

**United States Department of Labor  
Employees' Compensation Appeals Board**

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J.R., Appellant )  
and ) Docket No. 07-2355  
U.S. POSTAL SERVICE, POST OFFICE, ) Issued: April 2, 2008  
Brooklyn, NY, Employer )  
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)

*Appearances:*

*Appellant, pro se*

*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On September 725, 2007 appellant filed an appeal from decisions of the Office of Workers' Compensation Programs dated March 23 and August 23, 2007. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUES**

The issues are: (1) whether the Office properly determined that appellant was not entitled to reimbursement for chiropractic expenses; and (2) whether the Office met its burden of proof to terminate appellant's compensation benefits effective June 15, 2007.

**FACTUAL HISTORY**

On January 17, 2006 appellant, then a 38-year-old express mail clerk, filed a Form CA-2a, recurrence of disability claim, alleging disability due to a March 1, 1999 employment injury on November 7, 2005 when he injured his back picking up express mail. He stopped work that day and the employing establishment indicated that he had been working full duty since July 15, 2002. The Office adjudicated the claim as a new traumatic injury with an

Office file number 022518586.<sup>1</sup> On September 29, 2006 the Office accepted that appellant sustained a lumbar sprain and a lumbar (lower back) syndrome. He received wage-loss compensation beginning November 8, 2005.

In reports beginning September 19, 2005, Dr. Ilyce Maranga, a chiropractor, noted treating appellant for radiating back pain caused by his employment injuries of March 1, 1999 and November 7, 2005. She noted examination findings, diagnosed lumbosacral derangement with bilateral neuritis and provided restrictions to appellant's physical activity. By report dated January 17, 2007, Dr. Maranga noted physical findings of paraspinal tenderness and decreased range of motion. She diagnosed subluxation at L1 on L2 and L2 on L3 confirmed by x-ray dated July 5, 2006. The chiropractor advised that appellant was totally disabled for employment for six to eight weeks. A lumbar spine and pelvis x-ray dated July 5, 2006 was read by Dr. Mark Shapiro, a radiologist, as demonstrating moderate degenerative changes, most significant at L1, 2, 3 and mild scoliosis.

Dr. Scott T. Gray, an attending Board-certified orthopedic surgeon, submitted a report dated January 5, 2006. He noted the history of injury, findings on examination and diagnosed lower back syndrome, rule-out herniated disc. On December 21, 2006 he provided physical restrictions of no bending, squatting, pushing, pulling or lifting and advised that appellant was totally disabled due to chronic back pain. He recommended that appellant continue physical therapy.

By decision dated March 23, 2007, the Office found that chiropractic services were not authorized. Although, Dr. Maranga diagnosed subluxations by x-ray, she did not provide an explanation of the connection between the subluxations and appellant's November 7, 2005 employment injury.

On May 10, 2007 the Office referred appellant to Dr. Robert Israel, Board-certified in orthopedic surgery, for a second opinion evaluation. In a June 15, 2007 report, he reviewed the medical record, the history of injury, and appellant's complaints of low back symptoms. Examination of the lumbar spine demonstrated no spasms or tenderness over the paraspinal musculature. Sitting Lasegue's and sitting and supine straight leg raising tests were normal bilaterally. Spinal range of motion was normal, and bilateral patella and deep tendon reflexes were symmetric. Proprioception was normal with no sensory deficit on light touch and pinprick and no radiation of pain, numbness or tingling. Muscle strength in both lower extremities was 5/5, and no atrophy was present. Dr. Israel concluded that appellant had no objective findings, and his examination was entirely within normal limits. He diagnosed a resolved employment-related sprain of the lumbar spine and advised that appellant had no limitations and no further need for orthopedic treatment. In an attached work capacity evaluation, Dr. Israel advised that appellant had reached maximum medical improvement and could perform his usual job without restrictions.

By letter dated July 3, 2007, the Office proposed to terminate appellant's compensation benefits on the grounds that Dr. Israel found that the accepted medical condition had resolved.

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<sup>1</sup> The March 1, 1999 injury was adjudicated under Office file number 020755083 and on March 23, 2007 the claims were doubled.

In a decision dated November 8, 2006, the Office terminated appellant's compensation effective June 15, 2007.

### **LEGAL PRECEDENT -- ISSUE 1**

Section 8103(a) of the Federal Employees' Compensation Act<sup>2</sup> 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."<sup>3</sup> In interpreting this section 8103, the Board has recognized that the Office has broad discretion in approving services provided under the Act. The only limitation on the Office's authority is that of reasonableness.<sup>4</sup>

To be entitled to reimbursement of medical expenses, a claimant has the burden of establishing that the expenditures were incurred for treatment of the effects of an employment-related injury or condition.<sup>5</sup> Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.<sup>6</sup>

In assessing the probative value of chiropractic evidence, the initial question is whether the chiropractor is considered a physician under section 8101(2) of the Act. A chiropractor is not considered a physician under the Act unless it is established that there is a spinal subluxation as demonstrated by x-ray to exist.<sup>7</sup> 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.<sup>8</sup>

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.<sup>9</sup> 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

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> 5 U.S.C. § 8103; *see Sean O'Connell*, 56 ECAB 195 (2004).

<sup>4</sup> D.C., 58 ECAB \_\_\_\_ (Docket No. 06-2161, issued July 13, 2007).

