United States Department of Labor
Employees' Compensation Appeals Board

LAURA ADERMAN-SMALL, Appellant **and** **DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Iron Mountain, MI, Employer**	)))))))))	**Docket No. 04-442** **Issued: April 7, 2004**

Appearances:
Laura Aderman-Small, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On December 9, 2003 appellant filed a timely appeal from the decisions of the Office of Workers' Compensation Programs dated May 12 and October 29, 2003 wherein the Office denied appellant's claim for left sciatica pain and also denied her claim for payment for chiropractic care.

ISSUES

The issues on appeal are: (1) whether the Office properly denied appellant's claim for chiropractic care; and (2) whether the Office properly denied appellant's claim for left sciatica pain.

FACTUAL HISTORY

On March 26, 2003 appellant, then a 44-year-old nurse, filed a traumatic injury claim alleging that, on January 5, 2003, when helping to support a patient who had fallen, she sustained a low back strain with pain to her left buttocks and back. In support thereof, appellant submitted

a note dated January 24, 2003 by Dr. Daniel M. Mitchell, a Board-certified family practitioner and chiropractor, wherein he indicated that appellant was off work from January 24 to 27, 2003 due to injury. Appellant also submitted progress notes by Dr. Peter L. Begres, a chiropractor, dated from January 21 to March 7, 2003, wherein he indicated that he treated appellant for her work injury for low back pain with left leg pain into left buttocks and left groin. In his progress note dated January 24, 2003, Dr. Begres also noted left leg sciatica. In her initial history given to Dr. Begres, appellant indicated that she had not yet seen any other doctor with regard to the problem.

On February 27, 2003 appellant filed a claim for a recurrence as of January 24, 2003. Appellant noted that the pain never left from her original injury, but only intensified and that by January 24, 2003 she could barely walk.

By letter dated April 8, 2003, the Office requested that appellant submit further information. In the same letter, the Office noted that they would simultaneously develop appellant's claim for recurrence while her original claim was under development. Appellant responded to the Office's request by letter dated April 13, 2003, wherein she described in further detail her work injury and treatment.

By letter dated May 12, 2003, the Office accepted appellant's claim for low back pain. In another letter of the same date, the Office indicated that further medical information was necessary in order for the Office to accept payment of the chiropractic bills, and allowed appellant 30 days to submit this information. No additional information was timely filed, and by decision dated June 16, 2003, the Office denied appellant's claim for chiropractic treatment and claim for left sciatica pain. The Office noted that the file does not have evidence that an x-ray was ever performed, and the diagnosis of a chiropractor cannot be accepted as his practice was limited to diagnosing subluxations by x-ray only. The Office also noted that there was neither evidence from a physician authorizing chiropractic treatment nor any evidence to support the diagnosis of left sciatica pain.

By letter dated October 14, 2003, appellant requested reconsideration. In support thereof, appellant submitted a July 3, 2003 report by Dr. Virginia Feleppa, a Board-certified internist, who works with Dr. Mitchell, wherein she indicated that, at the time Dr. Mitchell saw appellant on January 24, 2003, he noted that it was two to three weeks after the initial event and, therefore, x-rays were not needed. She noted that, when she saw appellant on February 6, 2003, she was significantly improved and, therefore, did not need x-rays. Appellant also submitted an August 2, 2003 report by Dr. Yasser Salem, a Board-certified internist, wherein he indicated that he was the physician on call on January 5, 2003, that on that date he evaluated appellant and that her examination was suggestive of acute lumbar sprain, and that, at that time, he did not believe that he needed to get an x-ray of her back. He noted that he prescribed ice packs, analgesics and muscle relaxants, and advised appellant to wear lumbar support while on duty. Finally, appellant submitted an October 5, 2003 report wherein Dr. Begres indicated that he had seen appellant previously for similar subjective complaints, that in his professional opinion exposing appellant to a radiographic examination of the lumbar spine and pelvis was not warranted, and that appellant responded well to care and returned to a preinjury status as of March 28, 2003.

