

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PHYLLIS J. KELTNER-KEYSOR and FEDERAL JUDICIARY,
OFFICE OF THE CLERK, Springfield, IL

*Docket No. 98-1790; Submitted on the Record;
Issued March 13, 2000*

DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's chiropractic treatment on October 21, 1996.

On July 10, 1985 appellant, then a 51-year-old deputy clerk, filed a claim alleging that she fell and sustained injuries to her right shoulder, low back and pelvis in the summer of 1984. The Office accepted the claim for a lumbar arthritis with spinal stenosis at L4-5, left facet arthropathy at L5-S1 and a subluxation at L4-5. The Office paid appropriate benefits for all appropriate periods commencing May 20, 1985.

In an October 25, 1990 report, Dr. Don K. Gilchrist, a Board-certified orthopedist and Office referral physician, examined appellant. He was provided with a statement of accepted facts, the entire medical record with treatment notes and diagnostic findings. Dr. Gilchrist noted appellant's history of injury and set forth his examination findings. Based on the results of x-rays of the lumbosacral spine taken October 25, 1990, appellant was diagnosed with the following conditions: generalized osteoporosis of the spine, definite L5-S1 arthrosis, bilateral sacroiliac arthrosis, narrowing of the foramina at L4-5 and L5-S1, and normally maintained IV disc spaces. Dr. Gilchrist diagnosed probable mild degenerative disc disease without clinical evidence of significant bulge or rupture. He stated that the August 1984 employment injury caused a permanent aggravation of appellant's preexisting intermittent low back pain, noting that her prognosis was guarded, there was no indication for surgery and that continued chiropractic care was not beneficial from a strictly objective point of view. Dr. Gilchrist noted that as appellant seemed to get considerable psychological benefit from chiropractic care, he would have no objections to it so long as there were no strenuous chiropractic manipulations or adjustments.

In an October 29, 1990 report, Dr. Larry W. Bader, appellant's treating osteopath, stated that he first saw appellant after her 1984 injury and she remained under the care of her chiropractor since that time. Dr. Bader examined appellant and diagnosed a

traumatically-induced lumbosacral instability with chronic strain. He found no neurological symptoms and extreme weakness. Dr. Bader noted that appellant responded well to very conservative manipulative management in the past. He stated that, because of the instability of the lumbosacral area and the fact that it is a nonsurgical type of problem, appellant should continue with manipulative care done on a conservative per needed basis.

In a December 12, 1994 medical report, appellant's treating chiropractor, Dr. Kevin W. Imhoff, opined that she needed continued chiropractic treatment for the effects of the 1984 work injury. Dr. Imhoff stated that the December 7, 1994 x-rays demonstrated subluxation at L4-5 and compensatory scoliosis of the lumbar spine. He stated that chiropractic manipulative therapy was required two to three times a week to maintain appellant's ability to function.

The Office referred appellant to Dr. Dan R. McFarland, a Board-certified radiologist, for a second opinion review, and requested that he review the x-rays of file and make a determination as to whether there was evidence of a subluxation of the spine at L4-5. In a March 6, 1995 report, Dr. McFarland stated that he reviewed the radiographic films of September 14 and September 15, 1987 and December 7, 1994. He noted that the radiographic films dated November 11, 1991 were markedly underpenetrated and of no value for help in interpretation. Dr. McFarland found a normal lumbosacral spine, except for a very minor scoliotic curve likely not of significance, but no actual spinal subluxation.

The Office referred appellant to Dr. Min S. Chen, a Board-certified radiologist, for an impartial evaluation to resolve the conflict as to whether the x-rays of record demonstrated a spinal subluxation causally related to the 1984 injury. In her report of April 6, 1995, Dr. Chen indicated that she reviewed the x-ray films, some of which were underpenetrated, and opined that there was no radiographic evidence of subluxation. An increase in the lumbosacral angle, mild scoliosis and degenerative disease with some marginal spurs formation was noted.

By decision dated April 26, 1995, the Office terminated authorization of chiropractic services, finding that the weight of the medical evidence established that there was no subluxation of appellant's spine warranting further chiropractic treatment. The Office noted that the weight of the medical evidence established that continuing chiropractic treatment was not beneficial.

By decision dated May 16, 1996, an Office hearing representative set aside the April 26, 1995 termination decision finding that the Office failed to follow its procedures and issue pretermination notice prior to terminating appellant's entitlement.

On August 5, 1996 the Office issued a notice proposing to terminate chiropractic treatment by Dr. Imhoff. By decision dated October 21, 1996, the Office terminated authorization for chiropractic treatment, finding that the weight of the medical evidence established that there was no radiographic evidence of subluxation.

Appellant requested a hearing before an Office hearing representative and submitted a July 15, 1997 medical report from Dr. Bader. He stated that he last saw appellant on October 29, 1990. Dr. Bader reported that it was through chiropractic care that appellant was capable of continuing on in spite of severe instability problems in her lumbar region and pelvis.

