

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

_____)	
D.J., Appellant)	
)	
and)	Docket No. 19-1494
)	Issued: March 11, 2020
U.S. POSTAL SERVICE, POST OFFICE,)	
St. Louis, MO, Employer)	
_____)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On July 2, 2019 appellant, through counsel, filed a timely appeal from a March 21, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the March 21, 2019 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether OWCP abused its discretion in denying appellant's request for authorization of chiropractic treatment for the period January 26 through July 23, 2018.

FACTUAL HISTORY

On April 24, 2017 appellant, then a 21-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on April 14, 2017 he injured his lower back when retrieving a package from the rear of his postal vehicle while in the performance of duty. He stopped work on April 18, 2017 and returned to work on April 24, 2017. OWCP assigned the claim File No. xxxxxxx508,⁴ and accepted it for a lumbar strain.

On May 31, 2017 Dr. Galeano Gustavo, a family medicine specialist, released appellant to full-duty work on May 31, 2017. He related that appellant's lumbosacral spine examination was relatively normal with normal sensation, normal reflexes with normal lordosis, no tenderness, full range of motion, and negative straight leg raise bilaterally.

On or about June 2, 2017 appellant had a nonwork-related slip and fall at a gas station. He was diagnosed with lumbar strain.⁵ A September 15, 2017 magnetic resonance imaging (MRI) scan of the lumbar spine revealed no fracture, subluxation, or focal disc herniation in the lumbar spine.

On January 26, 2018 appellant sought care from Dr. Darrell B. Carroll, a chiropractor, who diagnosed lumbar sprain, left side lumbago with sciatica, radiculopathy of the thoracic and lumbar regions, and muscle spasm of the back. A history of the April 14, 2017 employment injury was provided. Dr. Carroll noted that appellant's straight leg raise test was positive on the left and noted several subluxations. Appellant received chiropractic treatment from Dr. Carroll until July 23, 2018. In his progress notes, Dr. Carroll noted subluxation of the lumbar and thoracic segments; however, he did not relate that his subluxation diagnoses were based on x-ray evidence.

Under OWCP File No. xxxxxxx885, appellant filed a traumatic injury claim (Form CA-1) for a back injury, which occurred on July 24, 2018 when closing a freight elevator while in the performance of duty. OWCP accepted the claim for strain of a muscle, fascia, and tendon of the lower back, strain of ligaments of the lumbar spine, and a strain of unspecified muscle, fascia, and tendon of the left shoulder and upper arm.

In an August 10, 2018 letter, OWCP advised appellant that the evidence submitted was insufficient to authorize chiropractic treatment for the period January 26 through July 23, 2018 for the accepted work-related conditions. It advised appellant of the criteria for authorization of

⁴ OWCP File No. xxxxxxx367, with a date of injury of April 17, 2017, was administratively closed as OWCP determined that it was for the same injury as the present claim, assigned File No. xxxxxxx508. All documents from File No. xxxxxxx367 were moved into the current case file.

⁵ Under OWCP File No. xxxxxxx948, appellant filed a claim for a July 8, 2017 traumatic injury when his back allegedly tightened up while carrying mail in the performance of duty. OWCP denied the claim as the factual component of fact of injury had not been established.

chiropractic treatment under FECA and requested additional medical information. Appellant was afforded 30 days to submit the necessary evidence.

By decision dated September 21, 2018, OWCP denied authorization for chiropractic treatment for the period January 26 through July 23, 2018. It noted that, while Dr. Carroll had described subluxation at various levels of the spine, he did not demonstrate subluxation of the spine based upon x-ray evidence.

On September 28, 2018 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. During the January 22, 2019 telephonic hearing, he testified that he sought chiropractic treatment for the 2017 employment injury and that manipulation had been performed. Appellant also testified that he had not been referred by an orthopedic doctor for the chiropractic treatment.

