

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT S. WINCHESTER and DEPARTMENT OF HEALTH & HUMAN SERVICES, PUBLIC HEALTH SERVICE, Rockville, MD

*Docket No. 00-800; Oral Argument Held June 11, 2002;
Issued November 8, 2002*

Appearances: *Herbert R. Rubenstein, Esq.*, for appellant; *Jim C. Gordon, Jr., Esq.*, for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof to establish that he is entitled to reimbursement for dental and chiropractic treatment.

This is the second appeal concerning the issue of the present case.¹ In the prior appeal, the Board issued a decision and order² on September 10, 1997 in which it affirmed the July 16, 1996 decision of the Office with respect to the denial of appellant's entitlement to reimbursement for dental and chiropractic treatment.³ The Board found that the opinions of Dr. Michael R. Gray, an attending physician Board-certified in preventive medicine and specializing in internal and occupational medicine; Dr. Brian L. Cabin, an attending physician specializing in family practice and preventive medicine; and Dr. Barry Kalinsky, an attending chiropractor, were not sufficiently well rationalized to establish that appellant's dental and chiropractic treatment were necessitated by the employment-related permanent aggravation of his preexisting multiple chemical sensitivity condition.

¹ The record also contains a decision in which the Board affirmed a March 13, 1992 Office of Workers' Compensation Programs decision denying appellant's request for payment of interest on retroactively received compensation. This matter is not currently before the Board.

² Docket No. 96-2560 (issued September 10, 1997).

³ The Office had accepted that in 1981 appellant, then a 56-year-old program analyst, sustained a permanent aggravation of a preexisting multiple chemical sensitivity condition due to exposure to organic phosphate pesticide at work. The pesticide was sprayed in restroom areas and appellant was exposed to the substance for a total period of about two weeks in March and April 1981. Appellant stopped working for the employing establishment in April 1981. He claimed that he incurred \$8,483.00 of employment-related dental expenses between December 1988 and May 1989 due to the replacement of metal fillings and \$2,606.90 of employment-related chiropractic expenses between February 1986 and May 1990. By decision dated July 16, 1996, the Office denied this claim on the grounds that appellant did not submit sufficient evidence in support thereof.

The Board also set aside the July 16, 1996 decision with respect to appellant's entitlement to reimbursement for other medical treatment and related expenses incurred between June 28, 1993 and July 23, 1995. The Board remanded the case to the Office for further development.⁴ The Board also reversed the June 20, 1996 decision of the Office on the grounds that the Office did not meet its burden of proof to terminate appellant's compensation effective July 23, 1995.⁵ The Board found that the opinion of Dr. John B. Sullivan, Jr., a Board-certified immunologist who served as an Office referral physician, was not sufficiently well rationalized to show that appellant no longer had residuals of his employment injury. The facts and circumstances of the case up to that point are set forth in the Board's prior decision and are incorporated herein by reference.

After the Board's September 10, 1997 decision, appellant submitted additional evidence in support of his claim that he was entitled to reimbursement for dental and chiropractic treatment.⁶ He requested reconsideration of his claim and, by decision dated November 25, 1998, the Office denied his claim on the grounds that he did not submit sufficient evidence in support thereof.

The Board finds that appellant did not meet his burden of proof to establish that he was entitled to reimbursement for dental and chiropractic treatment.

Section 8103(a) of the Federal Employees' Compensation Act states in pertinent part: "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 or the period of disability, or aid in lessening the amount of the monthly compensation."⁷ In order to be entitled to reimbursement of medical expenses, appellant has the burden of establishing that the expenditures were incurred for treatment of the effects of an employment-related injury or condition.⁸ Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.⁹

The Board finds that appellant did not submit sufficient medical evidence to establish that he was entitled to reimbursement for dental treatment in that the evidence does not show that the treatment was necessitated by the employment injury, permanent aggravation of his preexisting multiple chemical sensitivity condition.

⁴ The record contains a November 4, 1998 decision in which the Office denied appellant's claim for expenses incurred through July 23, 1995 on the grounds that he did not submit sufficient medical evidence in support thereof. However, this matter is not currently before the Board.

⁵ By decision dated June 28, 1995, the Office terminated appellant's compensation effective July 23, 1995. By decision dated June 20, 1996, the Office affirmed its June 28, 1995 decision.

⁶ Appellant's compensation for total disability was reinstated by the Office.

⁷ 5 U.S.C. § 8103.

⁸ *Bertha L. Arnold*, 38 ECAB 282, 284 (1986).

⁹ *Zane H. Cassell*, 32 ECAB 1537, 1540-41 (1981); *John E. Benton*, 15 ECAB 48, 49 (1963).

