

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WAYNE M. BOGOVICH and DEPARTMENT OF AGRICULTURE,
SOIL CONSERVATION SERVICE, Somerset, PA

*Docket No. 99-1594; Submitted on the Record;
Issued December 20, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs properly denied payment for services provided by a chiropractor.

The Board has duly reviewed the case record and finds that the Office properly denied payment for services provided by a chiropractor.

On April 10, 1997 appellant, then a 40-year-old area manager, filed a traumatic injury claim (Form CA-1) alleging that on April 8, 1997 he twisted his right knee. He stated that he was walking along a ramp when he slipped on some brush.

Appellant submitted medical evidence indicating that he received medical treatment for his right knee and back from April 9 through December 29, 1997 from Dr. Jerry R. Vieregge, a chiropractor.

By letter dated April 15, 1998, the Office accepted appellant's claim for a torn meniscus of the right knee and authorized arthroscopy surgery.

By decision dated April 15, 1998, the Office denied payment for services provided by Dr. Vieregge. In a May 11, 1998 letter, appellant requested an oral hearing before an Office representative.

By decision dated January 28, 1999, the hearing representative affirmed the Office's decision.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his or her claim including the fact that the

¹ 5 U.S.C. §§ 8101-8193.

individual is an “employee of the United States” within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

Section 8103 of the Act states in pertinent part, “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 or the period of disability, or aid in lessening the amount of monthly compensation.”⁴ Section 8101(3) of the Act, defining services and supplies,” states: “Reimbursable chiropractic 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.”⁵

In this case, appellant first alleged that he sustained a back condition due to his April 8, 1997 employment injury in a February 14, 1998 letter. Prior to his November 18, 1998 report, Dr. Vieregge did not diagnose a subluxation as demonstrated by x-ray to exist and therefore his prior reports are not considered to be those of a “physician.” In his November 18, 1998 report, Dr. Vieregge diagnosed a lumbar subluxation based on his review of a May 11, 1998 x-ray taken by Dr. Joffre Lewis, a Board-certified radiologist, who stated that this x-ray showed a normal lumbosacral spine. Dr. Vieregge did not interpret his own x-ray pursuant to section 10.400 of the regulations in diagnosing a subluxation.⁶ Further, the Board notes that the Office had not accepted a subluxation as resulting from appellant’s April 8, 1997 employment injury. Thus, Dr. Vieregge’s November 18, 1998 report is not that of a “physician” and does not constitute competent medical evidence under the Act.⁷

In light of the above, the Board finds that appellant has failed to satisfy his burden of proof to establish that he sustained a back injury at the time of his April 8, 1997 employment-related right knee injury. Since Dr. Vieregge did not diagnose an employment-related subluxation as demonstrated by x-ray, his chiropractic services are not reimbursable.

² *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Daniel J. Overfield*, 42 ECAB 718 (1991).

⁴ 5 U.S.C. § 8103(a).

⁵ 5 U.S.C. § 8101(3).

⁶ 20 C.F.R. § 10.400(e).

⁷ *See Linda J. Mendenhall*, 41 ECAB 532, 537 (1990); *Mary J. Briggs*, 37 ECAB 578, 581 (1986).

The January 28, 1999 decision of the Office of Workers' Compensation Programs' hearing representative is hereby affirmed.

Dated, Washington, DC
December 20, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member