United States Department of Labor
Employees' Compensation Appeals Board

D.C., Appellant	)	
and	)	**Docket No. 07-1180**
	)	**Issued: December 17, 2007**
U.S. POSTAL SERVICE, MAIN POST OFFICE, Middletown, PA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 28, 2007 appellant filed an appeal of a February 14, 2007 decision of the Office of Workers' Compensation Programs denying her claim for wage-loss compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant established that her disability for the period September 16 to October 13, 2006 is causally related to her accepted neck sprain.

FACTUAL HISTORY

The Office accepted that on July 24, 2006 appellant, then a 27-year-old part-time flexible clerk, sustained a neck sprain when pulling a tray of mail from a rack. Appellant stopped work on July 24, 2006 and returned to full-time, full-duty work on October 16, 2006.

In July 24, 2006 reports, Dr. Todd R. Fisher, an attending Board-certified family practitioner, opined that appellant sustained torticollis and a strain of the right superior and

inferior trapezial muscles that day when she lifted a heavy tray of mail at work. He referred her for physical therapy at the Drayer Physical Therapy Institute three times a week for four weeks. He held appellant off work from July 24 to August 6, 2006. In an undated slip, Dr. Fisher released appellant to full duty as of August 7, 2006.

In an August 9, 2006 emergency room report, Dr. Robert Lasek, an attending physician Board-certified in emergency medicine, noted a March 2006 occupational neck injury due to heavy lifting. He stated that appellant underwent a chiropractic manipulation on August 8, 2006 and "experienced severe pain in the right aspect of her neck relating to her right shoulder." Dr. Lasek diagnosed an "[a]cute muscle spasm of the neck secondary to chiropractic manipulation." He held appellant off work for an unspecified period.

In an August 11, 2006 report, Dr. Fisher stated that appellant sustained an acute right cervical sprain at work on July 24, 2006 and an exacerbation of that injury on August 7, 2006. He held appellant off work indefinitely. Dr. Fisher opined that the original injury had not resolved but should do so within two to four weeks. He referred appellant for physical therapy three times a week for four weeks at the Drayer Physical Therapy Institute to address "reinjury r[ight] cervical sprain." Appellant received physical therapy from August 16 to September 13, 2006.

On September 25, 2006 appellant claimed compensation for total disability for the period September 16 to October 13, 2006. She received continuation of pay from July 25 to September 7, 2006 and used a combination of sick and annual leave and leave without pay from September 9 to October 13, 2006.

In an October 19, 2006 letter, the Office advised appellant that the medical evidence submitted was insufficient to establish that she was totally disabled for work from September 16 to October 13, 2006. The Office requested that appellant obtain a narrative report from Dr. Fisher explaining why he referred her for chiropractic treatment and if such treatment disabled her for any period.

In a November 2, 2006 letter, Dr. Fisher stated that he referred appellant for physical therapy on July 24, 2006. He told appellant that it was "ok to see chiropractor" who worked in a physical therapy facility. Dr. Fisher explained that the accepted "cervical sprain caused [appellant's] disability; the manipulation and subsequent pain may have prolonged the disability but did not cause the disability."

In a February 1, 2007 letter, the Office requested that Dr. Fisher specify the dates when appellant was totally disabled for work due to the accepted cervical sprain. Dr. Fisher submitted a February 12, 2007 response stating that appellant was totally disabled for work on July 24, 2006. In a February 23, 2007 addendum, Dr. Fisher stated that appellant "was totally disabled July 24 to October 14, 2006. The start date of disability was July 24, 2006. [Appellant] RTW [returned to work] October 15, 2006."

By decision dated February 14, 2007, the Office denied appellant's claim for total disability compensation for the period September 16 to October 13, 2006 on the grounds that the medical evidence was insufficient to establish the claimed period of disability. The Office found

that, in his February 12, 2007 letter, Dr. Fisher "indicated that [appellant] was disabled on July 24, 2006 only."

LEGAL PRECEDENT

An employee seeking compensation under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence.[2]

To establish a causal relationship between a claimed period of disability and the accepted employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background, supporting such a causal relationship.[3] Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.[4] Rationalized medical evidence is evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the 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 the claimant.[5]

ANALYSIS

The Office accepted that appellant sustained a neck strain on July 24, 2006 in the performance of duty. On September 25, 2006 appellant claimed wage-loss compensation for the period September 16 to October 13, 2006. The Office denied the claim by February 14, 2007 decision, finding that the medical evidence was insufficient to establish total disability for work for the claimed period.

