

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAMELA K. GUESFORD and DEPARTMENT OF THE ARMY,
MADIGAN ARMY MEDICAL CENTER, Tacoma, WA

*Docket No. 02-915; Submitted on the Record;
Issued August 12, 2002*

DECISION and ORDER

Before WILLIE T.C. THOMAS, 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 authorization for medical benefits effective January 22, 2002 on the grounds that she had no further condition causally related to her December 17, 1992 employment injury.

The Office accepted that on December 17, 1992 appellant, then a 30-year-old pulmonary technician, sustained a concussion, cervical subluxation and lumbar strain when she slipped on ice. Appellant stopped work on December 17, 1992 and returned to work on December 29, 1992.¹

In a letter dated December 21, 2000, appellant requested payment of chiropractic services. She submitted a report dated September 28, 2001 from Dr. Chris Osterlitz, a chiropractor, who related that he had been treating appellant "primarily for chronic lower back and right hip pain which has been present since December 17, 1992." In a report dated December 15, 2000, Dr. Osterlitz stated:

"[Appellant] has been treated at this clinic since July 15, 1998 for symptoms related to her December 17, 1992 injury. She reported that the trauma she sustained in that fall created persistent right hip, right lumbar and right cervico-thoracic pain and stiffness."

¹ By decision dated May 30, 1995, a hearing representative set aside an August 17, 1994 decision denying appellant's request for authorization for massage therapy. In a decision dated March 18, 1998, the Office denied appellant's claim that she sustained temporomandibular joint dysfunction or bruxism causally related to her December 17, 1992 employment injury.

By letter dated November 16, 2001, the Office referred appellant, together with the case record and a statement of accepted facts, to Dr. Richard C. Arbeene, a Board-certified orthopedic surgeon, for a second opinion evaluation.

In a report dated December 5, 2001, Dr. Arbeene discussed the history of injury, reviewed the medical reports of record and listed findings on physical examination. He diagnosed “status post cervical and lumbar strains and concussion, work related, December 17, 1992.” He stated:

“In my opinion, none of [appellant’s] current subjective complaints relate to the specific diagnoses offered in the [s]tatement of [a]ccepted [f]acts. [She] has had ongoing subjective complaints, especially with respect to her lower back, for almost ten years. [Appellant’s] physical examination on an objective basis, was normal today. The soft tissue strains and sprains that she sustained at the time of her fall on December 17, 1992 would have healed within a period of just several weeks from the time of the actual incident in 1992.”

Dr. Arbeene found that appellant had no “current medical findings” of a cervical subluxation, lumbar strain or concussion. He stated:

“With respect to the diagnoses offered, I do not recommend ongoing treatment or evaluation. [Appellant] can certainly choose to seek chiropractic treatment or other forms of treatment at her discretion with respect to her subjective complaints but, in my opinion, such complaints have no relationship to the diagnoses offered relative to the December 17, 1992, work-related injury.”

On December 21, 2001 the Office issued appellant a proposed notice of termination of medical benefits on the grounds that the weight of the medical evidence, as represented by the report of Dr. Arbeene established that she had no further residual condition causally related to her employment injury.

By letter dated January 1, 2002, appellant expressed disagreement with the opinion of Dr. Arbeene and contended that his examination had been poor. She submitted a report dated January 7, 2002 from Dr. C.M. Rasmussen, an osteopath, who noted that x-rays obtained on January 9, 2002 revealed a “collapsed disc at L5-S1” and requested authorization for a magnetic resonance imaging (MRI) scan.

In a decision dated January 22, 2002, accompanied by a cover letter dated February 6, 2002, the Office finalized its termination of appellant’s entitlement to medical benefits effective that date.

The Board finds that the Office properly terminated appellant’s authorization for medical treatment.

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.² To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.³

In this case, the Office met its burden to terminate appellant's authorization for medical treatment through the report of Dr. Arbeene, a Board-certified orthopedic surgeon, who found that appellant had no residual condition caused by her employment injury. He listed normal findings on physical examination and concluded that appellant had no residuals of her accepted employment injuries of a concussion, cervical subluxation and lumbar strain. Dr. Arbeene concluded that appellant did not need further medical treatment. The Board has carefully reviewed his opinion and finds that it has reliability, probative value and convincing quality with respect to the conclusion reached regarding whether appellant has any residual condition due to her accepted employment injury. Dr. Arbeene provided a thorough review of the factual and medical background of appellant's claim and accurately summarized the relevant medical evidence. Moreover, he provided a proper analysis of the factual and medical history and findings on examination and reached conclusions regarding appellant's condition, which comported with this analysis.⁴

The remaining evidence of record submitted prior to the Office's termination of compensation is insufficient to establish that appellant had any residual condition causally related to her employment injury. In response to the Office's notice of proposed termination of benefits, she submitted a report from Dr. Rasmussen, an osteopath, who noted findings of a disc problem at L5-S1 and requested authorization for an MRI. However, Dr. Rasmussen did not discuss appellant's December 17, 1992 employment injury or provide a causation finding. Therefore, his opinion is of little probative value to the relevant issue of whether she had any residual condition causally related to her employment injury.⁵

Appellant also submitted reports from Dr. Osterlitz, her attending physician and a chiropractor. Dr. Osterlitz, in a report dated December 15, 2000, noted that following appellant's December 17, 1992 fall, she complained of pain in the right hip, right lumbar region and right cervico-thoracic region. He related that appellant had received treatment at his clinic since July 15, 1998. Dr. Osterlitz, however, did not specify whether the treatment consisted of manual manipulation to correct a cervical subluxation or was for appellant's pain in the right hip and lumbar region. In a report dated September 28, 2001, Dr. Osterlitz stated, "I have been treating [appellant] primarily for chronic low back and right hip pain which has been present since December 17, 1992." Section 8101(2) of the Federal Employees' Compensation Act provides that the term "physician" includes chiropractors only to the extent that their

² *Furman G. Peake*, 41 ECAB 361, 364 (1990).

³ *Id.*

⁴ *See Melvina Jackson*, 38 ECAB 443 (1987).

⁵ *Linda I. Sprague*, 48 ECAB 386 (1997) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship).

reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.⁶ As a chiropractor may only qualify as a physician in the diagnosis and treatment of spinal subluxation, his opinion is not considered competent medical evidence in evaluation of other disorders, including those of the extremities, although these disorders may originate in the spine.⁷ While Dr. Osterlitz was authorized to treat appellant's accepted spinal subluxation, he could not evaluate her right hip condition or other alleged back conditions. The only accepted condition for which Dr. Osterlitz is considered a physician under the Act is appellant's cervical subluxation, which he did not specifically address. Thus, his opinion does not constitute competent medical evidence in support of appellant's claim.⁸

The decision of the Office of Workers' Compensation Programs dated January 22, 2002 is affirmed.⁹

Dated, Washington, DC
August 12, 2002

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁶ *Robert H. St. Onge*, 43 ECAB 1169 (1992).

⁷ *George E. Williams*, 44 ECAB 530 (1993).

⁸ *Id.*

⁹ Appellant submitted new evidence with her appeal; however, the Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c). Appellant may submit the new evidence to the Office with a request for reconsideration under 5 U.S.C. § 8128.