

Appellant began treatment with Dr. Richard R. Waller, Jr., a chiropractor, on November 17, 1999. In November 19 and 22, 1999 reports, he indicated that in order to avoid an exacerbation of lower back pain which appellant experienced as a result of his workplace injury, he was to remain off work. Dr. Waller initially indicated that appellant could return to work on November 30, 1999, but took appellant off work due to increased lower back pain. By letter dated December 13, 1999, he indicated that appellant returned to work for eight hours but returned home after five hours due to increased back pain. Dr. Waller recommended that appellant return to work for five hour days for one week and then full time thereafter. In an attending physician's report dated September 27, 2000, he diagnosed lumbar sprain/strain and lumbar radiculitis, and checked the box indicating that he believed that appellant's condition was related to his employment. He provided treatment in the form of spinal manipulation, electrical muscle stimulation and diatherapy. Appellant also submitted progress notes from Bolton Chiropractic dated December 17, 1999 through February 9, 2001.

By letter dated March 16, 2000, the Office accepted appellant's claim for a sprain in the lumbar region.

The November 16, 1999 x-rays were interpreted by Dr. Vanessa Stipinovich, a Board-certified radiologist with the University of Massachusetts Memorial Medical Center, as evidencing degenerative joint disease of L4-5. She specifically noted, "No acute fracture or subluxation."

On November 30, 2000 appellant filed claims for compensation for intermittent wage loss between January 3 and September 8, 2000 for time missed while he attended appointments with Dr. Waller. The employing establishment submitted time analysis forms indicating the time appellant lost to see Dr. Waller. A statement from Dr. Waller's office confirmed the dates when he saw the chiropractor.

By letter dated July 9, 2001, the Office requested that appellant submit further medical information from a "medical doctor/physician," and detailed the limited circumstances under which a chiropractor is considered a physician under the Federal Employees' Compensation Act.

In attending physician's reports dated August 10, 2001 and July 3, 2002, Dr. Waller indicated that x-rays were taken at the University of Massachusetts Memorial Medical Center on November 16, 1999 which showed a subluxation of L5 on S1, flattening of the lumbar lordosis, and rotation malposition of L5 on S1. He treated appellant with chiropractic manipulation and adjudicative therapy for his subluxation of the lumbar spine, lumbar sprain/strain and lumbar radiculitis.

On August 29, 2002 appellant filed a recurrence of disability claim. By letter dated July 17, 2003, the Office requested that appellant submit further information.

Dr. Robert Pick, a Board-certified orthopedic surgeon, conducted a fitness-for-duty examination appellant on behalf of the employing establishment. In a report dated June 11, 2001, Dr. Pick indicated that "the alleged 1999 incident" was compatible with a possible lumbosacral muscle strain, which was a temporary and self-limiting soft tissue condition. He noted that, as of the date of examination, there were no objective musculoskeletal findings to

substantiate appellant's subjective symptomatology and indicated that an end result should have been reached by November 16, 1999.

By decision dated July 17, 2003, the Office denied intermittent wage loss from January 26 to September 8, 2000 on the grounds that the evidence failed to establish disability for work due to the November 16, 1999 employment injury. The Office explained that the evidence from Dr. Waller was not probative as he did not diagnose a subluxation by x-ray, that chiropractic care was not authorized and appellant provided no medical evidence other than from a chiropractor.

By letter dated March 17, 2004, Dr. Waller indicated that appellant had been under his care from November 17, 1999 until July 3, 2002 for a lifting injury that occurred at work on November 16, 1999. Due to his need for treatment, appellant would sometimes leave his place of work early in order to arrive on time for his appointments.

Appellant requested an oral hearing which was held on March 25, 2004. Appellant's representative argued that appellant should not be penalized because he never received any denial of his claim and continued to be treated by his employer as if he had received an on-the-job injury for which it granted him limited duty. Appellant contended that the employing establishment authorized him to see Dr. Waller.

On April 26, 2004 the employing establishment submitted letters dated September 20 and December 22, 2000 and July 5, 2001, in which it requested that appellant submit updated medical information with regard to his condition in order to continue at modified duty. The employing establishment noted that "chiropractic treatment was accepted in lieu of physical therapy and is not considered to be your treating physician."