Appellant submitted reports from Dr. Fisher, an attending Board-certified family practitioner, addressing the duration of the claimed disability. Initially, Dr. Fisher held appellant off work from July 24 to August 6, 2006. He released her to full duty as of August 7, 2006. Appellant then sought emergency room treatment on August 9, 2006 after experiencing neck pain during an August 8, 2006 chiropractic manipulation. Dr. Fisher stated in a February 12, 2007 letter that appellant was totally disabled for work only on July 24, 2006. He submitted a February 23, 2007 addendum stating that appellant was totally disabled for work from July 24 through October 14, 2006. This encompasses the period from September 16 to October 13, 2006 for which appellant claimed compensation. The Board finds, however, that Dr. Fisher's opinion

[1] 5 U.S.C. §§ 8101-8193.

[2] *Donna L. Miller*, 40 ECAB 492, 494 (1989); *Nathaniel Milton*, 37 ECAB 712, 722 (1986).

[3] *Manuel Gill*, 52 ECAB 282 (2001).

[4] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[5] *Leslie C. Moore*, 52 ECAB 132 (2000).

is insufficient to establish disability for the claimed period as he did not address the issue of whether appellant sustained an intervening neck injury on August 8, 2006.

The Board has held that, if treatment is performed as a result of an employment injury and it causes further impairment, this would constitute a consequential injury and would be compensable.[6] Also, the Office's implementing regulations provide that reimbursable chiropractic services[7] include physical therapy provided by a chiropractor "under the direction of a qualified physician."[8] It must therefore be determined if Dr. Fisher prescribed the chiropractic treatment provided on August 8, 2006 as physical therapy to treat the accepted neck sprain. On July 24, 2006 Dr. Fisher referred appellant for four weeks of physical therapy at the Drayer Physical Therapy Institute. He did not prescribe or otherwise mention chiropractic treatment at that time. In a November 2, 2006 letter, Dr. Fisher stated that he told appellant that it was "ok to see chiropractor" who worked in an unspecified physical therapy facility. But he did not indicate that he approved chiropractic treatment on or before August 8, 2006. The Board has held that contemporaneous evidence is entitled to greater probative value than later evidence.[9] Thus, Dr. Fisher's retroactive approval of chiropractic treatment is insufficient to establish that he prescribed the August 8, 2006 manipulation as physical therapy to treat the accepted neck sprain.

The Board finds that the medical record demonstrates that the August 8, 2006 chiropractic manipulation caused a new neck injury. In an August 9, 2006 report, Dr. Lasek, an attending physician Board-certified in emergency medicine, diagnosed an acute muscle spasm of the neck due to chiropractic manipulation. Dr. Fisher opined on August 11, 2006 that the August 8, 2006 chiropractic manipulation reinjured and exacerbated the accepted neck sprain. He added in a November 2, 2006 letter that the August 8, 2006 manipulation "may have prolonged [appellant's] disability." These medical opinions demonstrate that appellant sustained a new injury on August 8, 2006 as a result of chiropractic treatment that was not authorized by her attending physician as physical therapy to treat the accepted injury. The manipulation thus constitutes an intervening cause, breaking the legal chain of causation from the accepted July 24, 2006 neck sprain.[10] Therefore, appellant has failed to meet her burden of proof that her condition from September 16 to October 13, 2006 was related to the accepted July 24, 2006 neck sprain.

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[6] *Gaare R. Davis*, 48 ECAB 612 (1997).

[7] Under section 8101(2) of the Federal Employees' Compensation Act, chiropractors are only considered physicians and their reports considered medical evidence, to the extent that they treat spinal subluxations as demonstrated by x-ray to exist. 5 U.S.C. § 8101(2). Section 8101(3) of the Act limits the scope of reimbursable services provided by chiropractors to manual manipulation to treat a spinal subluxation demonstrable by x-ray. 5 U.S.C. § 8101(3).

[8] 20 C.F.R. § 10.311(d).

[9] *Conard Hightower*, 54 ECAB 796 (2003).

[10] *See Carlos A. Marrero*, 50 ECAB 117, 119-20 (1998) (the Board found that the claimant's use of an exercise machine constituted an intervening cause of appellant's disability and thus the Office properly denied appellant's claim for recurrence of disability); *Clement Jay After Buffalo*, 45 ECAB 707, 715 (1994) (the Board found that the claimant's knee injury sustained while playing basketball broke the legal chain of causation from an accepted knee injury sustained in the performance of his duties as a firefighter).

CONCLUSION

The Board finds that appellant has not established that her disability for the period September 16 to October 13, 2006 is causally related to her accepted neck sprain. The record demonstrates that she sustained an intervening injury on August 8, 2006.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 14, 2007 is affirmed.

Issued: December 17, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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