



May 13, 2008 letter requesting objective test results showing a diagnosed cervical condition and medical explanation of a material change in any cervical degenerative disc disease, possibly a June 24, 2008 telephone call advising that no cervical condition was accepted and that appellant needed to submit proof of a cervical condition and causal relationship. Neither is an appealable decision.<sup>2</sup>

### **ISSUES**

The issues are: (1) whether appellant has more than a four percent impairment of her left upper extremity; and (2) whether the Office properly denied authorization for further chiropractic therapy.

### **FACTUAL HISTORY**

On September 11, 2000 appellant, then a 36-year-old claims examiner, filed an occupational disease claim alleging that her chronic left shoulder, elbow, wrist and hand pain was a result of repetitive typing in her federal employment. The Office accepted her claim for left ulnar strain, left shoulder strain and left forearm strain. It also accepted left ulnar compression, left flexor tendinitis and left shoulder bursitis. On May 11, 2005 appellant received a schedule award for a three percent impairment of her left upper extremity. On November 18, 2005 she received a schedule award for an additional one percent impairment.

On February 6, 2007 the Office informed appellant that it had updated her claim to accept the following diagnoses: sprain of elbow and forearm, unspecified site, left; sprain of shoulder and upper arm, unspecified site, left; adhesive capsulitis of shoulder, left; carpal tunnel syndrome, left; myalgia and myositis, not otherwise specified, left. Appellant filed a claim for an increased schedule award based on the newly accepted conditions of left carpal tunnel syndrome and myalgia and myositis, left.

To resolve a conflict that arose between appellant's physician and an Office second opinion physician on whether there was a continuing work-related condition, the Office referred appellant, together with the case record and a statement of accepted facts, to Dr. Paul D. Belich, a Board-certified orthopedic surgeon, for an impartial medical evaluation.

On May 7, 2009 Dr. Belich related appellant's history of injury and current complaints. He reviewed her medical records and described his findings on physical examination. Dr. Belich diagnosed soft tissue periscapular pain, soft tissue left shoulder pain, normal examinations of the left elbow, left wrist and left hand. He explained that no significant objective findings or diagnostic tests substantiated appellant's complaints of pain in the left shoulder and shoulder girdle. Dr. Belich felt that she was actively resisting attempts to obtain a better range of motion in the left shoulder and was putting a great deal of effort in not allowing her arm to be raised more than 120 degrees. Internal and external rotations on the left were symmetrical to the right, an inconsistency indicative of abnormal pain-type behavior attempting to influence the

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<sup>2</sup> The record contains no adverse decision by the Office issued after November 18, 2008 and within 180 days of the filing of this appeal or before November 19, 2008 and within one year of the filing of this appeal, denying appellant's claim for an employment-related cervical condition. 20 C.F.R. § 501.3 (time limitations for appealing).

examination. Dr. Belich concluded that appellant's subjective complaints did not correspond with any objective findings or any definitive orthopedic diagnosis.

Having found appellant's range of motion evaluation invalid, Dr. Belich noted that other physicians never actually found impaired range of shoulder motion beyond a few degrees and there was nothing to explain why her current examination would be so much different. He concluded that he could not give appellant more than about a two to three percent impairment of the left upper extremity based on range of motion, but as there was nothing to indicate that she had an impaired ability to carry out her work, he believed her true impairment rating should be zero percent. Dr. Belich reviewed six previous impairment evaluations, three of which, from orthopedic surgeons, found no impairment and two of which found left hand stiffness and a sensory deficit that were not currently substantiated on examination.

In a decision dated June 18, 2009, the Office denied appellant's claim for an increased schedule award.

On August 2, 2007 the Office informed appellant that it could make payments for only one attending physician and that Dr. Doreen King was considered the attending physician for her claim.

On July 22, 2008 Dr. King noted that she had made numerous requests for further therapy since November 2007, all of which the Office had denied pending referral from appellant's primary care physician, which was confusing to Dr. King, as the Office indicated that she was the primary care physician. She requested authorization for four visits in 2007 and six visits in 2008. Dr. King noted that appellant was being treated periodically for sprain of the elbow and forearm, sprain of the shoulder and upper arm, adhesive capsulitis of the shoulder and myalgia and myositis. She added that appellant was seen clinically very infrequently and was under a self-directed stretching and strengthening protocol to minimize the return of symptoms. Dr. King concluded: "I can release [appellant's] workers' compensation claim with respect to these left upper extremity injuries as maximally medically improved as of the last date of service, [June 16, 2008.]"

In a letter dated October 28, 2008, the Office informed appellant that a review of her case file showed that Dr. King, whom she had been seeing for physical therapy, was a chiropractor, not a medical physician. As Dr. King reported that appellant had reached maximum medical improvement and had completed her physical therapy and as there was no evidence from a medical physician that appellant needed any additional physical therapy, the Office advised that no further physical therapy with Dr. King was authorized.

