

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHEILA G. PECKENSCHNEIDER and U.S. POSTAL SERVICE,
POST OFFICE, Harrisburg, Pa.

*Docket No. 96-1152; Submitted on the Record;
Issued March 25, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's claim for acupuncture treatments.

The Office accepted that appellant sustained a cervical strain and tendinitis of the left shoulder in a September 26, 1990 employment injury. Appellant submitted bills for acupuncture treatments she underwent from December 28, 1991 to March 29, 1994. By letter dated January 27, 1994, the Office advised appellant that "acupuncture may be authorized when recommended by the attending physician. The treatments are to be supervised by the recommending physician who must submit periodic reports to show progress or relief of symptoms. After reviewing your case, I could not find any recommendations for acupuncture nor could I find any treatment notes." By decision dated April 4, 1995, the Office refused to pay for appellant's acupuncture treatments on the basis that "medical evidence to substantiate that the acupuncture treatment was recommended and supervised by her attending physician has not been submitted."

Section 8103(a) of the Federal Employees' Compensation 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 the monthly compensation."¹ Pursuant to this section, the Office has determined that acupuncture treatments are payable under the Act, but has, in its procedure manual, imposed the following limitations on payment for acupuncture treatments: "Acupuncture may be authorized when recommended by the attending physician to provide relief. Such treatment shall be supervised by the recommending physician, who shall submit periodic reports to show progress or any relief of the symptoms."² These limitations are

¹ 5 U.S.C. § 8103(a).

² Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Services and Supplies*, Chapter 3.400.5(a)

consistent with the Office's regulations, which state that medical services are those "provided by or under the supervisor of physicians (M.D. and D.O.), surgeons, podiatrists, dentists, clinical psychologist, optometrists, and chiropractors, within the scope of their practices as defined by State law."³ They are also consistent with decisions of the Board to the effect that, when an authorized physician refers a claimant to a nonphysician for treatment, more control and direction by the referring physician must be shown than when an authorized physician refers a claimant to another physician.⁴

Despite the Office's advice to appellant as to the information needed for approval of payment for acupuncture treatments, appellant did not submit evidence showing that this treatment was recommended or supervised by the attending physician, and did not submit periodic reports from her attending physician to show progress or any relief of the symptoms. She submitted a June 30, 1994 report from the individual who treated appellant with acupuncture, stating that appellant had a good response to the treatments and had started to feel reduction of pain. Despite this individual signing the report as a "licensed acupuncture physician," there is no indication that she is a "physician" as defined in the Act.⁵ Appellant also submitted a March 22, 1994 note from Dr. Donald M. Katz, an internist, stating, "The only relief she has ever gotten was from acupuncture. She is to continue acupuncture as medically necessary for pain relief. She has been using acupuncture for the last two and one-half years for pain relief." This after-the-fact acknowledgments of treatment and its benefits cannot substitute for a referral or direction by an authorized physician.⁶ Appellant also submitted reports dated September 18 and November 1, 1995 from Dr. Lorenzo Bongolan, an orthopedic surgeon, recommending that appellant continue her acupuncture treatments. However, neither Dr. Bongolan nor Dr. Katz submitted periodic reports to show progress or any relief of the symptoms, or any other indication that they were supervising appellant's course of acupuncture treatments. Under these circumstances, the Office is not obligated to pay for appellant's acupuncture treatments.

The decisions of the Office of Workers' Compensation Programs dated January 8, 1996 and April 4, 1995 are affirmed.

(October 1990).

³ 20 C.F.R. § 10.400(e).

⁴ See *Rebecca Ortiz*, 42 ECAB 134 (1990) (the Board remanded the case to the Office for the authorized physician "to clarify or indicate the nature and extent of contemplated physical therapy recommended or prescribed for appellant") *David Deloatch*, 41 ECAB 212 (1989) (reimbursement denied on the basis it was "not rendered upon the direction of any authorized physician"); *Beverly A. Scott*, 37 ECAB 838 (1986) (the Board, noting that the authorized physician's referral or prescription for treatment by a chiropractor was not in the case record, remanded the case to the Office for the authorized physician "to indicate the nature and extent of treatments which were contemplated").

⁵ 5 U.S.C. § 8101(2) defines "physician" to include "surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law."

⁶ *Edward Schoening*, 41 ECAB 977 (1990).

Dated, Washington, D.C.
March 25, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member