

BRB No. 08-0773A

N.T.)
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 Claimant-Petitioner)
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 v.)
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 NEWPORT NEWS SHIPBUILDING) DATE ISSUED: 05/27/2009
 AND DRY DOCK COMPANY)
)
 Self-Insured)
 Employer-Respondent) DECISION and ORDER

Appeal of the Decision and Order Denying the Employer's Motion for Summary Decision; Decision and Order Approving Payment of Chiropractic Treatment Consisting of Spinal Manipulation of Richard K. Malamphy, Administrative Law Judge, United States Department of Labor.

Robert E. Walsh (Rutter Mills, L.L.P.), Norfolk, Virginia, for claimant.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying the Employer's Motion for Summary Decision; Decision and Order Approving Payment of Chiropractic Treatment Consisting of Spinal Manipulation (2008-LHC-00255) of Administrative Law Judge Richard K. Malamphy rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (the Act). We must affirm the administrative law judge's findings of fact and conclusions of law if they are supported by substantial evidence, are rational, and are in accordance with law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant sustained a work-related spinal impairment which, in turn, has given rise to a claim for medical benefits under the Act. Claimant's treating physician, Dr. Morales, referred claimant to Dr. Georgalas, a chiropractor, who treated claimant on six occasions between October 5 and November 2, 2006. Employer subsequently denied liability for

Dr. Georgalas's medical charges, and claimant filed a claim for these medical benefits. Employer thereafter filed a motion for summary decision, to which claimant responded, and the parties agreed before the administrative law judge that the case could be adjudicated pursuant to their respective filings and the attached deposition of Dr. Georgalas.

On employer's motion for summary decision, the administrative law judge found that a subluxation had been diagnosed, but relied on the Board's decision in *Bang v. Ingalls Shipbuilding, Inc.*, 32 BRBS 183 (1998), to conclude that the treatment provided by Dr. Georgalas was reimbursable by employer only to the extent that it involved spinal manipulation for the treatment of the subluxation.

Employer and claimant both appealed the administrative law judge's Decision and Order. The Board, by Order dated April 9, 2009, granted employer's motion to withdraw its appeal. BRB No. 08-0773. Employer has not responded to claimant's appeal. BRB No. 08-0773A.

In his appeal, claimant contends that the administrative law judge erred in denying claimant reimbursement for the other therapies provided by Dr. Georgalas in order to properly treat claimant's spinal subluxation. We agree and, for the reasons that follow, hold that treatment necessary for spinal manipulation to treat a subluxation is compensable.

Section 7(a) of the Act provides that an employer is liable for medical care and treatment related to the work injury. 33 U.S.C. §907(a). Section 702.404 of the Act's regulations, 20 C.F.R. §702.404, states:

The term physician includes . . . chiropractors. . . . The term 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 shown by X-ray or clinical findings.

In this case, it is uncontroverted that Dr. Georgalas is a chiropractor who provided treatment to claimant between October 5 and November 2, 2006, for a subluxation of the spine.¹ She is therefore a physician under Section 702.404, and employer is liable for reasonable treatment provided or prescribed by her as necessary for her spinal manipulations to treat claimant's subluxation. Based on claimant's diagnosed

¹ On September 29, 2006, Dr. Morales referred claimant to Dr. Georgalas for six weeks of intermittent chiropractic treatment.

subluxation, the administrative law judge erred in relying on the Board's holding in *Bang*, 32 BRBS 183, which denied benefits for biofeedback and physical therapy provided by a chiropractor to a claimant *who did not have a subluxation*. As claimant in the present case was being treated for a subluxation, *Bang* is distinguishable and does not control the result here.

Section 702.401(a), 20 C.F.R. §702.401(a), provides a broad definition of covered "medical care" under which treatment, including physical therapy, may be compensable. Specifically, Section 702.401(a) states:

Medical care shall include medical, surgical, and other attendance or treatment . . . and any other medical service or supply . . . which is recognized as appropriate by the medical profession for the care and treatment of the injury or disease.

20 C.F.R. §702.401(a). Under this section, a variety of services and equipment prescribed for the treatment of claimant's condition including, for example, biofeedback therapy have been held compensable. *See Barbour v. Woodward & Lothrop, Inc.*, 16 BRBS 300 (1984). The only difference where such care is prescribed by a chiropractor is that it must be related to the chiropractic manipulation to treat a demonstrated subluxation.

