

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ROBERT F. O'DONALD and DEPARTMENT OF THE NAVY,  
MARE ISLAND NAVAL SHIPYARD, Vallejo, Calif.

*Docket No. 97-2030; Submitted on the Record;  
Issued April 21, 1999*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's chiropractic medical benefits effective June 21, 1996.

On November 8, 1990 appellant, then a 46-year-old maintenance supervisor, filed a notice of traumatic injury and claim, alleging that on November 7, 1990 he sustained low back pain while lifting five-gallon paint cans. Appellant stopped work on November 9, 1990. The Office accepted appellant's claim for subluxations of the L4, L5 and S1. Appellant was off work intermittently between November 1990 and July 26, 1991 and ceased work on July 29, 1991. He received appropriate compensation for all periods of temporary total disability.

In a letter dated April 25, 1996, the Office advised appellant that it proposed termination of his chiropractic treatment on the grounds that continued medical chiropractic treatment was not supported by the medical evidence of record. By decision dated June 21, 1996, the Office terminated appellant's chiropractic treatment on the grounds that it was no longer medically necessary.

The Board has duly reviewed the entire case record on appeal and finds that the Office properly terminated appellant's chiropractic treatment effective June 21, 1996.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation.<sup>1</sup> After it has been determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment. To terminate authorization for chiropractic treatment, the Office must establish

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<sup>1</sup> *Mohamed Yanis*, 42 ECAB 325 (1991).

that the treatment cannot cure appellant's condition, provide relief or reduce the degree of disability as provided for under section 8103 of the Act.<sup>2</sup>

Section 8103(a) of the Act provides for furnishing to an injured employee "the services, appliances and supplies prescribed by a qualified physician" which the Office "considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of monthly compensation."<sup>3</sup> The Board has found that the Office has great discretion in determining whether a particular type of treatment is likely to cure or give relief.<sup>4</sup>

In the present case, the Office terminated appellant's chiropractic treatment based on the medical opinions of Dr. Ronald B. Wolfson, his treating physician and a Board-certified orthopedic surgeon and Dr. Joseph W. McCoy, an Office referral physician and a Board-certified orthopedic surgeon. Appellant suggests that Dr. Wolfson is not his primary treating physician as he was initially treated by Dr. Dennis E. Petrie, a chiropractor, who diagnosed the subluxations of the spine. However, a review of the record reveals that on September 5, 1991, appellant requested that Dr. Wolfson become his treating physician. On November 4, 1991 the Office authorized appellant's treatment by Dr. Wolfson and he became the primary physician of record. Thereafter, appellant continued with chiropractic treatments as recommended by Dr. Wolfson. In a report dated February 28, 1996, Dr. Wolfson indicated that chiropractic treatment was no longer necessary and did not need to be performed on an ongoing basis. In a report dated May 1, 1996, Dr. Wolfson noted that he had discussed the notice of proposed termination of chiropractic treatment appellant received from the Office and explained why this procedure was no longer necessary. He prescribed exercises to alleviate appellant's stiffness in place of chiropractic care. The record also contains a second opinion examination and report by Dr. McCoy in which he indicated that there were no objective findings to support the diagnosis of subluxation in the lumbar or thoracic area, there was no current significant lumbar injury and appellant's current limitations were related to lumbar disc herniation. Dr. McCoy concluded that orthopedic and chiropractic treatment was no longer necessary.<sup>5</sup> Thus, as the record did not contain any medical evidence which indicated that further chiropractic treatment was warranted, the Office properly terminated said services effective June 21, 1996.

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<sup>2</sup> 5 U.S.C. § 8103(a).

<sup>3</sup> *Id.*

<sup>4</sup> *James F. Archie*, 42 ECAB 180 (1991); *William E. Gay*, 38 ECAB 599 (1987).

<sup>5</sup> The Board notes that subsequent to the termination of appellant's chiropractic treatments on January 10, 1997, Dr. Wolfson again recommended that appellant receive chiropractic spinal adjustments. However, these later reports were submitted some six months after the June 21, 1996 decision and the Board's review is limited to the evidence that was before the Office at the time of its final decision. The Board therefore cannot consider these reports. 20 C.F.R. § 501.2(c)

The decision of the Office of Workers' Compensation Programs dated June 21, 1996 is hereby affirmed.

Dated, Washington, D.C.  
April 21, 1999

George E. Rivers  
Member

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member