By decision dated October 29, 2003, the Office affirmed the June 16, 2003 decision for the reason that the evidence submitted in support of the application was not sufficient to warrant modification.

LEGAL PRECEDENT -- ISSUE 1

Congress has imposed a limitation under the statute at section 8101(2) which defines the term "physician" to include chiropractors only 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, and subject to regulation by the Secretary."[1] The Act at section 8101(3) defines "medical, surgical, and hospital services and supplies" as including services by a chiropractor, but states: "Reimbursable chiropractic services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist, and subject to regulation by the Secretary."[2] Under this authority, the director has promulgated regulations which specify:

> (a) The services of chiropractors that may be reimbursed are limited by the Act to treatment to correct a spinal subluxation. The costs of physical and related laboratory tests performed by or required by a chiropractor to diagnose such a subluxation are also payable.
>
> (b) In accordance with 5 U.S.C. § 8101(3), a diagnosis of spinal subluxation as demonstrated by x-ray to exist must appear in the chiropractor's report before [the Office] can consider payment of a chiropractor's bill.
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> (c) A chiropractor may interpret his or her x-rays to the same extent as any other physician. To be given any weight, the medical report must state that x-rays support the finding of spinal subluxation. [The Office] will not necessarily require submittal of the x-ray, or a report of the x-ray, but the report must be available for submittal on request.
>
> (d) A chiropractor may also provide services in the nature of physical therapy under the direction of a qualified physician.[3]

ANALYSIS -- ISSUE 1

Appellant received treatment from Dr. Begres, a chiropractor. However, the services of chiropractors that may be reimbursed are limited by the Act to treatment to correct a spinal subluxation as demonstrated by x-ray to exist. The record does not show that Dr. Begres conducted an x-ray of appellant. In fact, Dr. Begres indicated that an x-ray was not warranted. Drs. Salem and Mitchell also stated that x-rays were not taken or needed. Furthermore, no physician prescribed chiropractic treatment. Accordingly, under the terms of the Act, the

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[1] 5 U.S.C. § 8101(2).

[2] 5 U.S.C. § 8101(3).

[3] 20 C.F.R. § 10.311.

chiropractic expense is not reimbursable, as there is no diagnosis of spinal subluxation as demonstrated by x-ray to exist and no physician prescribed chiropractic treatment.

LEGAL PRECEDENT -- ISSUE 2

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical opinion 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.[4]

Neither the fact that the condition became manifest during a period of federal employment, nor the belief of appellant that the condition was caused or aggravated by her federal employment is sufficient to establish causal relation.[5] Furthermore, as discussed above, a chiropractor is not considered a physician for purposes of the Act unless he diagnoses subluxation by x-ray.[6]

ANALYSIS -- ISSUE 2

The only doctor to note that appellant had left sciatica pain was Dr. Begres, a chiropractor. However, as the Board has already noted, Dr. Begres does not qualify under the circumstances of this case as a physician. Neither Dr. Mitchell nor his associate, Dr. Feleppa, note left sciatica pain; in fact neither physician notes any diagnosis. Dr. Salem noted that his examination of appellant was suggestive of acute lumbar sprain, but he made no mention of sciatica. Accordingly, there is no rationalized medical opinion establishing appellant has left sciatica pain as a result of her accepted injury.

CONCLUSION

As no physician diagnosed left sciatica pain, and as no physician demonstrated subluxation as demonstrated by x-ray, the Office properly determined that appellant had not established that she sustained left sciatica pain and that she was not to be reimbursed for chiropractic expenses.

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[4] *See Arturo A. Adame*, 49 ECAB 421, 424-25 (1998).

[5] *See Donna L. Mims*, 53 ECAB ___ (Docket No. 01-1835, issued August 13, 2002); *Lucrecia M. Nielsen*, 42 ECAB 583, 593 (1991); *Joseph T. Gulla*, 36 ECAB 516, 519 (1985).

[6] *Jay K. Tomokiyo*, 51 ECAB 361, 367 (2000).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated October 29 and May 12, 2003 are hereby affirmed.

Issued: April 7, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member