

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MAUREEN CONNOLLY and DEPARTMENT OF VETERANS AFFAIRS,  
NORTHPORT MEDICAL CENTER, CARDIAC CARE UNIT, Northport, N.Y.

*Docket No. 96-2637; Submitted on the Record;  
Issued December 3, 1998*

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DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's requests for reimbursement of chiropractic treatment.

The Office accepted that on June 24, 1994 appellant, then a 40-year-old registered nurse, sustained a "lumbar subluxation and herniated disc" in the performance of duty when applying a brake on a hospital bed. She received benefits on the daily rolls.

In a July 6, 1994 report, Dr. Robert Badalian, an attending chiropractor, noted findings of "misalignment of L1, L2, L3 and L4 vertebra, misalignment of R[ight] sacroiliac joint," "lumbar subluxation" and right sacroiliac joint subluxation. He noted providing manual manipulation treatments.<sup>1</sup> In an August 19, 1994 report, Dr. Badalian noted that the diagnosed spinal subluxations were attributable to the June 24, 1994 injury.<sup>2</sup> Based on Dr. Badalian's opinion, the Office accepted that appellant sustained a spinal subluxation.<sup>3</sup>

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<sup>1</sup> Dr. Badalian submitted periodic reports from August 19, 1994 to November 27, 1995 diagnosing a lumbar subluxation at L5-S1 and a herniated L5-S1 disc.

<sup>2</sup> An August 16, 1994 lumbar magnetic resonance imaging (MRI) showed a "[s]mall central herniated disc at L5-S1, with degenerative disc disease at this same level."

<sup>3</sup> Prior to the Office's acceptance of the spinal subluxation, in a September 23, 1994 letter, the Office advised that under the Federal Employees' Compensation Act, the term "physician" included "chiropractors only to the extent that their reimbursable services are limited to treatment consisting on manual manipulation of the spine to correct a subluxation of the spine as demonstrated by x-ray to exist." The Office noted that a subluxation was defined as an "incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae anatomically which must be demonstrable on an x-ray film to individuals trained in the reading of x-rays." The Office also advised appellant to obtain a statement from her chiropractor describing the basis for his diagnosis of spinal subluxation, and explaining how this subluxation was related to the June 24, 1994 injury or other employment factors.

In a September 30, 1994 report, Dr. Peter Altner, an employing establishment physician, noted a herniated L5-S1 disc by MRI and found appellant totally disabled for work.

In a January 4, 1995 report, Dr. Badalian limited appellant to sedentary activities.<sup>4</sup>

In a February 21, 1995 report, Dr. Anjani Sinha, a Board-certified orthopedic surgeon and second opinion physician, found limited lumbar motion, tenderness to palpation, “normal” lumbosacral x-rays, and a small L5 disc herniation with no neurologic deficit. He diagnosed a lumbosacral strain with right sciatica. In a May 10, 1995 report, Dr. Sinha indicated that appellant could return to full duty with no restrictions.

In a July 6, 1995 report, Dr. Badalian noted treating appellant’s “subluxations of the L1-L5 vertebra and an increased lumbar lordosis,” with manual manipulation. He also noted that the herniated disc at L5-S1 contributed to appellant’s lumbar instability.

In an August 3, 1995 report, Dr. Shafi Wani, an attending Board-certified neurologist, noted the June 24, 1994 injury, found bilaterally positive straight leg raising tests and restricted lumbar motion. Dr. Wani opined that appellant was extremely limited in physical activities and therefore disabled for work.

By notice dated July 20, 1995 and finalized September 26, 1995, the Office terminated appellant’s compensation effective September 20, 1995 on the grounds that, based on Dr. Sinha’s report, any disabling residuals of the accepted June 24, 1994 injury had ceased.<sup>5</sup> Appellant disagreed with this decision, and requested reconsideration through her attorney on March 19, 1996, alleging a conflict of medical opinion between Dr. Sinha, the second opinion physician, and Dr. Wani and Dr. Badalian, on her behalf. To resolve the conflict, the Office referred appellant, a statement of accepted facts and the medical record, to Dr. Thomas J. Dowling, a Board-certified orthopedic surgeon and spine specialist, for an impartial medical examination. Among the questions to be resolved by Dr. Dowling were if appellant should continue to receive chiropractic treatment, and whether she still had a spinal subluxation causally related to the June 24, 1994 injury.

