

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHERYL L. ANDERSON and U.S. POSTAL SERVICE,
POST OFFICE, North Reading, Mass.

*Docket No. 95-2165; Submitted on the Record;
Issued January 6, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
A. PETER KANJORSKI

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

Section 8103 of the Federal Employees' Compensation Act¹ provides in relevant part:

“(a) 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 the monthly compensation.”

The Office has the general objective of ensuring that an employee recovers from his injury to the fullest extent possible in the shortest amount of time. The Office therefore has broad administrative discretion in choosing the means to achieve this goal.² As the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from known facts.³

In the present case, the Office has accepted that appellant sustained a lumbosacral strain while in the performance of her federal employment duties on July 6, 1990. The record reflects that appellant initially sought medical treatment from her family practitioner, Dr. Rosen, who referred her to Dr. Goodman, a Board-certified orthopedic surgeon. Appellant was thereafter referred to Dr. Sidney N. Paly, a Board-certified neurosurgeon. Appellant began chiropractic

¹ 5 U.S.C. § 8103(a).

² *James A. Sellers*, 43 ECAB 924 (1992).

³ *Wilson L. Clow*, 44 ECAB 157 (1992).

treatment with Richard M. Danubio, D.C., on June 3, 1992. By decision dated August 3, 1993, the Office denied reimbursement of appellant's chiropractic expense. The Office found that appellant's July 30, 1990 x-rays did not indicate the existence of a subluxation, that chiropractic treatment was not an emergency and was not preapproved, therefore, chiropractic expense was not compensable in this case. Appellant thereafter requested a hearing before an Office hearing representative. A hearing was held on February 1, 1994 at which appellant appeared and testified.

The Office hearing representative, by decision dated and finalized on June 9, 1994, affirmed the August 9, 1993 decision. The hearing representative noted that appellant's chiropractic physician, Richard Danubio had diagnosed a spinal subluxation based upon x-rays which were taken upon appellant's initial visit to the chiropractor in 1992, thus he was a "physician" under the Act. The hearing representative found that there was no medical opinion, either from a medical doctor or from the chiropractor, however, which stated that the subluxation diagnosed in June 1992 was in any way causally related to the employment injury of July 6, 1990. The hearing representative also found that appellant's treating physician had not referred appellant for a specific course of chiropractic treatment but rather that appellant had desired chiropractic treatment and appellant's treating physician had indicated that he had no objection to such an approach. The hearing representative noted that appellant had not requested prior authorization for a course of chiropractic treatment. Finally, the Office hearing representative found that chiropractic treatment was not reimbursable as reasonable and necessary under the broad discretionary authority of 5 U.S.C. § 8103 as there was no evidence of record that the chiropractic treatment improved appellant's accepted condition or in any way was of such a nature to "... cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation...."

The Board has given careful consideration to the issue involved, the contentions of appellant on appeal and the entire case record. The Board finds that the decision of the Office hearing representative, dated and finalized on June 9, 1994, is in accordance with the facts and law in this case and hereby adopts the findings and conclusions of the hearing representative.

On November 23, 1994 appellant requested that the Office reconsider the denial of her chiropractic expense. In support of this request for reconsideration appellant submitted reports from Dr. Danubio dated March 9, 1994 and reports from Dr. Paly dated July 18, August 30 and September 26, 1994. In his report dated March 9, 1994, Dr. Danubio stated that "treatment of the above-captioned patient has been based on clinical findings, (objective/subjective) and are causally related to the accident in question. All treatment has been reasonable and necessary." This report is of limited probative value to establish that the chiropractic treatment was for a condition causally related to the accepted injury. The Board has held that a physician's opinion is not dispositive simply because it is offered by a physician.⁴ To be of probative value, the physician must provide a proper factual background and medical rationale which explains the medical issue at hand, *i.e.*, whether the current condition is disabling or whether the current condition is causally related to the accepted employment injury. Where no such rationale is present, the medical opinion is of diminished probative value.

⁴ See *Michael Stockert*, 39 ECAB 1186 (1988).

In his reports dated August 30 and September 26, 1994 Dr. Paly addressed whether appellant may currently benefit from chiropractic treatment. These reports as such are not relevant to the issue of whether the Office abused its discretion in denying appellant's chiropractic expense commencing in 1992. In his report dated July 18, 1994, Dr. Paly does address the issue of previous chiropractic treatment. Dr. Paly stated that appellant had not shown much improvement from her physiotherapy and in discussions with her, he had stated that, a chiropractor "might very well help." Dr. Paly stated that, while he had advised that Office that he had not referred appellant for chiropractic treatment on November 23, 1992, he meant that he did not have any specific chiropractor to whom he referred patients, thus the choice and timing of chiropractic treatment would have been appellant's. Dr. Paly concluded "I did, however, suggest that this might be beneficial to her and, hence, does constitute a referral in a true sense."

While Dr. Paly clarifies in his July 18, 1994 report that during a conversation with appellant he had suggested to her that chiropractic treatment might be beneficial. Dr. Paly still indicated, however, that he did not prescribe or recommend any specific course of chiropractic treatment to appellant for treatment of her accepted condition. Pursuant to 5 U.S.C. § 8103 the Office is required to furnish the services prescribed or recommended by a qualified physician, which are likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of monthly compensation. The evidence of record does not indicate that the diagnosed subluxation in 1992 was causally related to the accepted employment injury in 1990 and the evidence does not establish that appellant's treating physician prescribed or recommended chiropractic treatment for the accepted condition. The Office thus properly denied reimbursement of chiropractic treatment.

The decision of the Office of Workers' Compensation Programs dated May 8, 1995 is hereby affirmed.

Dated, Washington, D.C.
January 6, 1998

George E. Rivers
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member