

FACTUAL HISTORY

On December 19, 2005 appellant, then a 62-year-old secretary, sustained a traumatic injury after she slipped on a wet floor. She returned to work on January 3, 2006 and subsequently retired. On June 19, 2006 OWCP accepted the claim for right ankle sprain.

In medical reports dated June 16 to July 7, 2009, Dr. Keith K. Ratcliff, a treating chiropractor, reported that appellant sustained a work-related injury on December 19, 2005 and had chronic problems with her lower extremities, back, neck and right upper extremity. He noted that he reviewed x-rays of her neck and low back, as well as a magnetic resonance imaging (MRI) scan of the cervical spine dated April 22, 2009. Dr. Ratcliff stated that radiographic findings of the lumbar spine showed discopathy at L1-2 through L5-S1, intervertebral foraminal narrowing at L5-S1 and facet joint imbrication at L1-2 through L5-S1. He diagnosed right ankle pain secondary to the December 19, 2005 injury. Dr. Ratcliff further diagnosed right lower extremity pain, right low back pain, right mid back pain and neck pain secondary to joint and soft/hard tissue dysfunction as a result of the December 19, 2005 employment incident. He recommended chiropractic manipulative treatment to the restricted spinal and extraspinal joints, myofascial release, hard tissue release and requested authorization for treatment by OWCP.

In a December 28, 2009 MRI scan of the lumbar spine, Dr. Robert H. Santee, a Board-certified diagnostic radiologist, reported that there were spondylitic changes at L3-4 and L4-5 with some canal narrowing. The MRI scan also revealed a 3.57 millimeter (mm) anterior subluxation of L3 on L4, grade 1 spondyloisthesis of L3 on L4 and central disc protrusion and herniation at L4-5.

In medical reports dated September 16, 2009 to April 15, 2010, Dr. Donald A. Lakatosh, Board-certified in physical medicine and rehabilitation, reported that appellant sought treatment for neck, shoulder and back pain. In a December 30, 2009 report, he reported that a December 28, 2009 MRI scan showed central canal protrusion and herniation at L4-5 and grade 1 spondyloisthesis at L3-4. Dr. Lakatosh further stated that there was severe narrowing noted at the L3-4 disc level and a 3.57 mm anterior subluxation at L3-4. Plain x-ray confirmed the findings of advanced degenerative disc and facet disease at L3-4 with resultant grade 1 spondyloisthesis. Dr. Lakatosh opined that appellant's condition could be a result of her December 19, 2005 work-related injury and that her symptoms appeared to be causally related to her fall.

By decision dated May 17, 2010, OWCP expanded the claim to accept lumbar herniated disc at the L4-5 level.

By letter dated May 17, 2011, OWCP informed appellant that her chiropractor had submitted a medical report, which did not provide a diagnosis of subluxation of the spine. It informed her of circumstances by which chiropractors are reimbursed for their services and requested she submit additional medical evidence in support of her claim.

In a May 25, 2010 medical report, Dr. Lakatosh diagnosed appellant with right L5 radiculopathy and recommended that she be evaluated by an orthopedic spine surgeon. He further stated that he had little to offer with regard to physical medicine and rehabilitation.

In medical reports dated July 6 to September 1, 2010, Dr. David W. Leaf, a treating chiropractor, reported that appellant was evaluated and treated for low back pain located in the lumbar spine. He reviewed x-rays provided by Dr. Ratcliff and repeated his previously stated radiographic findings. Upon physical examination, Dr. Leaf opined that appellant's low back injury was a result of the December 19, 2005 employment incident and that her right lower extremity, low back pain, right mid upper back pain and neck pain were a result of her fall. He recommended manual manipulation, physiotherapy and myofascial release as treatment. In follow-up visits, Dr. Leaf treated appellant with adjustment to the upper lumbar spine and lower lumbar region to correct joint dysfunction of the vertebral segments. He requested OWCP authorize treatment for chiropractic services.

By letter dated May 22, 2011, appellant stated that her chiropractor did not take x-rays of her spine because Dr. Lakatos had already done so and provided those findings in his medical reports. She further stated that Dr. Lakatos provided a diagnosis of anterior subluxation at the L3-4 level. Appellant submitted physical therapy notes dated September 15 to October 1, 2010 documenting treatment for her low back, hip, buttocks, lateral thigh and calf pain.

