

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VIVIAN SEWARD and U.S. POSTAL SERVICE,
POST OFFICE, Portland, Oreg.

*Docket No. 96-1972; Submitted on the Record;
Issued July 13, 1998*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issues are: (1) whether appellant was entitled to reimbursement for chiropractic services; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for an oral hearing.

In the present case, appellant filed a claim on August 3, 1994, alleging that she sustained injuries causally related to sorting and casing mail. The Office accepted that appellant sustained a cervical strain and left shoulder strain causally related to her federal employment. An attending chiropractor, Dr. Thomas D. Freedland, diagnosed a subluxation based on x-rays taken August 1, 1994. The Office referred the x-rays to Dr. Michael J. Peters, a Board-certified radiologist, who opined in a December 28, 1995 report that the x-rays did not reveal a subluxation.

In a decision dated February 6, 1996, the Office found that the medical evidence failed to establish a subluxation, and therefore payment of chiropractic services was denied. Appellant requested an oral hearing by letter postmarked March 28, 1998. By decision dated April 29, 1996, the Office denied the request on the grounds that it was untimely, and appellant could request reconsideration and submit additional relevant evidence on subluxation.

The Board has reviewed the record and finds that the case is not in posture due to a conflict in the medical evidence.

Section 8101(2) of the Federal Employees' Compensation Act provides that the term "physician" ... includes chiropractors only 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."¹

¹ 5 U.S.C. § 8101(2).

The medical evidence indicates that Dr. Freedland took x-rays on August 1, 1994. He diagnosed a cervical subluxation at C5-6 as demonstrated on x-ray in reports dated September 6, 1994 and January 3, 1995. In a report dated February 21, 1995, Dr. Freedland discussed appellant's treatment, and he again indicated that appellant had a subluxation of the cervical spine.

The second opinion radiologist, Dr. Peters, reviewed the August 1, 1994 x-rays and opined that there were no subluxations found. The Office, in its February 6, 1996 decision, stated that "Dr. Peters is a Board-certified radiologist, he provided [a] well-reasoned opinion and for these reasons, his report is considered the weight of the medical evidence...."

To the extent that the Office accords Dr. Peters' opinion the weight of the evidence based on his qualification as a Board-certified radiologist, the Board finds that this is not appropriate in the present case. The Office's regulations provide that a "chiropractor may interpret his or her x-rays to the same extent as any other physician defined in this section."² The opinion of a Board-certified radiologist does not necessarily outweigh the opinion of a chiropractor interpreting his own x-rays.³

The Office also refers to Dr. Peters' "well-reasoned" opinion, but Dr. Freedland has shown familiarity with definition of subluxation and has explained his diagnosis. Dr. Freedland discusses the diagnosis of subluxation in his February 21, 1995 report and refers to the definition of subluxation in the *Medicare Carriers Manual* in an October 2, 1995 report.⁴ The Office has not explained how Dr. Peters' opinion is accorded the weight of the evidence based on the reasoning offered for the expressed opinions.

5 U.S.C. § 8123(a) provides that if there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination." In this case a chiropractor interpreting his own x-rays has opined that a subluxation was revealed, and a second opinion radiologist has found no subluxation on the same x-rays. The Board finds that there is a conflict in the medical evidence as to whether the August 1, 1994 x-rays revealed a subluxation, and the case must be remanded for resolution of the conflict. After such further development as the Office deems necessary, it should issue an appropriate decision. Due to the Board's finding on the initial issue, the Board will not address the denial of a request for a hearing.

² 20 C.F.R. § 10.400(e).

³ See *George E. Reilly*, 44 ECAB 458 (1993). The Director of the Office argued that the opinion of a Board-certified radiologist outweighs the opinion of a chiropractor on the interpretation of x-rays; the Board, however, found a conflict between a chiropractor interpreting his own x-rays and an Office medical adviser who was a Board-certified radiologist.

⁴ The Office has adopted the definition of subluxation contained in the *Medicare Carriers Manual*; see FECA Bulletin 84-71 (December 14, 1984), and 20 C.F.R. § 10.400(e).

The decision of the Office of Workers' Compensation Programs dated February 6, 1996 is set aside and the case remanded for further action consistent with this decision of the Board.

Dated, Washington, D.C.
July 13, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member