

On April 9, 2002 appellant, a 30-year-old corrections officer, injured his right shoulder and right wrist while engaged in a training procedure. He filed a claim for benefits, which the Office accepted for right shoulder sprain and right wrist sprain. Appellant returned to full duty on June 20, 2002.

In a report dated August 30, 2002, received by the Office on November 19, 2002, Dr. Andrew Beistel, an osteopath, recommended that appellant be referred for a consultation with a chiropractor. Appellant also requested approval for massage therapy.

By letter dated November 26, 2002, the Office expanded the claim to accept a left shoulder sprain condition. In addition, it noted that it had been contacted by appellant's treating physician regarding some outstanding requests for treatment it had not received; it stated that these requests had been sent to the employing establishment and not the Office. With regard to appellant's past requests for massage therapy, the Office stated that it had authorized physical therapy because this was a more active treatment.

In addition, the Office noted that the attending physician had requested that appellant be evaluated by a chiropractor. It stated that this treatment was requested in regard to appellant's complaints of back pain; it advised, however, that the claim had not been accepted for a back injury. The Office informed appellant that in order to receive authorization for chiropractic treatment he needed to: (a) submit evidence of spinal subluxation shown by x-ray, in conjunction with manual manipulation of the spine; or (b) a formal referral from his treating physician based on diagnosis and course of treatment pertaining to an accepted condition.

By letter dated January 20, 2003, appellant advised the Office that, after undergoing physical therapy for his accepted April 2002 injuries to his right shoulder, right wrist and left shoulder, he had informed his treating physician that he had also sustained injuries to his neck and middle back. He stated, however, that his physician told him that she was unable to provide treatment for his neck and back because the Office had not authorized such treatment. Appellant further stated that she submitted a June 6, 2002 fax to the Office requesting authorization for chiropractic treatment for his neck and middle back injuries. He asserted that he chose to pay for treatment first and receive reimbursement later because he had to wait a lengthy period of time to receive such authorization. Appellant stated that the process was further delayed because his treating physician misfiled his authorization request.

By letter dated January 27, 2003, the Office advised the claimant that the chiropractic referral and request for thoracic spinal x-rays was not authorized because a thoracic diagnosis had not been established and because a work-related back condition had not been accepted. It did authorize the consultation with Dr. Joseph A. Cerimele, an osteopath, for the accepted bilateral shoulder and wrist conditions.

In a report dated March 11, 2003, Dr. Cerimele noted complaints of cervical pain, particularly with extension, and mid-scapular popping and mid-thoracic popping with lumbar flexion and extension. He stated that when appellant sustained his work injury in April 2002 he not only injured his right acromioclavicular joint but also hyperextended his cervical spine and lumbar spine; this occurred when he was hoisting a 150-pound stretcher over a 12-foot wall which came backwards toward his right acromioclavicular joint and twisting him backwards. Dr. Cerimele diagnosed direct trauma to the right acromioclavicular joint with an extension injury to the cervical spine and the thoracic spine. He recommended x-rays of the right shoulder; the cervical spine, and the thoracic spine, followed by consideration of manipulative therapy for the cervicothoracic areas and continued therapy for the right shoulder.

On April 7, 2003 the Office expanded appellant's claim to include the conditions of cervical sprain/strain and thoracic sprain/strain and gave authorization for cervical and thoracic spinal x-rays. In addition, it stated that it had contacted his attending physician and advised him to submit copies of diagnostic tests to the Office; it instructed the attending physician to determine whether these test results supported a diagnosis for a condition not currently accepted and provide an opinion as to whether this condition was work related. Additionally, the Office requested a copy of Dr. Cerimele's follow-up report and treatment recommendations based on the x-ray findings submitted to the Office.

On April 9, 2003 the Office received cervical and thoracic x-ray reports from Dr. Naeem Shabbir, Board-certified in neurology. The cervical x-ray noted no evidence of fracture, malalignment, disc space narrowing or encroachment of the intervertebral foramina. The thoracic x-ray report showed no evidence of recent bony or disc abnormality.

In reports dated May 7 and June 2, 2003, Dr. Cerimele noted that he administered cervicothoracic spinal manipulation which rendered an improvement in appellant's condition.

