

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATRICIA CULLEN and DEPARTMENT OF HEALTH & HUMAN SERVICES, Kansas City, MO

*Docket No. 01-2165; Submitted on the Record;
Issued May 3, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly denied authorization of chiropractic services.

On January 14, 1998 appellant, then a 46-year-old program specialist, sustained an employment-related skin tear of the right index finger and contusions to the right hip and ankle when she slipped and fell on ice. She received appropriate compensation and returned to work. On May 7, 1999 appellant sought reimbursement for medical expenses, including treatment by Dr. Stephen Gradwohl, a chiropractor, who advised that appellant had preexisting scoliosis and diagnosed multiple subluxations by x-ray.

In a report dated August 23, 1999, an Office medical adviser advised that Dr. Gradwohl was treating appellant for fixed axial skeletal deformities and not subluxation, which were not employment related and, therefore, his treatment should not be authorized. In a decision dated August 31, 1999, the Office denied appellant's claim for chiropractic services on the grounds that the medical evidence failed to establish how the January 14, 1998 employment injury caused subluxations or a worsening of appellant's underlying back condition.

On September 27, 1999 appellant requested a hearing and submitted a report dated that day in which Dr. Gradwohl advised that, while appellant's subluxations had existed prior to the employment-related fall, she had been asymptomatic prior to the fall but needed treatment subsequently. At the hearing, held on February 15, 2000, she testified that she had been seeing Dr. Gradwohl since 1995 and that she had a number of medical bills that needed to be paid, in addition to those of Dr. Gradwohl.

Appellant also submitted additional medical evidence which included unsigned reports from Dr. Steven Simon, a Board-certified physiatrist, who advised that he had referred appellant to Dr. Gradwohl in February 1998. In an unsigned report dated February 14, 2000,¹ Dr. Simon

¹ The report was stamped "dictated but not proofread."

advised that he began treating appellant in November 1995 when she was involved in a motor vehicle accident and noted that she had preexisting scoliosis. He further explained:

“Scoliosis is a condition of spinal ligamentous instability which results in an abnormal curvature of the spine in a left and right direction. There was a preexisting situation of kyphoscoliosis for [appellant]. A fall to the right hip with trauma can induce muscle spasm. The muscle spasm is significant because it attaches these muscles to the very portions of the bones that are then pulled asymmetrically, worsening and contributing to the destabilization of spinal ligaments. There are a number of problems that [she] has exhibited, including pelvic floor instability with secondary myospasm; again, these muscles attaching to the lower lumbar and mid-thoracic spine areas. Our reports back in 1998 indicate that she has had a fall with trauma jarring to the system, adding to discomfort and worsening her underlying situation of scoliosis.”

Dr. Simon concluded that appellant continued to have problems with kyphoscoliosis and generalized back discomfort.

By decision dated April 19, 2000 and finalized April 20, 2000, an Office hearing representative affirmed the prior decision that appellant was not entitled to chiropractic services.² On July 18, 2000 appellant requested reconsideration and submitted a July 18, 2000 report from Dr. Gradwohl who advised that the January 14, 1998 fall aggravated appellant’s preexisting condition. In a January 9, 2001 decision, the Office denied modification of the prior decision, finding that the medical evidence still did not explain how appellant sustained an employment-related back condition.

On April 6, 2000 appellant again requested reconsideration and submitted additional medical evidence including a 1997 scoliosis series x-ray, unsigned reports from Dr. Simon dated December 23, 1996 and January 29, 1998, and a number of unsigned treatment notes from Dr. Gradwohl dating from September 8, 1997 to April 16, 1998. By decision dated May 24, 2001, the Office denied modification of the prior decisions, finding that the medical evidence was insufficient to establish that chiropractic treatment was warranted for the employment-related conditions. The instant appeal follows.

The Board finds that the Office properly denied authorization of chiropractic services.