In a September 21, 2011 medical note, Dr. Leaf stated that an MRI scan performed on December 28, 2009 revealed an anterior subluxation at L3-4.

By decision dated October 12, 2011, OWCP found that appellant was not entitled to reimbursement for chiropractic treatment because the evidence did not establish that she received chiropractic treatment for subluxation of the spine diagnosed by her chiropractor based upon x-ray evidence or that the treatment was medically necessary for the accepted employment injury.

On November 7, 2011 appellant requested review of the written record before the Branch of Hearings and Review.

In support of her claim, appellant submitted a December 28, 2009 diagnostic report from Dr. Santee reviewing an x-ray of the lumbar spine. Dr. Santee noted an anterior subluxation of L3 on L4 and diagnosed advanced degenerative disc and facet changes at L3-4 with resultant grade 1 spondylolisthesis of L3 on L4.

By decision dated January 27, 2012, OWCP affirmed the October 12, 2011 decision finding that the medical evidence was insufficient to establish coverage for chiropractic treatment.

LEGAL PRECEDENT

Section 8103 of FECA³ provides that 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 of the periods of any disability or aid in lessening the amount of

³ 5 U.S.C. § 8103.

any monthly compensation.⁴ These services, appliances and supplies shall be furnished by or on the order of the United States medical officers and hospital or at the employee's option by or on the order of physicians and hospitals designated or approved by the Secretary.⁵ The employee may be furnished necessary and reasonable transportation and expenses incidental to the securing of such services, appliances and supplies.⁶ In interpreting this section 8103, the Board has recognized that OWCP has broad discretion in approving services provided under FECA. The only limitation on OWCP's authority is that of reasonableness.⁷

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.⁸ Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.⁹

In assessing the probative value of chiropractic evidence, the initial question is whether the chiropractor is considered a physician under section 8101(2) of FECA. A chiropractor is not considered a physician under FECA unless 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 and subject to regulation by the Secretary.¹⁰ Without diagnosing a spinal subluxation from x-ray, a chiropractor is not a physician under FECA.¹¹

OWCP's implementing regulations provide exceptions to the general rule that services rendered by a chiropractor are not payable when they do not consist of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist. These exceptions are for physical therapy rendered by a chiropractor under the direction of an authorized physician and for chiropractic treatment authorized without limitations by OWCP or the employing establishment.¹²

ANALYSIS

The Board finds that OWCP properly denied authorization and reimbursement for chiropractic care.

⁴ *Id.*

⁵ *Daniel J. Perea*, 42 ECAB 214 (1990).

⁶ *See Debra S. King*, 44 ECAB 203 (1992); *Bertha L. Arnold*, 38 ECAB 282 (1986).

⁷ *D.C.*, Docket No. 06-2161 (issued July 13, 2007).

⁸ *T.F.*, Docket No. 06-1186 (issued October 19, 2006).

⁹ *Cathy B. Millin*, 51 ECAB 331 (2000).

¹⁰ 5 U.S.C. § 8102(2); *see Mary A. Ceglia*, 55 ECAB 626 (2004); *Sean O'Connell*, 56 ECAB 195 (2004).

¹¹ *Id.*

¹² 20 C.F.R. § 10.311(d).

Appellant sustained an injury on December 19, 2005, which was initially accepted by OWCP for right ankle sprain. OWCP subsequently expanded her claim on May 17, 2010 to include lumbar herniated disc at the L4-5 level. Appellant failed to establish that her chiropractic treatments consisted of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist which was causally related to the December 19, 2005 employment incident.

In reports dated June 16 to July 7, 2009, Dr. Ratcliff, a treating chiropractor, reported that appellant sustained a work-related injury on December 19, 2005 and had chronic problems with her lower extremities, back, neck and right upper extremity. After reviewing an MRI scan of the cervical spine and x-rays of appellant's neck and lower back, he stated that radiographic findings of the lumbar spine showed discopathy and facet joint imbrication at L1-2 through L5-S1 and intervertebral foraminal narrowing at L5-S1. Dr. Ratcliff diagnosed right ankle pain, right lower extremity pain, right low back pain, right mid back pain and neck pain secondary to joint and soft/hard tissue dysfunction as a result of the December 19, 2005 employment incident. He recommended chiropractic manipulative treatment to the restricted spinal and extraspinal joints, myofascial release and hard tissue release to the restricted tissues.