On May 20, 2004 the Office received a request from appellant to change physicians to Dr. Michael Lyons, a chiropractor. In a May 6, 2004 report, Dr. Lyons related appellant's history of injury that he twisted his neck, right shoulder and right wrist while straining to catch a ladder which fell back on him. He noted that appellant's wrist and shoulder improved with treatment but that he continued to have neck and upper back symptoms. Dr. Lyons stated that the Office approved one day of chiropractic treatment by Dr. DiDomenico, who adjusted appellant and provided temporary relief; however, no further treatment was approved. On examination, he noted complaints of frequent mild to moderate and occasionally sharp neck pain. Dr. Lyons stated that appellant experienced almost daily neck and upper back pain which was becoming progressively worse and increased with activity, as well as bending, turning his head and sitting for prolonged periods. He diagnosed chronic cervical sprain/strain with associated myofascial pain syndrome. Dr. Lyons opined that appellant could require prolonged treatment due to the chronicity of his condition.

Dr. Lyons submitted progress reports from May 19 to November 17, 2004 which documented chiropractic treatment. He also submitted authorization requests to the Office for retroactive dates of service spanning from January 12 through October 4, 2006.

On February 22, 2007 appellant filed a Form CA-2a claim for benefits, alleging that he sustained a recurrence of disability on May 1, 2004 which was causally related to his accepted April 2002 employment injury. He indicated on the form that he continued to work when he experienced his recurrence of back pain; however, due to the persistence of this pain, which he believed was causally related to his accepted back condition, he required chiropractic treatment. Appellant stated that, because chiropractic care was authorized in December 2003, he was not aware that he needed further authorization from the Office.

By letter dated February 26, 2007, the Office advised appellant that, pursuant to section 8101(2) of the Act, there were limitations regarding reimbursement for chiropractic services. It noted that no x-rays were taken of his cervical or thoracic spine at the time of the April 9, 2002 work injury and that x-rays that were taken a year later were normal. The Office stated that,

since no subluxation as demonstrated by x-ray existed, it could only consider chiropractic treatment if his attending medical doctor recommended such treatment as a form of therapy for a fixed period of time and if the attending physician actually oversaw the treatment provided. The Office stated that, since the last documented, active treatment he received was approximately June 2, 2003, with a lapse of a year in medical care, he was required to submit additional factual and medical evidence to address the progression of his conditions since June 2003, as well as the circumstances surrounding the need for additional treatment in relation to the original work injury.

By letter to appellant dated June 22, 2007, the Office reiterated the issues pertaining to his claims for recurrence of disability and reimbursement for chiropractic care.

In an April 9, 2007 report, Dr. Frank G. Farone, an osteopath, indicated that appellant had complaints of mild thoracic pain which he had experienced intermittently since his April 2002 work injury. He stated that appellant had experienced recurrent episodes, for which he had received periodic chiropractic treatment. Dr. Farone diagnosed de Quervain's tendinitis, shoulder sprain/strain, and thoracic sprain/strain and opined that these conditions were related to work activities. He stated that appellant had a stable and chronic condition that did not require continuous treatment; he advised that the occasional spontaneous flare-ups directly resulted from the original injury and would benefit from a short course of chiropractic treatments.

In a September 7, 2007 report, Dr. Farone stated that appellant continued to experience mild, constant pain and aching in his thoracic spine, with radiation to the neck. He advised that appellant's condition improved with manipulation/chiropractic treatments, but was recurrent. Dr. Farone related that appellant's condition was normal between episodes, but noted that he had "flare-ups" in which he required several chiropractic sessions to recover. He diagnosed recurrent left-sided thoracic strain with no numbness or weakness and normal range of motion, in addition to de Quervain's tendinitis of the right wrist and sprain/strain for the right shoulder. Dr. Farone stated that appellant's conditions were related to the accepted injury.

On September 13, 2007 Dr. Farone requested authorization from the Office to provide chiropractic treatment of appellant's thoracic spine from September 14 to November 1, 2007.

In a statement dated July 18, 2007, appellant stated that when he began to experience back pain in May 2004 he sought treatment on his own with a chiropractor, Dr. Lyons. He asserted that he intended to just pay for one manipulation; however, when he told Dr. Lyons it was a work injury, he advised appellant that he would treat it as such. Appellant stated that after his last day of treatment in November 2004 he began to receive letters from Dr. Lyons indicating that his bills were not paid. He ultimately paid these bills and received chiropractic treatment from Dr. Lyons from January to September 2006. Appellant stated that the employing establishment told him this treatment would be authorized by the Office. He asserted that, when the Office subsequently notified him that it was not authorized, he went to the employing establishment and was told that they had assumed he was seeing a medical doctor, not a chiropractor.