Appellant submitted an August 28, 1998 report in which Dr. Gray, an attending physician Board-certified in preventive medicine and specializing in internal and occupational medicine, detailed medical literature regarding the effect of amalgam fillings, comprised of mercury and other metals, on the immune system. Dr. Gray indicated the literature showed that vapors from decomposing fillings made of mercury and other metals could be released and absorbed by the body and that the release of such vapors was greater when electricity passed between different types of metal fillings, thus creating an “electro-galvanic” or “oral galvanism” effect. He noted that, prior to the replacement of his fillings in 1988 and 1989 with materials containing low metal content, appellant had high levels of oral galvanism due to his fillings which contained mercury, copper, nickel, silver and low-alloy gold. Dr. Gray indicated that appellant was “highly reactive to extremely low levels of exposure” to electromagnetic fields and metals. He noted that the oral galvanism in appellant’s mouth had a negative effect on his immune system which suffered a “serious immune system defect” caused by the employment-related exposure to pesticide in 1981. Dr. Gray indicated that appellant’s condition improved after his fillings were replaced, although he still remained totally disabled from all work. He stated:

“It is highly unlikely that the dental work would have been necessary without the disabling work-related exposure to the toxic pesticides in 1981, which triggered his severe immunotoxicity state. Prior to that exposure, [appellant] was working full time and leading an active personal life. As the case record shows, he was substantially recovering from a prior, nondisabling medical condition that made him unusually sensitive to the 1981 pesticide exposure. Following the accepted 1981 injury, he was and continues to be totally disabled. The dental work in this claim was clearly an appropriate medical service provided by a qualified medical practitioner that was considered likely to cure or give relief to the accepted injury, by eliminating the mercury and amalgam related immune response, and the cytotoxic and oral galvanism response from other metals in the dental restorations.”

Dr. Gray’s report is of limited probative value on the relevant issue of the present case in that he did not provide adequate medical rationale in support of his conclusion that appellant’s dental work in 1988 and 1989 was necessitated by his 1981 employment injury.¹⁰ He did not adequately explain the medical process through which appellant’s employment-related condition would have been aggravated by his fillings such that replacement of the fillings would have been required. Dr. Gray indicated that appellant’s mouth had high levels of oral galvanism, *i.e.*, electrical interaction between fillings containing different metals, but he did not present the

¹⁰ See *Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

findings of objective testing which would support this assertion.¹¹ He indicated that the oral galvanism and oxidation processes in appellant's mouth caused degradation of his fillings such that harmful levels of mercury and other metals were released. However, Dr. Gray did not specify what levels of emission would be harmful; nor did he present the findings of objective testing which would show that appellant's fillings emitted harmful vapors. In addition, he did not adequately explain the process through which harmful materials would be absorbed by appellant's body; nor did he present testing results which would show that such materials were in fact absorbed. Moreover, Dr. Gray indicated that appellant was highly reactive to extremely low levels of exposure to electromagnetic fields and metals, but he did not submit findings of any testing which identified the extent of appellant's sensitivity to such materials or processes.

Dr. Gray's report contains extensive discussion of medical literature which posits that certain metal fillings pose a danger to persons with damaged immune systems. However, this literature is of a generalized nature and Dr. Gray has not provided sufficient argument to establish that the medical processes described in the medical literature are applicable to the circumstances of appellant's specific condition. Moreover, Dr. Gray's opinion is essentially premised on the assumption that appellant sustained comprehensive, all-encompassing damage to his immune system due to the employment-related exposure in 1981. He argued that appellant's immune system was so compromised by the 1981 exposure that a wide range of his bodily systems (including respiratory, cardiac, digestive and total immune systems) experienced serious adverse effects. However, as previously noted, appellant's case has only been accepted for permanent aggravation of his preexisting multiple chemical sensitivity condition. It has not been accepted that appellant has sustained employment-related immune system damage to the extent posited by Dr. Gray and the medical evidence does not otherwise support such an assertion.¹²

Appellant also submitted an October 26, 1991 report in which Dr. Cabin stated that he had interactions between the various metals used in his dental work and that, due to his compromised immune system, his dental work became a "significant health issue." Dr. Cabin stated that he concurred in appellant's choice to replace his dental fillings with materials which would reduce the electrolytic process in his mouth. However, this report contains deficiencies which are similar to those contained in Dr. Gray's reports. Dr. Cabin did not provide sufficient medical rationale to support his opinion that appellant's dental work was required by his employment injury; nor did he present objective findings to support his description of appellant's dental condition and its effect on his employment-related condition.

In addition, the Board finds that appellant did not submit sufficient medical evidence to establish that he was entitled to reimbursement for chiropractic treatment in that the evidence does not show that the treatment was necessitated by the employment injury, permanent aggravation of his preexisting multiple chemical sensitivity condition.

¹¹ In a report dated June 28, 1993, Dr. Gray indicated that prior to the replacement of appellant's fillings in 1988 and 1998, a galvanometer showed high readings for electrolytic reactions in his dental work. However, he did not provide any further details of this testing or any recitation of its specific results.

¹² In a report dated March 15, 1996, Dr. Gray indicated that a lymphocyte profile obtained on February 28, 1996 showed that appellant had a pattern of immune system dysfunction which was consistent with his exposure to pesticide in 1981. However, he did not provide sufficient medical rationale to establish his assertion that this claimed immune system damage was related to the accepted employment injury.