<sup>5</sup> T.F., 58 ECAB \_\_\_\_ (Docket No. 06-1186, issued October 19, 2006).

<sup>6</sup> *Cathy B. Millin*, 51 ECAB 331 (2000).

<sup>7</sup> 5 U.S.C. § 8102(2); *see Mary A. Ceglia*, 55 ECAB 626 (2004).

<sup>8</sup> *Sean O'Connell*, *supra* note 3.

<sup>9</sup> *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

condition and the specific employment factors identified by the claimant.<sup>10</sup> Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>11</sup>

### **ANALYSIS -- ISSUE 1**

Appellant sustained injury on November 7, 2005, accepted by the Office for a lumbar sprain and lower back syndrome. He submitted reports beginning September 19, 2005 from Dr. Maranga, an attending chiropractor. In a January 17, 2007 report, Dr. Maranga diagnosed subluxation at L1 on L2 and L2 on L3 confirmed by x-ray films dated July 5, 2006. Based on her x-ray diagnosis, she meets the statutory definition of a physician under the Act,<sup>12</sup> and therefore her reports constitute medical evidence.<sup>13</sup> However, Dr. Maranga did not provide an opinion as to the cause of the diagnosed spinal subluxation.

The mere fact that a condition manifests itself during a period of employment or the claimant's belief that the condition was caused or aggravated by employment conditions is insufficient to establish a causal relationship.<sup>14</sup> Dr. Maranga provided no opinion that appellant's diagnosed spinal subluxations were due to the November 7, 2005 injury. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>15</sup> Appellant did not submit a reasoned medical opinion explaining how the diagnosed spinal subluxations were caused by his employment. He has not established that he is entitled to reimbursement for chiropractic care.<sup>16</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits. The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.<sup>17</sup> The Office's burden of proof in terminating compensation includes the necessity

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<sup>10</sup> *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

<sup>11</sup> *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

<sup>12</sup> A chiropractor may interpret his or her x-rays to the same extent as any other physician. The Office will not necessarily require the submittal of the x-ray or x-ray report, but it must be made available for submittal on request. 20 C.F.R. § 10.311(c).

<sup>13</sup> *Id.*

<sup>14</sup> *Dennis M. Mascarenas*, *supra* note 11.

<sup>15</sup> *Willie M. Miller*, 53 ECAB 697 (2002).

<sup>16</sup> *T.F.*, *supra* note 5.

<sup>17</sup> *Jaja K. Asaramo*, 55 ECAB 200 (2004).

of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>18</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits effective June 15, 2007. The accepted conditions in this case are lumbar sprain and lower back syndrome. In a December 21, 2006 report, Dr. Grant provided restrictions to appellant's physical activity and advised that he was totally disabled due to chronic back pain. However, he did not provide a rationalized explanation as to how appellant's disability was due to the accepted lumbar injuries. In a January 17, 2007 report, Dr. Maranga also advised that appellant was totally disabled, but she too provided no rationale for her conclusion.

The weight of the medical evidence rests with the opinion of Dr. Israel who performed a second opinion evaluation for the Office. In a June 15, 2007 report, Dr. Israel noted his review of the medical record, the history of injury, and provided findings on physical examination. He noted no spasms or tenderness over the lumbar spine, negative straight leg raising, normal range of motion and no atrophy. Dr. Israel advised that the examination was entirely within normal limits. He diagnosed an employment-related sprain of the lumbar spine that had resolved and advised that appellant had no limitations, no further need for orthopedic treatment, and that he could perform his usual job without any physical restrictions.

Whether a particular injury causes an employee to be disabled for work and the duration of that disability, are medical issues that must be proved by a preponderance of the reliable, probative and substantial medical evidence.<sup>19</sup> In assessing medical evidence, the number of physicians supporting one position or another is not controlling; the weight of such evidence is determined by its reliability, its probative value and its convincing quality. The factors that comprise the evaluation of medical evidence include the opportunity for and the thoroughness of physical examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>20</sup> Neither Dr. Grant nor Dr. Maranga specifically addressed the cause of their diagnosed conditions or related the conditions to appellant's employment injuries or provided adequate explanation as to why appellant remained totally disabled. Their reports are of diminished probative value.<sup>21</sup> The Office met its burden of proof in terminating appellant's compensation benefits based on the medical opinion of Dr. Israel.<sup>22</sup>

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<sup>18</sup> *Id.*

<sup>19</sup> *Tammy L. Medley*, 55 ECAB 183 (2003).

<sup>20</sup> *Nicolette R. Kelstrom*, 54 ECAB 570 (2003).

<sup>21</sup> *Robert Broome*, 55 ECAB 389 (2003).

<sup>22</sup> *Jaja K. Asaramo*, *supra* note 17.

## **CONCLUSION**

The Board finds that appellant is not entitled to reimbursement for chiropractic treatment. The Office met its burden of proof to terminate appellant's compensation benefits effective June 15, 2007.<sup>23</sup>

## **ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated August 23 and March 23, 2007 are affirmed.

Issued: April 2, 2008  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>23</sup> The Board notes that appellant submitted evidence to the Office, found in Office file number 020755083, subsequent to the August 23, 2007 decision, and with his appeal to the Board. The Board cannot consider this evidence, however, as its review of the case is limited to the evidence of record which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c). Appellant retains the right to request reconsideration with the Office.