By decision dated May 2, 2008, the Office denied the recurrence of medical condition claim. It found that appellant had failed to meet the standards for entitlement to reimbursement

for chiropractic treatment beyond June 2003, this was the last date such treatment was supported by the medical evidence of record.

By letter dated May 6, 2008, appellant's attorney requested a hearing, which was held on September 22, 2008. The claimant testified that he experienced low back problems following the April 2002 injury and eventually began to have problems in his cervical and thoracic spine. Appellant received spinal manipulation from Dr. Cerimele, an osteopath, in June 2003, which brought temporary relief for his back conditions. He reiterated his previously stated belief that the employing establishment approved his request to seek treatment from Dr. Lyons in May 2004, and that it was only later that he learned that the Office did not authorize such chiropractic treatment.<sup>1</sup>

Appellant underwent a magnetic resonance imaging (MRI) scan of his thoracic spine on July 27, 2007, which was administered by Dr. Benjamin L. Glass, a chiropractor. The results of this test showed no intrinsic abnormalities of the spinal cord, with no increase or decreased signal intensity; and normal marrow signal intensity throughout the thoracic spine. Dr. Glass noted that the vertebral body height appeared within normal limits. He stated that the test results also demonstrated decreased disc space height with diminished signal intensity of the disc, indicating disc desiccation. Dr. Glass diagnosed multiple Schmorl's node defects from T7 through T9 and disc dehydration/degeneration at T7-8.

In an October 15, 2007 report, Dr. Joseph C. Totaro, a chiropractor, stated that on examination appellant had mild palpable muscle spasms in the lower cervical extensors and trapezius muscles bilaterally and moderate palpable muscle spasms in the left mid-thoracic musculature. He also noted decreased thoracic range of motion in flexion, with increased pain in the left thoracic musculature and decreased right rotation of cervical range of motion with tenderness and stiffness in the right cervical extensors. Dr. Totaro also reviewed the July 27, 2007 MRI scan results. He noted Dr. Glass' diagnoses of multiple Schmorl's node defects from T7 through T9 and disc dehydration/degeneration at T7-8, but stated that all other orthopedic and neurological tests were within normal limits.

Dr. Totaro stated that appellant sustained a work-related injury on April 9, 2002 and was diagnosed with cervical and thoracic sprain/strains, which are usually self-limiting injuries which heal within six to eight weeks; appellant's symptoms, however, did not resolve within that time frame. He noted that appellant did not obtain diagnostic testing until his July 2007 MRI scan, which was more than five years postinjury. Dr. Totaro stated the biggest problem with obtaining a diagnostic test this late after the initial injury is proving that any positive findings on the diagnostic test were truly caused by the injury. While he noted that disc dehydration/degeneration at T7-8 was also noted July 2007 MRI scan, he asserted that it was difficult if not impossible to determine whether this condition was present prior to the April 2002 work injury. Dr. Totaro stated that, if it was present prior to the injury, it would show that the area involved

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<sup>1</sup> By letter dated October 8, 2008, the employing establishment responded to the contentions raised at the hearing by appellant and his attorney. It stated that since appellant had an accepted claim it had assumed that all bills submitted would be paid by compensation. The employing establishment stated that it had also assumed that appellant had been referred by a medical doctor to see Dr. Lyons. The employing establishment stated that at no time would they just directly refer staff to a chiropractor, as a referral from a medical doctor was required.

was already weakening and made the area involved more susceptible to injury; if it was not present prior to the injury, enough time had passed so that it could have developed due to the injury. He concluded that, based on all the evidence of record, that the Schmorl's nodes indicated on the July 2007 MRI scan were directly and proximally caused by his April 9, 2002 work injury.

By decision dated December 12, 2008, an Office hearing representative affirmed the May 2, 2008 Office decision.