Appellant submitted an April 14, 1993 report in which Dr. Kalinsky, an attending chiropractor, indicated that x-rays were taken early in the treatment process which showed that he had a spinal subluxation complex. Dr. Kalinsky described his treatment between 1986 and 1990 and stated: “The constant tension from coping with chronic fatigue and frequent acute reaction to inadvertent chemical exposures had a direct effect on the extent and severity of the subluxation condition.” In the present case, appellant sustained spinal subluxations as demonstrated by x-rays to exist and, therefore, his report would in fact constitute medical evidence.¹³ However, Dr. Kalinsky did not provide adequate medical rationale in support of his opinion that appellant’s employment-related condition caused or aggravated his subluxation condition and that chiropractic treatment was thereby justified. He did not provide any explanation of the medical process through which “tension” from fatigue and chemical exposure could be related to the subluxation condition in appellant’s back. Nor did he adequately describe how this tension process was related to the accepted employment injury.

Appellant also submitted an August 28, 1998 report in which Dr. Gray discussed medical literature which posited that emotional stress, lack of mobility, and “chemical irritation” can cause or worsen spinal subluxations or dislocations.¹⁴ He indicated that appellant was exposed to various conditions related to his 1981 employment injury including immune system suppressions and dysfunction, mental confusion, anxiety, headaches, cardiac symptoms, gastrointestinal and urinary dysfunction, lack of exercise from chronic fatigue, episodes of emotional and physical stress from exposure to ambient chemicals and the stress of coping with a serious disability over many years. Dr. Gray noted that the chiropractic treatment helped to alleviate appellant’s symptoms and stated:

“The physical and emotional stress of an isolated life and inability to function except for a few hours each day is all-encompassing and has continued within a narrow range of small improvements and periods of increased limitations for over seventeen years. This background stress and the enforced inactivity are a reasonable cause of subluxation. In addition, however, there are frequent periods of more intense symptoms and periods of increased fatigue and isolation that result from inadvertent exposure to chemicals when [appellant] must venture into the ‘normal’ world to purchase food and clothing, conduct medical appointments and maintain minimal social contact. These incidents can take a few hours or up to several weeks to resolve and add an additional burden of stress. Stress from the insecurity of living with a severe disability provides further burden and potential to cause subluxation. Severe chronic fatigue also results in hypomobility, another potential cause of subluxation.”¹⁵

Dr. Gray did not provide adequate medical rationale to support his opinion that appellant experienced various stresses, related to his 1981 employment injury, such that he sustained

¹³ Under section 8101(2) of the Act, chiropractors are only considered physicians, and their reports considered medical evidence, to the extent that they treat spinal subluxations as demonstrated by x-ray to exist. 5 U.S.C. § 8107(a); see *Jack B. Wood*, 40 ECAB 95, 109 (1988).

¹⁴ He noted that Dr. Kalinsky had identified spinal subluxations as shown by x-ray testing to exist.

¹⁵ In a June 28, 1993 report, Dr. Gray also stated that the physical and emotional stress appellant encountered due to his disability accelerated the “reduction of spinal flexibility that is called subluxation” and necessitated chiropractic treatment.

subluxations which required chiropractic treatment. He did not sufficiently explain the medical process through which these emotional and physical stresses, as described above, could be competent to cause or aggravate the dislocation of vertebrae in appellant's back. In particular, Dr. Gray did not provide any notable rationale for his opinion that appellant's relative inactivity caused or aggravated his spinal subluxations.¹⁶ He cited medical literature which generally indicated that various stresses relating to chemical exposure or immune deficiencies could cause or aggravate subluxations, but he did not adequately explain how these processes occurred in appellant's specific case.¹⁷ Moreover, Dr. Gray indicated that various stress factors, such as cardiac, gastrointestinal and urinary problems, were related to appellant's 1981 employment injury, but he did not provide adequate argument or rationale in support of this assertion.

For these reasons, appellant did not meet his burden of proof to establish that he is entitled to reimbursement for dental and chiropractic treatment.

The November 25, 1998 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
November 8, 2002

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁶ Dr. Gray indicated that appellant's limited ability to engage in physical activity meant that his mechanoreceptors were not able to function normally and his physical and emotional stress enhanced the nociceptor activity. However, he did not provide any further description of such a process or evidence of its occurrence in appellant's case.

¹⁷ In his October 26, 1991 report, Dr. Cabin indicated that, due to appellant's multiple chemical sensitivity condition, appellant experienced tension through his body when exposed to chemicals and, therefore, he required chiropractic treatment to avoid a chronic somatic disorder. He did not provide any further explanation of this opinion and his report lacks adequate medical rationale. The record contains other reports of Dr. Cabin, dated June 20, 1995 and May 28, 1998, which discuss his multiple chemical sensitivity condition. However, these reports do not contain an opinion on appellant's need for dental or chiropractic treatment.