In an April 10, 1996 report, Dr. Dowling provided a history of injury and treatment, and recounted appellant’s difficulties with activities of daily living due to low back pain. On examination Dr. Dowling found decreased lumbar motion, slight paraspinal tenderness, and positive supine straight leg raising tests bilaterally. Dr. Dowling obtained lumbar x-rays, including “AP [anterior-posterior], lateral, right and left obliques, spot lateral view of the lumbosacral junction, as well as flexion/extension views.” Dr. Dowling opined that these x-rays did not demonstrate spondylolysis, spondylolisthesis, significant degenerative changes, scoliosis, or any “osteoblastic or osteolytic lesions.” He diagnosed “[m]echanical low back pain with associated lumbosacral radiculitis” of a “discogenic source,” and secondary bilateral trochanteric

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<sup>4</sup> A February 8, 1995 lumbar MRI showed “internal derangement of the L5-S1 intervertebral disc with small broad herniation of the disc.”

<sup>5</sup> On November 11, 1995 appellant declined the employing establishment’s offer to reemploy her in her date-of-injury position.

bursitis.” Dr. Dowling stated that appellant was “not capable of working at this time ... as a direct result of” the June 24, 1994 injury, noting that he disagreed with Dr. Sinha’s statement of the etiology of appellant’s condition. Dr. Dowling noted that appellant had been receiving chiropractic treatment “and has really not improved overall. I do not feel that chiropractic treatment is giving her any further benefit. With regard to [appellant] having a subluxation of the spine, I find no evidence of any spinal subluxation with radiographs obtained in my office.”<sup>6</sup>

By decision dated May 31, 1996, the Office vacated its September 26, 1995 decision based on Dr. Dowling’s report, finding that appellant was disabled as a result of the June 24, 1994 injury. The Office noted Dr. Dowling’s statements that appellant had not improved with chiropractic treatment, and that there was no radiographic evidence of spinal subluxation. The Office therefore denied reimbursement of chiropractic expenses.

The Board finds that the case is not in posture for a decision.

Section 8101(2) of the 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.”<sup>7</sup> The Board has held that a chiropractor may interpret his or her own x-rays with regard to whether there is a spinal subluxation.<sup>8</sup> The Board finds that in this case, Dr. Badalian, appellant’s chiropractor, does qualify as a physician as he diagnosed a spinal subluxation by x-ray in reports from July 6, 1994 through November 2, 1995, and provided manual manipulation treatment. However, the record indicates that the Office did not reimburse appellant for any chiropractic expenses. As Dr. Badalian qualified as a physician under the Act for the purposes of this case, the Office should have reimbursed appellant for expenses related to manual manipulation treatment of the accepted spinal subluxation.

However, before any reimbursement can take place, the issue of whether or not appellant had the accepted spinal subluxation on and after May 31, 1996 must be resolved. Dr. Badalian’s final report of record is November 27, 1995. Appellant submitted no additional evidence substantiating the existence of a spinal subluxation after November 27, 1995. Dr. Dowling, in his April 10, 1996 report, did not find evidence of spinal subluxation by x-ray. Therefore, in its May 31, 1996 decision, the Office found that appellant was no longer entitled to reimbursement of chiropractic treatment expenses as the accepted spinal subluxation had resolved, and that Dr. Dowling opined such treatment was no longer effective.

On appeal appellant contends that because there was a conflict of medical opinion regarding the presence of the spinal subluxation between Dr. Badalian and Dr. Sinha, the second opinion physician, the Office should have referred the appropriate x-rays and medical records to a Board-certified radiologist for resolution of this conflict, and not Dr. Dowling, a Board-

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<sup>6</sup> In an accompanying work capacity evaluation, Dr. Dowling stated that appellant should limit “sitting, standing, bending, rotation, lifting, crawling, carrying, walking,” and could not work.

<sup>7</sup> 5 U.S.C. § 8101(2); *see also Linda Holbrook*, 38 ECAB 229 (1986).