An employee is entitled to receive all medical services, appliances or supplies which a qualified physician prescribes or recommends and which the Office considers necessary to treat a work-related injury.³ Section 8101(3) of the Federal Employees’ Compensation Act⁴ which defines services and supplies, provides that reimbursable chiropractic services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as

² The hearing representative further advised appellant regarding the procedures to be followed for reimbursement of medical expenses for the accepted conditions.

³ *Lisa DeLindsay*, 51 ECAB ____ (Docket No. 99-1769, issued August 24, 2000).

⁴ 5 U.S.C. §§ 8101-8193.

demonstrated by x-ray to exist and subject to regulation by the Secretary.⁵ Furthermore, while the Office is obligated to pay for treatment of employment-related conditions, appellant has the burden of establishing that the expenditure is incurred for treatment of the effects of an employment-related injury or condition. To be entitled to reimbursement of medical expenses by the Office, appellant must establish a causal relationship between the expenditure and the treatment by submitting rationalized medical evidence supporting such a connection and demonstrating that the treatment is necessary and reasonable.⁶

Although a claimant is not entitled, as a matter of right, to reimbursement of medical expenses which are not authorized by the Office, the Office nevertheless has the discretion to approve unauthorized medical care pursuant to section 8103. The Office is required to exercise its discretion to determine whether medical care has been authorized, or whether unauthorized medical care involved emergency or unusual circumstances, and is therefore reimbursable regardless of whether the underlying claim for benefits has been accepted or denied.⁷ Likewise, a referral by an authorized physician is sufficient to obligate the Office to pay for reasonable and necessary treatment for an employment-related condition by another physician. However, where a physician refers a claimant to a nonphysician for treatment, more control and direction by the referring physician must be shown.⁸ In order to be entitled to reimbursement for medical expenses, a claimant must establish that the expenditures were incurred for treatment of the effects of an employment-related injury. Proof of causal relation in a case such as this must include supporting rationalized medical evidence.⁹

In the instant case, medical reports from appellant's chiropractor, Dr. Gradwohl, established that subluxations were demonstrated by x-ray to exist and that her treating physiatrist, Dr. Simon, had referred appellant for chiropractic treatment. The evidence, however, does not indicate that the subluxations were caused by the January 14, 1998 employment injury. The Board has held that a diagnosis of a subluxation must be established as employment related in order for chiropractic treatment to be reimbursable. Where, as here, the chiropractor did not relate appellant's subluxation to her employment injury, treatment of appellant was not reimbursable merely upon a diagnosis of a subluxation.¹⁰ The Office has not accepted that this condition was caused or aggravated by the January 14, 1998 employment injury,¹¹ and while

⁵ 5 U.S.C. § 8101(3); *see Thomas W. Stevens*, 50 ECAB 288 (1999).

⁶ *See Dale E. Jones*, 48 ECAB 648 (1997).

⁷ *See Michael L. Malone*, 46 ECAB 957 (1995).

⁸ *Thomas W. Stevens*, *supra* note 5.

⁹ *See Cathy B. Millin*, 51 ECAB ____ (Docket No. 97-2898, issued February 10, 2000).

¹⁰ *Thomas W. Stevens*, *supra* note 5.

¹¹ The Board 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. *Lawrence A. Wilson*, 51 ECAB ____ (Docket No. 99-367, issued September 21, 2000).

Dr. Simon provides, in unsigned reports, some explanation that appellant's back condition is related to the employment injury, his report dated February 14, 2000 merely indicates that a fall can induce muscle spasm and does not provide an explanation indicating how the slip and fall on January 14, 1998 caused or aggravated appellant's preexisting back condition.¹² The Board therefore finds that appellant has failed to establish that chiropractic services should be authorized.

The decisions of the Office of Workers' Compensation Programs dated May 24 and January 9, 2001 are hereby affirmed.

Dated, Washington, DC
May 3, 2002

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

¹² Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. Moreover, the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship. *Minnie L. Bryson*, 44 ECAB 713 (1993).