U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LAWRENCE A. WILSON and DEPARTMENT OF THE INTERIOR, NATIONAL PARK SERVICE, Los Alamos, NM

Docket No. 99-367; Submitted on the Record;
Issued September 21, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS, MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's claim for compensation for intermittent dates from March 31 through June 25, 1998.

On November 10, 1997 appellant, then a 46-year-old electrician, filed a claim alleging that he sustained a traumatic injury on November 5, 1997 in the performance of duty. The Office accepted appellant's claim for lumbosacral strain and an aggravation of a preexisting herniated nucleus pulposus at L1-2. Appellant stopped work on November 6, 1997 and returned to part-time employment with restrictions on January 20, 1998.[1]

In a form report dated February 13, 1998, Dr. Charles McCanna, appellant's attending physician who specializes in family practice, diagnosed acute lumbosacral strain and disc disease and recommended that appellant undergo a work hardening program at a physical therapy facility. By letter dated February 23, 1998, the Office referred the case to a rehabilitation counselor to develop a work hardening program for appellant.

In a report dated March 25, 1998, Dr. McCanna indicated that he had referred appellant for chiropractic treatment "due to persistent LS [lumbosacral] strain and disc disease."

By letter dated March 27, 1998, the Office informed Dr. McCanna that it would not authorize chiropractic treatment at this time. The Office stated:

> "Last month [appellant] was accepted for a work hardening program. We must receive the report of the outcome of this program before we will consider your

[1] By decision dated February 9, 1998, the Office reduced appellant's compensation on the grounds that his actual earnings in his part-time limited-duty position fairly and reasonably represented his wage-earning capacity. Appellant subsequently resumed full-time employment.

request for chiropractic treatment. It is premature to consider additional types of treatment prior to the conclusion of work hardening."

The record indicates that appellant returned to full-time limited-duty employment on March 30, 1998.[2]

In a status report dated April 28, 1998, an Office rehabilitation specialist noted that appellant had not begun the work hardening program because his attending physician had requested a job description from the employing establishment before approving a program. By letter dated April 29, 1998, the Office notified Dr. McCanna that descriptions of possible future positions for appellant with the employing establishment were not relevant to approving a work hardening program.

In a letter dated May 5, 1998, Dr. McCanna informed the Office that a work hardening program was no longer available in the area for appellant. He discussed a permanent light-duty position that the employing establishment planned to offer appellant and which he found was within appellant's restrictions. Dr. McCanna stated that appellant was "reporting benefit from chiropractic treatment" and "could in addition enter a work conditioning program compatible with these proposed job duties."

By letter dated June 4, 1998, the Office informed Dr. McCanna that an Office rehabilitation specialist rather than the attending physician selected the facility where appellant would undergo a work hardening program. The Office noted that appellant was currently working full time in a limited-duty position and requested that Dr. McCanna specify whether he continued to recommend a work hardening program. The Office further requested that Dr. McCanna explain whether he expected continued chiropractic treatment would enable appellant to resume his regular employment and, if so, to describe the expected duration of treatment. The Office also requested a rationalized medical report from Dr. McCanna discussing appellant's current disability from his regular employment and its relationship to his accepted employment injury.

In a report dated June 19, 1998, Dr. McCanna related:

"[I]t now appears unrealistic that [appellant] could tolerate the physical stress of some of his previous duties (*e.g.*, heavy lifting and digging/shoveling), as he undoubtedly would restrain his back and further aggravate his lumbar disc disease.

"Consequently, 'full recovery' is unlikely, even with a work conditioning or hardening program. Therefore [appellant's] supervisor, I understand, has agreed to his performing previous job duties with an assistant available to do the occasional heavy physical tasks….

[2] By decision dated June 23, 1998, the Office found that an overpayment in the amount of $973.89 existed because appellant received compensation for partial disability after he returned to full-time employment with no loss of wages. The Office further found that appellant was not entitled to waiver of the overpayment as he was not without fault in its creation. Appellant has not appealed this decision and, therefore, it is not before the Board.

> "[Appellant] was examined at my office yesterday. He is somewhat improved with weekly chiropractic treatment and so I recommend that these be continued on a weekly schedule for the next [four] months."

In a report of a telephone call dated July 15, 1998, an Office claims examiner indicated that he had informed appellant that Dr. McCanna's June 19, 1998 report was not sufficiently rationalized regarding the need for chiropractic treatment.

