

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

R.S., Appellant)
and) Docket No. 11-355
U.S. POSTAL SERVICE, POST OFFICE,) Issued: May 25, 2011
Merrick, NY, Employer)

)

Appearances:
Appellant, *pro se*
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

On November 30, 2010 appellant filed an application for review of a June 1, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP). She also timely requested an oral argument in the matter and submitted arguments she believed merited consideration by the Board. The appeal was docketed as No. 11-355.

In its June 1, 2010 decision, OWCP modified an October 28, 2009 decision to reflect that the medical evidence did not establish the accepted lifting incident caused a medical condition. It found that Dr. Thomas Dow, a chiropractor, was not a physician under the Federal Employee's Compensation Act (FECA)¹ because the x-rays taken at the hospital on August 6, 2009, the date of injury, did not indicate a subluxation of the spine. Appellant appealed to the Board asserting that she saw Dr. Dow the day after she was injured and he took x-rays and diagnosed spinal conditions.

Consistent with appellant's assertions on appeal, the record reflects that Dr. Dow's September 25, 2009 report noted x-ray findings taken August 7, 2009 that showed L5 and L4 subluxation with probable L4 and L5 disc herniation. Dr. Dow opined that appellant's condition was employment related. He also provided an August 7, 2009 x-ray report in which he found

¹ 5 U.S.C. § 8101 *et seq.*

lumbar subluxation. OWCP regulations provide that a chiropractor may interpret his own x-rays to the same extent as any other physician and do not require that an x-ray film or x-ray report be submitted. Instead, the regulations provide that the x-ray or a report of the x-ray be made available for submittal upon request.² As Dr. Dow diagnosed a spinal subluxation based on a review of x-rays, he is a physician under FECA.³ Since OWCP erroneously found Dr. Dow was not a physician under section 8101(2) of FECA, the case must be remanded for OWCP to properly consider the evidence submitted by Dr. Dow.⁴ After such further development as OWCP deems necessary, it should issue an appropriate merit decision.

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated June 1, 2010 is set aside and the case remanded to OWCP for further action consistent with this order of the Board.

Issued: May 25, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

² See 20 C.F.R. § 10.311(c).

³ The term physician includes 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. 5 U.S.C. § 8101(2); *see also Paul Foster*, 56 ECAB 208 (2004); D.S., Docket No. 09-860 (issued November 2, 2009).

⁴ In light of the disposition of this matter, it is not necessary to hold oral argument.