extensive degenerative changes. He indicated that there was no evidence of malalignment or subluxation.

In a medical opinion dated November 13, 2000, Dr. Kuhrt Wieneke, a Board-certified orthopedic surgeon, commented, in part:

> "[Appellant's] lumbar spine films as well as [computerized tomography] (CT) scan, indicate an L3-4 anterior subluxation, secondary to hypertrophic degenerative disease and prior surgery. This is not in any way causally related to the July 13, 1999 work injury or to his lumbosacral strain.

By decision dated December 5, 2000, appellant's claim for chiropractic treatment was denied.

The Board finds that the Office properly denied authorization of chiropractic services.

An employee is entitled to receive all medical services, appliances or supplies which a qualified physician prescribes or recommends and which the Office considers necessary to treat a work-related injury.[1] Section 8101(3) of the Federal Employees' Compensation Act[2] which defines services and supplies, provides that 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.[3] Furthermore, while the Office is obligated to pay for treatment of employment-related conditions, appellant has the burden of establishing that the expenditure is incurred for treatment of the effects of an employment-related injury or condition. To be entitled to reimbursement of medical expenses by the Office, he must establish a causal relationship between the expenditure and the treatment by submitting rationalized medical evidence supporting such a connection and demonstrating that the treatment is necessary and reasonable.[4]

In the instant case, Dr. Auerbach and Dr. Wieneke both noted a subluxation. However, neither physician related this to appellant's accepted work-related injury of July 13, 1999. In fact, Dr. Auerbach noted that the minimal subluxation was most likely due to hypertrophic degenerative disease. The Office accepted appellant's claim for lumbar strain, not hypertrophic degenerative disease. Furthermore, Dr. Wieneke specifically stated that the subluxation was

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[1] *Lisa DeLindsay*, 51 ECAB (Docket No. 99-1769, issued August 24, 2000).

[2] 5 U.S.C. §§ 8101-8193.

[3] 5 U.S.C. § 8101(3); *see Thomas W. Stevens*, 50 ECAB 288 (1999).

[4] *See Dale E. Jones*, 48 ECAB 648 (1997).

secondary to hypertrophic degenerative disease and was "not in any way causally related to the July 13, 1999 work injury or to his lumbosacral strain." The Board, therefore, finds that appellant has failed to establish that chiropractic services should be authorized.[5]

The decision of the Office of Workers' Compensation Programs dated December 5, 2000 is hereby affirmed.

Dated, Washington, DC
November 22, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

[5] The Board notes that on January 24, 2000 appellant filed a claim for recurrence of the July 13, 1999 injury. By letter dated July 13, 2000, the Office accepted this claim for medical treatment only. At the time of the appeal, there had been no adverse decision in the recurrence claim. The question as to whether appellant's surgery in November 1999 was covered under the Act was still unresolved and appellant had been referred for a second opinion medical evaluation.