On August 14, 1998 appellant submitted claims for compensation on account of disability (Forms CA-8) requesting wage-loss compensation for time lost from work attending doctor's appointments and chiropractic treatments.[3]

By decision dated August 31, 1998, the Office found that appellant was entitled to three hours of compensation for his June 18, 1998 appointment with Dr. McCanna. The Office found that appellant was not entitled to compensation for time lost due to appointments with Dr. McCanna on May 27 and June 25, 1998 as the record did not establish that he saw the physician on these dates. The Office further denied compensation for time missed from work for chiropractic treatment from March 31 through June 25, 1998 as such treatment was not authorized.

The Board finds that appellant has not established that he is entitled to wage-loss compensation for time lost from work due to medical appointments with his attending physician on May 27 and June 25, 1998.

Section 8103 of the Federal Employees' Compensation Act[4] provides that 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 of the periods of any disability or aid in lessening the amount of any monthly compensation. These services, appliances and supplies shall be furnished by or on the order of the United States medical officers and hospital or at the employee's option by or on the order of physicians and hospitals designated or approved by the Secretary. The employee may be furnished necessary and reasonable transportation and expenses incident to the securing of such services, appliances and supplies.[5] The Board has previously interpreted this provision of the Act, which requires payment of expenses incidental to the securing of medical services, as authorizing payment for loss of wages incurred while obtaining medical services. Case law makes clear that an employee is entitled to disability compensation for any loss of wages incurred during the time he or she receives authorized treatment and for loss of wages for time spent incidental to such treatment.[6] The rationale for this entitlement is that, during such required examinations and treatment and

[3] Appellant described the chiropractic treatments as physical therapy.

[4] 5 U.S.C. §§ 8101-8193.

[5] *Linda Holbrook*, 38 ECAB 229 (1986).

[6] *See Henry Hunt Searles, III*, 46 ECAB 192 (1994).

during the time incidental to undergoing such treatment, an employee did not receive his or her regular pay.[7]

Regarding the appointments with Dr. McCanna on May 27 and June 25, 1998, while, as discussed above, time lost from work for an employment-related injury would be compensable,[8] in this case appellant has submitted no evidence that he missed work attending physician's appointments on these dates. Thus, he is not entitled to wage-loss compensation.

The Board finds, however, that the case is not in posture for decision on the issue of whether appellant is entitled to wage-loss compensation for time lost from work for chiropractic treatment during the period March 31 through June 25, 1998.

Services rendered by chiropractors are generally not payable by the Office except "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…."[9] In the present case, there is no evidence that appellant's chiropractor, Dr. Susan Bright, treated appellant for a subluxation of the spine as demonstrated by x-ray to exist. Dr. Bright, therefore, cannot be considered a "physician" within the meaning of the Act.

The Board, however, has created exceptions to the general rule that services rendered by a chiropractor are not payable when they do not consist of manual manipulation of the spine to correct a subluxation demonstrated to exist by x-ray. Once a claim is accepted by the Office and a particular physician is designated as the treating physician, bills for "physical therapy" treatments provided by a chiropractor, which are prescribed or authorized by the treating physician, are payable by the Office regardless of whether the chiropractor diagnosed a subluxation based on x-rays.[10] In the instant case, the record contains a report dated March 25, 1998 from Dr. McCanna, who noted that he had referred appellant for chiropractic treatment "due to persistent LS [lumbosacral] strain and disc disease." It thus appears that appellant's chiropractic treatment may have been authorized by his treating physician, in which case he would be entitled to compensation for time lost from work undergoing such prescribed treatment.

The case will, therefore, be remanded to the Office. On remand, the Office should review Dr. McCann's March 25, 1998 report to determine whether he authorized or prescribed physical therapy for appellant and, if so, whether the services rendered were "likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation."[11] The Office should then determine whether appellant has established that he is

[7] *Id.*

[8] *Vincent E. Washington*, 40 ECAB 1242 (1989).

[9] *See* 5 U.S.C. § 8101(2).

[10] *Rebecca Ortiz*, 42 ECAB 134 (1990).

[11] 5 U.S.C. § 8103(a).

entitled to wage-loss compensation as a result of time lost from work undergoing the authorized physical therapy.

The decision of the Office of Workers' Compensation Programs dated August 31, 1998 is affirmed in part and set aside in part and the case is remanded for further proceedings consistent with this decision of the Board.

Dated, Washington, DC
September 21, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member