<sup>8</sup> *Roddy D. Riggs*, 34 ECAB 1664, 1668 (1983).

certified orthopedic surgeon. The Board has held that in situations where there is a conflict between a chiropractor and a medical doctor with respect to the presence or absence of a subluxation, the file and x-rays should be referred to a Board-certified radiologist for resolution of the conflict.<sup>9</sup> These conflicts of opinion often occur prior to the Office's acceptance or denial of a claim for spinal subluxation.<sup>10</sup>

However, the present case may be distinguished from this line of precedent on two points: (1) the Office accepted the condition of spinal subluxation based on Dr. Badalian's opinion; and (2) there is competent medical opinion of record indicating that chiropractic treatment was no longer effective. These two elements are substantially similar to the facts of *Richard M. Bowen*.<sup>11</sup> In *Bowen*, two Board-certified orthopedic surgeons diagnosed an L5-S1 spondylolisthesis and other spinal abnormalities. The claimant then sought treatment from a chiropractor, who diagnosed a spinal subluxation based on the spondylolisthesis. An Office medical adviser stated that as the medical record demonstrated the existence of spinal subluxations, "chiropractic care should be authorized if recommended by [the Board-certified orthopedic surgeon] treating physician."<sup>12</sup> Appellant's treating physician agreed that while "spondylolisthesis is indeed a subluxation ... [he did] not believe that chiropractic treatment is going to be of any permanent or long-term value." On this basis, the Office denied reimbursement of chiropractic expenses, and the Board affirmed this denial, finding that a referral to a Board-certified radiologist was not necessary under the circumstances of the case.

In this case, Dr. Dowling was asked to determine if the accepted subluxation was still present, and whether chiropractic treatment should continue, in addition to resolving the conflict regarding the duration of appellant's disability for work. Therefore, the Office asked Dr. Dowling to answer essentially the same questions as would have been put to a Board-certified radiologist. As part of his April 10, 1996 examination, Dr. Dowling obtained extensive lumbar x-rays, which he opined did not demonstrate spinal subluxation. Dr. Dowling also stated that Dr. Badalian's chiropractic treatment of nearly two years duration had "really not improved" appellant's condition, and that "chiropractic treatment [was not] giving [appellant] any further benefit." The Office therefore found in its May 31, 1996 decision that reimbursement of chiropractic expenses should be denied as the accepted subluxation was no longer present, and that chiropractic treatment was no longer effective.

The Board finds that Dr. Dowling's opinion is of sufficient probative value to resolve the conflict regarding the continued presence of the spinal subluxation. Dr. Dowling is a Board-certified orthopedic surgeon, specializing in treatment of the spine. He was provided with appropriate questions regarding the spinal subluxation and efficacy of further chiropractic

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<sup>9</sup> *Robert F. Hamilton*, 41 ECAB 431 (1990); see also FECA Bulletin No. 84-71 (issued December 14, 1984).

<sup>10</sup> See, e.g., *Bruce Chameroy*, 42 ECAB 121 (1990); *Marjorie S. Geer*, 39 ECAB 1099 (1988); *George Witte*, 38 ECAB 585 (1987); *Arlene F. Dougherty*, 37 ECAB 359 (1986); *Christine L. Kielb*, 35 ECAB 1060 (1984); *Virginia Mary Dunkle*, 34 ECAB 1305 (1983); *Clyde W. Rigsby*, 33 ECAB 354 (1981); *Lula B. Gettis*, 33 ECAB 425 (1982); *James P. Roberts*, 31 ECAB 1010 (1980).

<sup>11</sup> 33 ECAB 1015, 1019 (1982).

<sup>12</sup> *Id.* at 1019.

treatment, and based his opinion on a statement of accepted facts and the complete medical record, as well as extensive lumbar x-rays taken contemporaneous to his April 10, 1996 examination. The Board further finds that Dr. Dowling's opinion that further chiropractic treatment would be of no benefit to appellant is of sufficient probative value to resolve this issue as well, again due to the completeness and accuracy of the record, and his medical expertise. Thus, the Board finds that referral to a Board-certified radiologist is not necessary in this case.

The case will be remanded to the Office for further development to ascertain which portions of Dr. Badalian's treatment consisted of manual manipulation for the period July 6, 1994 through May 31, 1996, the date of the Office's decision. Following such development, the Office shall reimburse the appropriate party for expenses incurred for chiropractic manual manipulation treatment of the accepted spinal subluxation.

The decision of the Office of Workers' Compensation Programs dated May 31, 1996 is hereby set aside in part regarding the finding denying reimbursement of chiropractic expenses, affirmed in part regarding the finding that the accepted spinal subluxation had resolved, and affirmed in part regarding the vacation of the September 26, 1995 decision. The case is remanded to the Office for further development consistent with this decision and order.

Dated, Washington, D.C.  
December 3, 1998

George E. Rivers  
Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member