### **LEGAL PRECEDENT -- ISSUE 1**

Section 8103(a) of the Federal Employees' Compensation Act<sup>2</sup> states in pertinent part: The United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation.<sup>3</sup> In interpreting this section 8103, the Board has recognized that the Office has broad discretion in approving services provided under the Act. The only limitation on the Office's authority is that of reasonableness.<sup>4</sup>

To be entitled to reimbursement of medical expenses, a claimant has the burden of establishing that the expenditures were incurred for treatment of the effects of an employment-related injury or condition.<sup>5</sup> Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.<sup>6</sup>

In assessing the probative value of chiropractic evidence, the initial question is whether the chiropractor is considered a physician under section 8101(2) of the Act. A chiropractor is not considered a physician under the Act unless it is established that there is a spinal subluxation as demonstrated by x-ray to exist.<sup>7</sup> Services rendered by chiropractors are generally not reimbursable 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.<sup>8</sup>

The Office's implementing regulations provide that reimbursable chiropractic services include physical therapy provided by a chiropractor under the direction of a qualified physician.<sup>9</sup>

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Id.* at § 8103; *see Sean O'Connell*, 56 ECAB 195 (2004).

<sup>4</sup> *D.C.*, 58 ECAB \_\_\_\_ (Docket No. 06-2161, issued July 13, 2007).

<sup>5</sup> *T.F.*, 58 ECAB \_\_\_\_ (Docket No. 06-1186, issued October 19, 2006).

<sup>6</sup> *Cathy B. Millin*, 51 ECAB 331 (2000).

<sup>7</sup> 5 U.S.C. § 8102(2); *see Mary A. Ceglia*, 55 ECAB 626 (2004). *Sean O'Connell*, *supra* note 3.

<sup>8</sup> *Sean O'Connell*, *supra* note 3.

<sup>9</sup> 20 C.F.R. § 10.311(d).

## **ANALYSIS**

The Board finds that the Office properly denied authorization and reimbursement for chiropractic care. Appellant sustained an injury on April 9, 2002, which was accepted by the Office for bilateral shoulder strain and right wrist strain. He subsequently experienced thoracic and cervical pain and sought treatment for spinal manipulation. The Office advised appellant in its January 20, 2003 letter that treatment from a chiropractor was not authorized. In addition, it noted that it had been receiving requests for outstanding bills from physicians appellant had consulted. In April 2003, after receiving reports indicating cervicothoracic symptoms related to the April 2002 work injury from Dr. Cerimele, appellant's attending osteopath, the Office expanded the claim to include cervical sprain/strain and thoracic sprain/strain; it then authorized treatment and a course of physical therapy with Dr. Cerimele, who administered spinal manipulation on May 7 and June 2, 2003. Approximately one year later, appellant sought treatment from a chiropractor, Dr. Lyons. Although he may have assumed that he did not require prior approval from the Office for such treatment based on his discussions with the employing establishment, such authorization was required and he acknowledged that he never obtained authorization from the Office for treatment from Dr. Lyons as prescribed physical therapy.

In addition, there were no x-rays taken of appellant's cervical or thoracic spine contemporaneous with the April 2002 work injury and x-rays taken of his cervical and thoracic spine on April 9, 2003 were normal. None of the reports from Dr. Lyons contain evidence of spinal subluxation of the spine as demonstrated by x-ray.

Chiropractors Glass and Totarino treated appellant in 2007 for multiple Schmorl's nodes from T7-T9 and disc dehydration and dissection, based upon their interpretation of an MRI scan report. Their treatment did not meet the requirements for chiropractic treatment as it was not treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.<sup>10</sup>

Dr. Farone in his April 9 and September 7, 2007 reports did recommend that appellant undergo chiropractic sessions for flare ups of his accepted shoulder and thoracic sprains, which he related were due to the accepted 2002 injury. This recommendation was made after the chiropractic care appellant received during 2002 through 2006. While appellant did receive chiropractic treatments from Drs. Glass and Totaro in 2007, these treatments were not for the accepted shoulder and thoracic sprains, noted by Dr. Farone. Appellant has not established that he is entitled to reimbursement for chiropractic care.<sup>11</sup>

## **CONCLUSION**

The Board finds that the Office did not abuse its discretion when it denied authorization or reimbursement for chiropractic treatment.

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<sup>10</sup> A chiropractor may interpret his or her x-rays to the same extent as any other physician. The Office will not necessarily require the submittal of the x-ray or x-ray report, but it must be made available for submittal on request. 20 C.F.R. § 10.311(c).

<sup>11</sup> *T.F.*, *supra* note 5.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 4 and May 2, 2008 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: December 29, 2009  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board