By decision dated June 14, 2004, the hearing representative affirmed the July 17, 2003 decision. The hearing representative determined that appellant had not provided medical evidence sufficient to entitle him to intermittent wage loss for the period January 3 to September 8, 2000. The hearing representative noted that appellant did not establish that his chiropractor was a physician under the Act and that the employing establishment had not completed a Form CA-16 authorizing such treatment.

LEGAL PRECEDENT

Section 8103 of the Act¹ 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. The employee may be furnished necessary and reasonable transportation and expenses incident to the securing of such services, appliances and supplies.² The Board has interpreted this provision of the Act, which requires payment of expenses

¹ 5 U.S.C. §§ 8101-8193.

² *Linda Holbrook*, 38 ECAB 229 (1986).

incidental to the securing of medical services, as authorizing payment for loss of wages incurred while obtaining medical services. 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.³ The rationale for this entitlement is that, during such required examinations and treatment and during the time incidental to undergoing such treatment, an employee did not receive his or her regular pay.⁴ Under the Act the term disability is defined as the incapacity because of an injury in employment to earn the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in a loss of wage-earning capacity.⁵

Services rendered by chiropractors are generally not reimbursable 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...”⁶ 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 a spinal subluxation.⁷ The Office’s regulations further provide: “A chiropractor may also provide services in the nature of physical therapy under the direction of a qualified physician.”⁸

ANALYSIS

Appellant requested wage-loss compensation for the time spent in treatment by his chiropractor, Dr. Waller. In the present case, there is no evidence that Dr. Waller treated appellant for a subluxation of the spine as demonstrated by x-ray to exist. Therefore, he is not considered a physician as defined under the Act. Although Dr. Waller indicated that he treated appellant for a subluxation of the spine, there is no x-ray evidence to support this diagnosis. The only x-ray of record, dated November 16, 1999, was obtained at the University of Massachusetts Memorial Medical Center and was interpreted by Dr. Stipinovich as showing no spinal subluxation. The record does not reflect that this x-ray was obtained for or on behalf of Dr. Waller’s treatment of appellant but in conjunction with treatment he received at the medical center prior to seeking chiropractic treatment. Although Dr. Waller listed findings of an L5-S1 subluxation based on the November 16, 1999 x-ray, it is not readily apparent that he was interpreting his x-ray or one obtained in conjunction with his treatment of appellant, as required under the implementing federal regulation.⁹ There is no evidence in the record that a physician referred appellant for chiropractic treatment, nor does the record evidence that the employing

³ *Lawrence A. Wilson*, 51 ECAB 684 (2000).

⁴ *Id.*

⁵ 5 U.S.C. § 8102

⁶ *See* 5 U.S.C. § 8101(2).

⁷ 20 C.F.R. § 10.311(c).

⁸ 20 C.F.R. § 10.311(d).

⁹ Moreover, Dr. Waller did not list a diagnosis of spinal subluxation until August 10, 2001, some 20 months following the November 16, 1999 injury.

establishment ever issued a Form CA-16 to appellant authorizing examination or treatment by Dr. Waller.¹⁰ For these reasons, Dr. Waller is not a physician as defined under the Act, and his services do not constitute authorized medical treatment. There is no evidence that a qualified physician ever directed appellant to obtain physical therapy from Dr. Waller. Further no CA-16 was ever issued authorizing treatment by the chiropractor. Appellant's argument that the employing establishment authorized his treatment is not supported by the evidence of record. Accordingly, the Board finds that appellant is not entitled to wage loss for the time taken to attend appointments with his chiropractor.¹¹

CONCLUSION

The Board finds that appellant is not entitled to wage-loss compensation for intermittent hours spent at chiropractic appointments during the period January 3 to September 8, 2000.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 9, 2004 and July 17, 2003 are affirmed.

Issued: December 20, 2004
Washington, DC

Alec J. Koromilas
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

¹⁰ See 20 C.F.R. § 10.300.

¹¹ The Board notes that appellant submitted notes in support of his claim by nurse practitioners and physician's assistants. However, such reports are not considered medical evidence as these persons are not considered physicians under the Act. See 5 U.S.C. § 8101(2); *Ricky Storms*, 52 ECAB 349, 353 (2001).