On appeal, appellant disagrees with the Office's decision to deny her schedule award claim and terminate her therapy. She argues that she is in pain daily, that she self-medicates and that the pain interferes with her work. Appellant adds that the Office approved Dr. King as her attending physician.

### **LEGAL PRECEDENT -- ISSUE 1**

Section 8107 of the Federal Employees' Compensation Act<sup>3</sup> authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. Such loss or loss of use is known as permanent impairment. The Office evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.<sup>4</sup>

A claimant seeking compensation under the Act has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence.<sup>5</sup>

### **ANALYSIS -- ISSUE 1**

Appellant requested an increased schedule award based on the Office's February 6, 2007 update of accepted conditions. She had the burden of proof to establish that she was entitled to an increased award, to show that she had more than a four percent impairment of her left upper extremity. However, appellant submitted no impairment evaluation to support her claim. Dr. Belich, an orthopedic surgeon and impartial medical specialist selected to resolve whether appellant had any continuing work-related condition, examined her but could find no objective basis to substantiate her pain complaints. He deemed the range of motion findings invalid due to active resistance and he could find no evidence of the left hand stiffness or sensory deficit for which she previously received schedule compensation. Dr. Belich concluded that appellant's true impairment rating should be zero percent.

Moreover, the evidence the Office obtained indicated that appellant had no permanent impairment of the left upper extremity. Because the weight of the medical evidence does not support her claim, the Board finds that she has not met her burden of proof to establish that she is entitled to an increased schedule award. The Board will affirm the Office's June 18, 2009 decision.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8103(a) of the Act provides that 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 that the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of any disability or aid in lessening the amount of any monthly compensation.<sup>6</sup> The Office must therefore exercise discretion in determining whether

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<sup>3</sup> 5 U.S.C. § 8107.

<sup>4</sup> 20 C.F.R. § 10.404. For impairment ratings calculated on and after May 1, 2009, the Office should advise any physician evaluating permanent impairment to use the sixth edition. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.0808.6.a (January 2010).

<sup>5</sup> *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

<sup>6</sup> 5 U.S.C. § 8103(a).

the particular service, appliance or supply is likely to effect the purposes specified in the Act.<sup>7</sup> The only limitation on the Office's authority is that of reasonableness.<sup>8</sup>

Section 8101(2) of the Act<sup>9</sup> provides that the term "physician," as used therein, "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 and subject to regulation by the Secretary." Without diagnosing a spinal subluxation from x-ray, a chiropractor is not a "physician" under the Act.<sup>10</sup>

### ANALYSIS -- ISSUE 2

The Office mistook Dr. King for a "physician" under the Act. Dr. King's letterhead, the body of her reports, the way she signed her name gave no indication that she was a doctor of chiropractic.<sup>11</sup> Thus, the August 2, 2007 notice to appellant that the Office could make payments for only one attending physician and that Dr. King would be considered the attending.

However, Dr. King was not in fact a "physician." She did not diagnose a subluxation from x-ray. Dr. King's services did not include manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist. Therefore, the Office properly, if belatedly, recognized her as a chiropractor providing physical therapy. Dr. King indicated in her July 22, 2008 report that she was releasing appellant from further managed care. She explained that appellant was already infrequently seen on a clinical basis and was under a self-directed stretching and strengthening protocol to minimize the return of symptoms. Further, Dr. King stated that she was releasing appellant's workers' compensation claim with respect to her left upper extremity injuries as appellant had reached maximum medical improvement, an indication that appellant's condition had stabilized and would not materially improve with further physical therapy. The Office had discretion in this matter and under the circumstances, the Board finds that the Office acted reasonably in advising appellant that it was authorizing no further physical therapy from Dr. King without evidence from a medical physician that appellant needed such physical therapy. The Board will affirm the Office's October 28, 2008 decision.

### CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she has more than a four percent impairment of her left upper extremity. The Board also finds that the Office properly denied authorization for further chiropractic therapy.

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<sup>7</sup> See *Marjorie S. Geer*, 39 ECAB 1099 (1988) (the Office has broad discretionary authority in the administration of the Act and must exercise that discretion to achieve the objectives of section 8103).

<sup>8</sup> *Daniel J. Perea*, 42 ECAB 214 (1990).

<sup>9</sup> 5 U.S.C. § 8101(2).

<sup>10</sup> See generally *Theresa K. McKenna*, 30 ECAB 702 (1979).

<sup>11</sup> She did not follow her name with the initials D.C.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 18, 2009 and October 28, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 24, 2010  
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