In this case, in addressing employer's liability for the medical charges associated with the services performed by Dr. Georgalas, the administrative law judge found that appropriate treatment was rendered to claimant. Nonetheless, he concluded that Dr. Georgalas was limited to payment by employer for only her actual spinal manipulations for the treatment of claimant's subluxation, and not for any other provided treatment. Decision and Order at 5–6. In so concluding, he erred in relying solely on the Board's decision in *Bang*, which as we have stated is inapplicable on its facts, rather than addressing whether the treatment was necessary for the spinal manipulations to correct claimant's subluxation.

Dr. Georgalas treated claimant on six occasions between October 5 and November 2, 2006. Georgalas Dep. at 8–10. Dr. Georgalas testified that her treatment of claimant involved physical therapy as well as chiropractic manipulation; specifically, Dr. Georgalas stated that claimant was given spinal manipulation and hot packs, electrical muscle stimulation and intersegmental traction. *Id.* at 6. Regarding the necessity of the other therapies provided, Dr. Georgalas testified:

Q: You provided other treatment that was sort of adjunctive to the spinal manipulation?

A: That is correct.

Q: That being what?

A: Electrical muscle stimulation, electrical muscle stimulation as a form of physical therapy that relaxes the muscles. Heat pack, which also helps to relax the muscles. And the reason why is because the man is very, very tight. His muscles are very tight, and in order to adjust the spine we have to relax the muscles so we can get the movement of the vertebra, and also intersegmental traction to help traction the area above where he had surgery so we can get the movement that we also need – all of which is a form of physical therapy.

Id. at 18–19. Dr. Georgalas was also asked the following:

Q: Would the treatment you were asked to provide by Dr. Morales have been affective [sic] – specifically the spinal manipulations – if you had not along with it administered the therapeutic modalities you described like the intersegmental traction and the muscle stimulation?

A: It all works together. It all works together.

Q: If you had been – if you had been told in advance that the only thing you could do was spinal manipulation – you could not do muscle stimulation or intersegmental traction – what would have been your response? Would you be willing to do just the spinal manipulation without the other modalities?

A: Many times I do the other modalities and I write it off because the patient needs it.

Q: So the answer to my question being –

A: Yes, I do it . . . because without it the patient doesn't get the benefits. He doesn't get well.

Q: So can I take it your answer is you wouldn't just do the manipulations. . . .

A: Spinal manipulation by itself when you have a muscle spasm is not that beneficial. You have to relax the muscle.

Q: Okay.

A: And you need the other modalities to relax the muscle.

Id. at 19–20.

Dr. Georgalas’s deposition testimony is the only evidence as to whether the other therapies were necessary for her spinal manipulation. This uncontradicted evidence establishes that in order for a patient like claimant with a subluxation of the spine to benefit from spinal manipulation, it is necessary to relax the patient’s muscles; Dr. Georgalas stated that she would not perform the manipulation without also providing this therapy. Specifically, with regard to claimant, Dr. Georgalas explained that his muscles were very tight and the therapy was necessary to relax them so that his spine could be adjusted. The testimony of Dr. Georgalas thus establishes that the physical therapy she provided was necessary and integral to the manual manipulation of claimant’s spine in order to treat his subluxation. Based on these uncontradicted facts, as the totality of Dr. Georgalas’s services were reasonable and necessary for the manual manipulation of claimant’s spine to treat a subluxation, employer is liable for these services.² The administrative law judge’s decision denying reimbursement for services other than the actual spinal manipulation is reversed, and the decision is modified to hold employer liable for all treatment related to and necessitated by the manual manipulation of claimant’s spine to treat his diagnosed subluxation.

² In support of his position on appeal, claimant cites *Voytovich v. C & C Marine Maint. Co.*, 39 BRBS 63(ALJ) (2005), where an administrative law judge held employer liable for the totality of services related to the treatment of claimant’s spinal subluxation, including manual manipulation, an office visit, and electrical muscle stimulation. While this opinion is not binding on the Board, the administrative law judge properly observed in that case that to deny the recovery of medical charges necessary for a covered procedure such as spinal manipulation would be akin to permitting reimbursement for tooth extraction, but not Novocain injections.

Accordingly, the administrative law judge's Decision and Order is modified to provide that employer is liable for the treatment, including physical therapy, provided by Dr. Georgalas.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge