

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ADRIAN DALTON and U.S. POSTAL SERVICE,
POST OFFICE, Marietta, Ohio

*Docket No. 96-1944; Submitted on the Record;
Issued May 19, 1998*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

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

The Board has duly reviewed the case record in the present appeal and finds that the Office properly denied reimbursement of chiropractic expenses.

On February 3, 1994 appellant, then a letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on December 28, 1993, he pulled a muscle in the left shoulder while lifting a heavy parcel into a building. Appellant did not stop work.

On March 17, 1994 the Office accepted appellant's claim for left trapezius muscle strain.

By decision dated June 14, 1994, the Office found that appellant was not entitled to continuation of pay inasmuch as appellant had failed to file a Form CA-1 within 30 days of the date of injury. In a July 1, 1994 letter, appellant requested an oral hearing before an Office representative.

By decision dated January 17, 1995, the hearing representative affirmed the Office's June 14, 1994 decision.

By letter dated May 25, 1995, the Office advised appellant that it could not pay for any chiropractor treatment rendered by Dr. Jeffrey R. Dexter, a chiropractor, because Dr. Dexter failed to provide an x-ray report or x-ray films confirming the existence of his finding that appellant had a C4 subluxation of the cervical spine. The Office stated that there was no basis upon which to consider payment of any charges submitted by Dr. Dexter for services rendered. The Office then advised appellant that he could continue to receive treatment from Dr. Dexter, but that he had to do so at his own expense.

In a May 26, 1995 response letter, Ms. Darliss Gaskins, an executive secretary from Dr. Dexter's office, submitted an April 27, 1994 x-ray report.

In a September 12, 1995 telephone conversation with the Office, Ms. Gaskins asked about the status of outstanding bills for chiropractic treatment provided to appellant during the period September 19 through October 11, 1994 and April 19 through May 22, 1995.

By decision dated October 3, 1995, the Office found the evidence of record insufficient to establish that appellant's claim for chiropractic treatment was causally related to the December 28, 1993 employment injury. In so doing, the Office found that the May 18, 1994 and April 25, 1995 medical reports of Dr. Dexter revealing that appellant had a subluxation at C4 were equivocal because the December 1993 x-rays did not demonstrate subluxation of the cervical spine. In an October 23, 1995 letter, appellant requested an examination of the written record by an Office representative.

By decision dated March 6, 1996, the hearing representative found that the Office properly denied reimbursable services for chiropractic treatment of appellant's December 28, 1993 employment injury. Specifically, the hearing representative found that the December 30, 1993 x-ray report of Dr. William Grosel, a radiologist, revealing that there was no evidence of compression fracture or spondylolisthesis, that disc spaces appeared within normal limits, that the intervertebral foramina were patent and that the odontoid was intact constituted the weight of the evidence. The hearing representative further found that Dr. Grosel's report did not diagnose subluxation by x-ray and that Dr. Grosel possessed superior qualifications than Dr. Dexter.

Under section 8101(2) of the Federal Employees' Compensation Act,¹ "[t]he 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 of the spine as demonstrated by x-ray to exist and subject to regulation by the Secretary."² In the present case, Dr. Dexter stated in a May 16, 1994 report that he examined appellant on April 27, 1994, that appellant underwent neurological and orthopedic evaluations, and that x-rays were performed confirming a C4 subluxation of the cervical spine. Dr. Dexter indicated a history of appellant's employment injury and stated that the mechanics of the employment injury constituted one which strained the left trapezius muscle, as well as, subluxating the C4 vertebra of the spine. Dr. Dexter further stated that the subluxation of the cervical spine led to a decrease in spinal motion and continued muscle problems. Dr. Dexter opined that the subluxation of the C4 vertebra was a direct result of lifting the parcel and carrying it on the shoulder. In an April 25, 1995 report, Dr. Dexter reiterated the findings of his May 16, 1994 report. Dr. Dexter's report was accompanied by an April 27, 1994 x-ray report revealing that appellant had no recent fracture or gross osteopathology, that appellant had mild osteoarthritis and early osteophitis formation at C4 and C5 of the cervical spine, that appellant had a subluxation at C4 of the cervical spine, and that flexion malposition was evident. In a May 26, 1995 letter, Dr. Dexter

¹ 5 U.S.C. §§ 8101-8193.

² *Robert J. McLennan*, 41 ECAB 599 (1990); *Robert F. Hamilton*, 41 ECAB 431 (1990); *see also* 5 U.S.C. § 8101(2); 20 C.F.R. § 10.400(a).

indicated that appellant had a subluxation at C4 of the cervical spine. In response to the Office's May 25, 1995 letter, Ms. Gaskins submitted the April 27, 1994 x-ray report. The April 27, 1994 x-ray report was not signed by a physician. Further, the record does not reveal that Ms. Gaskins is a physician, rather the record reveals that Ms. Gaskins is an executive secretary. Any medical evidence relied upon by the Office to resolve an issue must be signed by a physician.³ Therefore, the Board finds that the April 27, 1994 x-ray report does not constitute competent medical evidence. Accordingly, Dr. Dexter is not entitled to reimbursement for chiropractic expenses.

The March 6, 1996 and October 3, 1995 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, D.C.
May 19, 1998

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

³ *James A. Long*, 40 ECAB 538, 541 (1989).