The Board notes that services rendered by chiropractors are generally not payable by OWCP 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 and subject to regulation by the Secretary."¹³ In the present case, there is no evidence that appellant's chiropractor, Dr. Ratcliff, treated appellant for a subluxation of the spine as demonstrated by x-ray to exist. Dr. Ratcliff, therefore, cannot be considered a "physician" within the meaning of FECA.¹⁴

In medical reports dated July 6 to September 1, 2010, Dr. Leaf, a treating chiropractor, reported that he had reviewed the x-rays provided by Dr. Ratcliff. Upon physical examination, he opined that appellant's injury to her low back was a result of the December 19, 2005 employment incident and that her right lower extremity, low back pain, right mid upper back pain and neck pain were a result of her fall. Dr. Leaf treated her with adjustment to the upper lumbar spine and lower lumbar region to correct joint dysfunction of the vertebral segments. In a September 21, 2011 medical report, he stated that an MRI scan performed on December 28, 2009 revealed an anterior subluxation at L3-4.

In the present case, Dr. Leaf diagnosed an anterior subluxation at L3-4 and based his diagnosis on a December 28, 2009 MRI scan of the lumbar spine. The Board affirms OWCP's finding that he was not a physician pursuant to section 8101(2) of FECA as a chiropractor is only considered a physician if his diagnosis or subluxation is based on a review of x-rays; there is no provision in FECA or the regulations for acceptance of a chiropractor's report as probative

¹³ See 5 U.S.C. § 8101(2).

¹⁴ See *Garey Harrison*, Docket No. 03-128 (issued May 27, 2003).

medical evidence where subluxation is diagnosed by MRI scan.¹⁵ Under FECA, reimbursable chiropractic services are limited to treatment to correct a subluxation as demonstrated by x-ray.¹⁶

The Board has created exceptions to the general rule that services rendered by a chiropractor are not payable unless they consist of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray.¹⁷ These exceptions are for physical therapy rendered by a chiropractor under the direction of an authorized physician¹⁸ and for chiropractic treatment authorized without limitations by OWCP or the employing establishment.¹⁹

The Board finds, however, that the evidence in this case fails to establish that the treatment provided by Dr. Ratcliff or Dr. Leaf was under the direction of Dr. Lakatosh, Dr. Santee or any other authorized physician. In his medical reports, Dr. Lakatosh recommended that appellant be evaluated by an orthopedic spine surgeon. Further, his May 25, 2010 medical report specifically stated that he had little to offer with regard to physical medicine and rehabilitation. There is no indication of a referral by an authorized physician for physical therapy or chiropractic treatment as a result of appellant's accepted December 19, 2005 injury, which would require OWCP to pay for reasonable and necessary treatment for an employment-related condition.²⁰

The record does not establish that chiropractors Leaf or Radcliff are physicians, authorized to provide chiropractic care, as defined by FECA. The evidence of record also fails to establish that treatment provided by Dr. Leaf and Dr. Ratcliff was under the direction of an authorized physician as contemplated by section 8101(2) of FECA, for a condition causally related to the accepted injury. Thus, chiropractic services are not reimbursable.²¹

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

CONCLUSION

The Board finds that OWCP properly denied authorization of chiropractic services.

¹⁵ *Jay K. Tomokiyo*, 51 ECAB 361 (2000).

¹⁶ *Susan P. Pastorino*, Docket No. 00-562 (issued May 16, 2001).

¹⁷ *Edward Schoening*, 41 ECAB 977 (1990).

¹⁸ *Eleanor B. Loomis*, 37 ECAB 792 (1986).

¹⁹ *Beverly A. Scott*, 37 ECAB 838 (1986).

²⁰ *David L. Sala*, 38 ECAB 419 (1987).

²¹ *Susan P. Pastorino*, Docket No. 00-562 (issued May 16, 2001).

ORDER

IT IS HEREBY ORDERED THAT the January 27, 2012 and October 12, 2011 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 2, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board