U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHERRY A. GAYHEART and DEPARTMENT OF THE AIR FORCE, WRIGHT PATTERSON AIR FORCE BASE, Xenia, OH

Docket No. 03-2038; Submitted on the Record;
Issued March 24, 2004

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate authorization of appellant's chiropractic treatment.

On March 21, 2001 appellant, then a 51-year-old accounting technician, filed a traumatic injury claim (Form CA-1) after she fell off a 12- to 14-inch step and hit a door causing pain, numbness and tingling in her back and left hip. Appellant's medical history included preexisting degenerative disc disease and a herniated disc. In a March 22, 2001 report, Dr. Robert Boike, a chiropractor, stated that appellant's x-rays were negative for fracture or osteopathology, but did show moderate myospasm's lipping, spurring and irregular bodies of lumbar spine and mildly decreased loss of lumbar curves with a narrowing of the disc space at L5-S1. He diagnosed sacroiliac subluxation, lumbar strain, sprain and lumbosacral segmental somatic dysfunction. Dr. Boike attributed appellant's condition to her workplace fall. In an April 24, 2001 decision, the Office accepted appellant's claim for subluxation of her lumbar spine and sacroiliac.

In a May 9, 2001 letter, the Office referred appellant to Dr. Donald P. Sickler, a Board-certified orthopedic surgeon, for a second opinion.

In a June 6, 2001 report, Dr. Scott West, a neurosurgeon and appellant's treating physician, stated that appellant complained of low back pain with radiation into her left buttock, groin, thigh, calf and toes. On examination he found palpable tenderness in the lower lumbar region. Range of motion testing showed flexion limited to 20 degrees, side bending limited to 5 degrees towards the left and 10 degrees to the right. Dr. West noted that appellant had trouble walking on her left heel and toes. He diagnosed herniated lumbar discs at L4-5 and L5-S1.

In a June 19, 2001 report, Dr. Sickler reviewed appellant's history of injury and medical treatment. He stated that appellant complained of pain in her left hip radiating to the lateral aspect of her foot with numbness and parethesias. Appellant had difficulty raising her left leg and pushing on her left foot. On examination, he found paraspinal tenderness on the left side greater than the right, extending along the iliac crest on the left side and associated with some

interlaminar tenderness at L5-S1 on the left radiating into her buttock. Dr. Sickler also found decreased pinprick sensation in the lateral aspect of appellant's left foot and noted that she walked with a pronounced limp and was unable to walk on her toes of her left foot. He reviewed the x-rays of Dr. Boike, stating that they were of poor quality. The anterior-posterior and lateral x-ray of the lumbosacral spine suggested some narrowing at L5-S1 with some lipping at L5-S1. A May 3, 2001 magnetic resonance imaging (MRI) scan of the lumbosacral spine revealed degenerative disc disease at L3, 4 and 5, with a large herniated lumbar disc at L5 on the left with a smaller one at L4 on the left. Dr. Sickler stated that appellant's primary problem was that of a herniated lumbar disc at L5-S1, which was consistent with her mechanism of injury. He found no evidence of a subluxation, either of the lumbosacral or sacroiliac areas.

In a June 21, 2001 report, Dr. Boike stated that originally he thought appellant only had a cervical strain that would resolve itself within four to six weeks. However, appellant continued to have pain, stiffness and crepitus in her cervical spine. He noted on examination that appellant showed limited range of motion with mild paraspinal cervical muscular spasms with point tenderness, tightness and mild edema. Dr. Boike noted that a foraminal compression test increased cervical spine pain and that x-rays confirmed a subluxation at the C6 level.

In a July 27, 2001 report, Dr. West stated that an electromyogram was negative for radiculopathy and recommended conservative treatment.

On September 7, 2001 the Office referred appellant's record to an Office medical adviser, who stated that the diagnosis of cervical subluxation was not causally related to the accepted injury. He noted a high likelihood that the subluxation of appellant's cervical spine was due to degenerative disc disease and not her accepted fall. The Office medical adviser noted that degenerative disc disease was preexisting, but appellant may have had an aggravation of the condition as it was not unusual to have an asymptomatic aggravation. On May 8, 2002 appellant returned to work four hours a day.

