

BRB Nos. 99-0499
and 99-0499A

FORREST HATCHER)	
)	
Claimant-Respondent)	
Cross-Petitioner)	
v.)	
)	
DYNAELECTRIC COMPANY)	DATE ISSUED:
)	
and)	
)	
FIREMAN'S FUND INSURANCE)	
COMPANY)	
)	
Employer/Carrier-)	
Petitioners)	
Cross-Respondents)	DECISION and ORDER

Appeals of the Decision and Order - Awarding Benefits of Edward Terhune Miller, Administrative Law Judge, United States Department of Labor.

Michael J. Beattie, Alexandria, Virginia, for claimant.

Michael D. Dobbs (Mell, Brownell & Baker), Washington, D.C., for employer/carrier.

Before: HALL, Chief Administrative Appeals Judge, SMITH and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Employer appeals, and claimant cross-appeals, the Decision and Order - Awarding Benefits of (97-DCW-6) of Administrative Law Judge Edward Terhune Miller, rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (1982)(the Act), as extended by the District of Columbia Workmen's Compensation Act, 36 D.C. Code §§501-502 (1973)(the D.C. Act). We must affirm the findings of fact and conclusions of law of the administrative law judge if they are rational, supported by substantial evidence, and in accordance with law. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant sustained a back injury while working as an electrician for employer on October 6, 1976. Following his return to work,¹ claimant received semi-weekly chiropractic treatments from Dr. Cypher, D.C., including manual manipulation of the spine between 1985 and April 1997, at which time claimant continued his treatment with Dr. Piorkowski, D.C. Employer paid for all chiropractic services while claimant continued to work as an electrician, from 1976 to July 2, 1996, when it controverted the reasonableness of claimant's continued chiropractic treatment.

In his decision, the administrative law judge determined that claimant has a subluxation and therefore ordered employer to pay for the reasonable and necessary past chiropractic care provided by Drs. Cypher and Piorkowski,² as well as for continuing weekly chiropractic treatment, insofar as they consist of manual manipulation of the spine, including hot moist packs and high voltage therapy which he found are integral and necessary components of such treatment.

On appeal, employer challenges the administrative law judge's award of medical benefits. In his cross-appeal, claimant urges the Board to affirm the administrative law judge's decision.

Employer argues it cannot be liable for the chiropractic treatment provided by Drs. Cypher and Piorkowski as neither one is an authorized physician under Section 7(c) of the Act, 33 U.S.C. §907(c) (1982). Employer also argues that the administrative law judge erred in finding that the chiropractic treatment provided to claimant is reasonable and necessary, and in holding that components of claimant's chiropractic treatment, *i.e.*, hot moist packs and high volt galvanism therapy, are compensable.

In pertinent part, Section 7(c) of the 1972 Act states that the Secretary "*may* designate the physicians who are authorized to render medical care under this chapter." 33 U.S.C. §907(c) (1982)[emphasis added]. Claimant's options for medical care under the Act are not limited solely to those physicians on the "authorized" list, as the Secretary is not required to designate all of the authorized physicians. In addition, Section 702.404, 20 C.F.R. §702.404, provides that "chiropractors" are included in the definition of the term "physician." Consequently, although Drs. Cypher and Piorkowski are not on the Secretary's list of authorized

¹Claimant missed about three weeks of work due to his employment-related injury and employer voluntarily paid temporary total disability benefits for this period of time.

²The administrative law judge also ordered employer to pay for the neurological tests conducted by Dr. Green on behalf of claimant on February 29, 1996.

physicians, they are nevertheless authorized under the Act to treat claimant “to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation shown by X-ray or clinical findings.” 20 C.F.R. §702.404; see *Bang v. Ingalls Shipbuilding, Inc.*, 32 BRBS 183 (1998).

After setting out the pertinent part of Section 702.404 and the Board’s holding in *Bang*, 32 BRBS at 184-85, the administrative law judge determined that claimant suffers from a clinically diagnosed subluxation. Specifically, the administrative law judge noted that Drs. Cypher and Piorkowski opined that claimant suffers from a subluxation of the spine and that their opinions are corroborated by a neurosurgeon, Dr. Green, who, based on the results of an electromyography and physical examination, concluded that claimant suffers from a “mild subluxation.”³ In contrast, the administrative law judge noted that Drs. Brown, Sheely, Johnson, Heilen and Sloan found no disc herniation or other abnormality. On this issue, however, the administrative law judge accorded greatest weight to Drs. Cypher and Piorkowski, as corroborated by Dr. Green, because they have treated claimant extensively over time and are professionals whose role is analogous to that of treating physicians. As the administrative law judge’s weighing of the evidence on this issue is rational, his finding is affirmed. See *Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 373 U.S. 954 (1963); *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961); see also generally *Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979).

The administrative law judge then found employer liable for continued chiropractic treatment on a regular basis, *i.e.*, up to one treatment per week, insofar as it consists of manual manipulation of the spine, including hot moist packs and high voltage therapy. He found this treatment reasonable and necessary, in that it allows claimant to continue to work at his physically taxing employment as an electrician. In particular, the administrative law judge determined, based upon the credible testimony of claimant⁴ and in the absence of any contradictory evidence, that the moist hot packs and high voltage galvanism therapy are compensable as they are both integral and necessary components of manipulation treatment to

³Thus, contrary to employer’s contention, Dr. Green’s diagnosis of a mild subluxation is based on his clinical findings which included an electromyography in both lower extremities and related paraspinal muscles and nerve conduction studies in the right lower extremity.

⁴Specifically, claimant testified that the moist hot packs and high voltage galvanism are standard treatments used by chiropractors to loosen muscles and release tension from them so manual adjustments can be made.

correct claimant's clinically diagnosed subluxation. In addition, the administrative law judge examined the medical bills submitted by Drs. Cypher and Piorkowski for previous treatment provided to claimant, and similarly determined that the only compensable treatments were those related to chiropractic manipulation, hot moist packs, and high voltage galvanism therapy.

Inasmuch as the administrative law judge considered the chiropractic care in terms of the regulation at Section 702.404 and the Board's decision in *Bang*, 32 BRBS at 183, and his findings are rational and supported by substantial evidence, we affirm his conclusion that employer is liable for claimant's past and future chiropractic care, up to one visit per week, so long as it involves manual manipulation of the spine, including hot moist packs and high voltage galvanism therapy.

Accordingly, the administrative law judge's Decision and Order - Awarding Benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY,
Administrative Appeals Judge