By decision dated March 21, 2019, OWCP's hearing representative affirmed the September 21, 2018 denial of authorization of chiropractic treatment for the period January 26 through July 23, 2018. The hearing representative reviewed the evidence in appellant's claims pertaining to the lumbar spine condition and was unable to find any diagnostic studies, which indicated a subluxation diagnosis based upon x-ray evidence or any evidence that appellant was referred for chiropractic treatment by a physician.

LEGAL PRECEDENT

Section 8103(a) of FECA⁶ 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 by or recommended by a qualified physician, which OWCP considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation.⁷ In interpreting this section of FECA, the Board has recognized that OWCP has broad discretion in determining whether a particular type of treatment is likely to cure or give relief.⁸ The only limitation on OWCP's authority is that of reasonableness.⁹

Under section 8101(2) of FECA, chiropractors are only considered physicians to the extent that they treat spinal subluxations as demonstrated by x-ray to exist.¹⁰ OWCP's regulation relates that reimbursable chiropractic services are limited to physical examinations (and related laboratory tests), x-rays performed to diagnose a subluxation of the spine, and treatment consisting of manual manipulation of the spine to correct a subluxation.¹¹

⁶ See *supra* note 2.

⁷ 5 U.S.C. § 8103; see *Thomas W. Stevens*, 50 ECAB 288 (1999).

⁸ *R.C.*, Docket No. 18-0612 (issued October 19, 2018); *W.T.*, Docket No. 08-0812 (issued April 3, 2009).

⁹ *D.C.*, Docket No. 18-0080 (issued May 22, 2018); *Mira R. Adams*, 48 ECAB 504 (1997).

¹⁰ 5 U.S.C. § 8101(2). See *A.D.*, Docket No. 18-1478 (issued February 4, 2019).

¹¹ 20 C.F.R. § 10.5(o).

OWCP's implementing regulations provide exceptions to the general rule that services rendered by a chiropractor are not payable when they do not consist of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist. These exceptions are for physical therapy rendered by a chiropractor under the direction of an authorized physician and for chiropractic treatment authorized without limitations by OWCP or the employing establishment.¹²

ANALYSIS

The Board finds that OWCP did not abuse its discretion in denying appellant's request for authorization of chiropractic treatment for the period January 26 through July 23, 2018.

The evidence of record, including evidence from appellant's claims concerning his lumbar spine, is devoid of a subluxation diagnosis based upon x-ray evidence or any evidence that appellant was referred for chiropractic therapy treatment by a physician for treatment of his accepted employment injuries. The record contains reports from Dr. Carroll, a chiropractor, who provided spinal manipulation of multiple subluxations during the period in question. However, Dr. Carroll did not provide explanation in any of his progress notes that a subluxation had been diagnosed based upon x-ray evidence. As chiropractic treatment can only be reimbursed for manual manipulation of subluxation based upon x-ray evidence, Dr. Carroll's chiropractic treatment is not reimbursable.¹³

Furthermore, appellant has not established that his chiropractic care should be authorized as he was referred for chiropractic care by a physician. Appellant has in fact testified that he was not referred to Dr. Carroll for chiropractic treatment. The evidence of record also does not establish that chiropractic care has otherwise been authorized by OWCP or the employing establishment.¹⁴

On appeal counsel asserts that OWCP's decision is contrary to law and fact. As explained above, the Board finds that OWCP did not abuse its discretion by denying authorization of chiropractic treatment for the period in question.¹⁵

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that OWCP did not abuse its discretion in denying appellant's request for authorization of chiropractic treatment for the period January 26 through July 23, 2018.

¹² *Id.* at § 10.311(d); *see W.D.*, Docket No. 12-0968 (issued November 2, 2012).

¹³ *Supra* note 11.

¹⁴ *Supra* note 12.

¹⁵ *Supra* notes 11 and 12.

ORDER

IT IS HEREBY ORDERED THAT the March 21, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 11, 2020
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board