In a May 24, 2002 letter, the Office sought clarification from Dr. Sickler regarding whether appellant still had a subluxation of the lumbar spine. In a June 5, 2002 response, Dr. Sickler stated that he did not believe that appellant sustained a subluxation of her lumbar spine or sacroiliac. Dr. Sickler noted that when he examined appellant he found no evidence of a subluxation.

In a July 8, 2002 decision, the Office proposed terminating authorization of appellant's chiropractic treatment relying on the reports of Dr. Sickler. No further evidence was received from appellant. In an August 16, 2002 decision, the Office terminated appellant's chiropractic treatment.

In an August 25, 2002 letter, appellant requested a hearing. In a September 16, 2002 report, Dr. West noted that appellant underwent a lumbar myelogram and postmyelogram computerized tomography scan on September 9, 2002, that showed a blunting of the nerve root sleeve at the L4-5 and the L5-S1 levels on the left. He noted that there was also disc bulging at the L5-S1 level on the left, with some nerve root compression of the left S1 nerve root. He noted that a previous MRI scan showed that a disc herniation at the L4-5 level caused obliteration of the lateral recess at the L4-5 level.

In an October 25, 2002 letter, Dr. Boike contended that Dr. Sickler was not qualified to determine whether appellant continued to have a spinal subluxation. He opined that only a chiropractor was qualified to make that determination. At the May 21, 2003 hearing, appellant, through her representative, also argued that Dr. Sickler was not qualified to diagnose subluxation and, therefore, the Office did not meet its burden of proof to terminate authorization at her chiropractic treatments. In a July 18, 2003 decision, the hearing representative affirmed the August 16, 2002 termination.

The Board finds that the Office did not meet its burden of proof to terminate appellant's chiropractic treatments as there is a conflict in the medical evidence.

The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability. To terminate authorization for medical treatment, the Office must establish that a claimant no longer has residuals of an employment-related condition, which require further medical treatment.[1]

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.[2] The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.[3] The Office must establish by the weight of the reliable, probative and substantial evidence that the employment-related disability had ceased. The evidence 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.[4]

The Board finds that there is a conflict in the medical evidence between Dr. Sickler, who served as an Office referral physician, and Dr. Boike, appellant's attending chiropractor, regarding whether appellant had sustained a subluxation and has continuing residuals causally related to her March 21, 2001 injury. In a March 22, 2001 report, Dr. Boike obtained x-rays and diagnosed sacroiliac subluxation, lumbar strain, sprain and lumbosacral segmental somatic dysfunction, which he attributed to appellant's employment. Under the Federal Employees' Compensation Act a chiropractor may interpret his or her x-rays to the same extent as any other physician.[5] Based on this interpretation, the Office accepted spinal subluxation of the lumbar spine and sacroiliac. Chiropractic treatment by Dr. Boike was authorized.

In a June 19, 2001 report, Dr. Sickler reviewed Dr. Boike's x-rays and found they were of poor quality. He stated that an MRI scan of the lumbosacral spine revealed degenerative disc disease at L3, 4 and 5 and noted a large herniated lumbar disc at L5 on the left with a smaller one

[1] *Furman G. Peake*, 41 ECAB 361, 364 (1990).

[2] *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

[3] *Id.*

[4] *See Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

[5] 20 C.F.R. § 10.311(c).

at L4 on the left. Dr. Sickler stated that appellant's primary problem was that of a herniated lumbar disc at L5-S1 and that he could find no evidence of any spinal subluxation, either of the lumbosacral or sacroiliac regions.

In terminating appellant's authorization of chiropractic treatment, the Office relied on the reports of Dr. Sickler. The Board finds that the conflict in medical opinion was created between Dr. Boike and Dr. Sickler prior to the August 16, 2002 termination decision.[6] Therefore, the Office did not meet its burden of proof to terminate authorization of appellant's chiropractic treatment.

The decisions of the Office of Workers' Compensation Programs dated July 18, 2003 and August 16, 2002 are hereby reversed.

Dated, Washington, DC
March 24, 2004

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

[6] Section 8123(a) of the Act provides in pertinent part:

> "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination. When there are opposing reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a) of the Act, to resolve the conflict in the medical evidence."