He noted a history of traumatically induced ligamentous strain/sprain and laxity involving the lumbosacral region and sacroiliac areas of a chronic nature. Facet arthritis, osteoporosis and fibromyalgia were also diagnosed. He noted that appellant had an extreme lumbar lordotic curve and carried her weight-bearing line through L3 far anterior to the sacral base. The sacrum being a “J” shape type. He stated that only through gentle manipulation of the tissue allowed appellant to continue to function in a vertical position. Dr. Bader found appellant to be neurologically intact. Reflexes in upper and lower extremities were equal, bilaterally symmetrical and very active. She could heel and toe walk. Straight leg raising tests were negative both seated and supine except for some hamstring tension. Dr. Bader noted that he took x-rays and compared them to his prior notes from 1990 as there were no prior x-rays to compare with. He stated that the lumbosacral angle in May 1985 was 46 degrees and now it is in the range of 60 degrees, which indicated a normal course of degradation due to age and the effects of gravity on a very unstable situation. He stated that, for the most part, there was no change in the apparent height of the discs in the lumbar region and no severe increase in arthritic changes. There was a heavy build up of calcium on the lumbar facets, especially L5-S1, which would be natural given the configuration of her lumbosacral region. Dr. Bader stated that the remarkable small amount of continued deterioration over the years could be due to the fact that appellant had regular manipulative mobilization techniques, which allowed her to function at a much higher degree and with much less discomfort. Without some form of manipulation, Dr. Bader stated that appellant would be unable to stand, walk or function for any period of time without severe pain and that, in a very short period of time, appellant would be relegated to having to become dependent on a wheelchair or some other device.

In an October 20, 1997 report, Dr. Imhoff stated that due to the chronicity of appellant’s spinal stenosis, facet arthritis, as well as the chronic sprain condition of the ligamentous support at L4-5, appellant would continue to require ongoing treatment. Without manual manipulative therapy, appellant’s condition would continue to deteriorate. He noted that, due to the nature of appellant’s condition, there was no expectation of improvement over time and she would require ongoing treatment indefinitely and would be unable to function on a day-to-day basis without ongoing treatment.

In a decision dated February 9, 1998 and finalized February 11, 1998, an Office hearing representative affirmed the October 21, 1996 chiropractic treatment termination decision.

The Board finds that the Office met its burden of proof in terminating appellant’s chiropractic treatment on October 21, 1996.

Once the Office accepts a claim it has the burden of proving that the employee’s disability has ceased or lessened before it may terminate or modify compensation benefits.¹ After it has determined that an employee has disability causally related to his or her federal

¹ *Karen L. Mayewski*, 45 ECAB 219, 221 (1993); *Betty F. Wade*, 37 ECAB 556, 565 (1986); *Ella M. Garner*, 36 ECAB 238, 241 (1984).

employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.²

In the present case, the Office accepted the diagnosis of subluxation at L4-5 as an employment injury-related condition. The Office terminated appellant's entitlement to receive chiropractic treatments by Dr. Imhoff on October 21, 1996 on the grounds that the weight of the medical opinion evidence established that she did not have a subluxation of the spine as demonstrated by x-ray to exist.

In this case, appellant's treating chiropractor, Dr. Kevin W. Imhoff, opined that appellant needed continued chiropractic treatment for the effects of the 1985 work injury. He noted a December 7, 1994 x-ray continued to show a subluxation at L4-5. In his March 6, 1995 report, Dr. McFarland, a second opinion radiologist, reviewed all the radiographic films of record, including the December 7, 1994 film and found no spinal subluxation at L4-5. The Office properly found a conflict in medical opinion and referred appellant to Dr. Chen for an impartial evaluation. Dr. Chen reviewed the x-ray films of record and found there was no radiographic evidence of any spinal subluxation.

In situations when there exists opposing medical reports of virtually equal weight and rationale, and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.³

Pertaining to the termination of chiropractic treatment, the Board finds that the weight of the medical evidence rests with the April 6, 1995 report of Dr. Chen, to whom the Office referred appellant's x-rays of record. She determined that there was no radiographic evidence of any spinal subluxation. Dr. Chen was provided with a statement of accepted facts, the entire medical record, and all x-rays of record. Based on her findings, Dr. Chen found no radiographic evidence of subluxation. Dr. Chen's report was based on accurate facts, and all medical records and x-rays available and her report was fully responsive to the inquires of the Office. Thus, the Board finds that the Office properly relied on Dr. Chen's report in terminating appellant's chiropractic treatments on October 21, 1996 as there was no evidence of subluxation at L4-5 by x-ray.

In regards to whether appellant should continue chiropractic treatment, Dr. Gilchrist, a Board-certified orthopedist and Office referral physician, stated that, although the August 1984 injury caused a permanent aggravation of her preexisting back condition, there was no indication for surgery and no objective evidence indicating continued chiropractic care.

Thus, the Board finds that the Office properly terminated appellant's chiropractic treatment on October 21, 1996.

² *Jason C. Armstrong*, 40 ECAB 907 (1989).

³ 5 U.S.C. § 8123(a); *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

Appellant subsequently submitted a July 15, 1997 medical report of Dr. Bader and a chiropractic report from Dr. Imhoff. Dr. Bader attributed appellant's minimal spinal deterioration over the years to her regular manipulative chiropractic treatment. However, he did not provide a fully rationalized medical opinion as to why these treatments were needed on a continuing basis. Further, the report of Dr. Chen found there was no L4-5 subluxation of the spine, as had been accepted by the Office. It is noted that, although Dr. Bader stated that a left sacral shear, right anterior ilial rotation and pubic symphysis inferior on the right side needed to be maintained, he did not provide any rationale relating these conditions to the August 1984 injury. Dr. Imhoff's subsequent opinion and argument are repetitive in nature. As Dr. Imhoff was on one side of the conflict that Dr. Chen resolved, the additional reports from Dr. Imhoff are insufficient to overcome the weight accorded to Dr. Chen as the impartial medical specialist.⁴

Inasmuch as the Office properly met its burden of proof in terminating appellant's benefits on October 21, 1996, the attorney's legal arguments are irrelevant.

The decision of the Office of Workers' Compensation Programs dated February 9, 1998 and finalized on February 11, 1998 is hereby affirmed.

Dated, Washington, D.C.
March 13, 2000

George E. Rivers
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁴ See *Dorothy Sidwell*, 41 ECAB 857 (1990).