

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN F. ERJAVEC and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS HOSPITAL, Cleveland, Ohio

*Docket No. 96-1640; Submitted on the Record;
Issued June 29, 1998*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs abused its discretion in terminating appellant's authorization for continuing physical therapy.

The Board has duly reviewed the case on appeal and finds that the Office abused its discretion in terminating appellant's authorization for continuing physical therapy.

Appellant injured his back in the performance of duty on March 29, 1981. The Office accepted appellant's claim for lumbosacral myofascitis and permanent aggravation of preexisting degenerative arthritis. By decision dated January 1996 and finalized February 7, 1996, the Office terminated appellant's authorization for continuing physical therapy.

Section 8103 of the Federal Employees' Compensation Act¹ provides that the Office shall provide a claimant with the services, appliances, and supplies prescribed or recommended by a qualified physician which are likely to cure, give relief, reduce the degree or period of disability, or aid in lessening the amount of monthly compensation. In interpreting section 8103, the Board has recognized that the Office has broad discretion in approving services provided under the Act. The Office has the general objective of ensuring that an employee recovers from his injury to the fullest extent possible in the shortest amount of time. The Office therefore has broad administrative discretion in choosing means to achieve this goal. The only limitation on the Office's authority is that of reasonableness.² Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are

¹ 5 U.S.C. §§ 8101-8193, 8103.

² *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

contrary to both logic and probable deductions from established facts. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.³

The Office relied upon reports from appellant's attending physician, Dr. Louis Maggiore, an internist, in reaching its decision. In a report dated February 8, 1994, Dr. Maggiore stated that appellant had been receiving treatment once a week for his accepted back injury. He stated, "[T]his therapy is the sole contributor in maximizing [appellant's] functional capacity because he simply cannot tolerate any additional medications." Dr. Maggiore also stated, "I will clearly state that I do not believe continuing his therapy will promote a recovery of either his back or ankle injuries." Dr. Maggiore completed a report on August 10, 1995 and stated that appellant received enormous benefit from the continuing physical therapy. He stated, "The problem is, of course, that it is not a sustaining or curative type of therapy."

The Office asked that an Office medical adviser determine whether the physical therapy was a medical necessity. In a report dated October 30, 1995, the Office medical adviser stated that although the physical therapy was beneficial to appellant it was not related to the accepted condition.

The Office found that there has been no significant function improvement and that no improvement was expected from further physical therapy. The Office terminated authorization for further physical therapy to give relief from appellant's employment-related injuries. Thus, the question to be decided is whether the Office abused its discretion in denying further physical therapy.

The Office medical adviser stated that physical therapy was beneficial to appellant.⁴ The reports from Dr. Maggiore clearly establish that he believes that physical therapy reduces appellant's constant discomfort. Therefore, the established medical facts of record establish that physical therapy benefited appellant and there is no evidence or inference to the contrary.

The Board finds that there is no medical evidence upon which the Office could reasonably base its determination that physical therapy was not appropriate treatment. Instead the Office based its determination on the lack of functional improvement achieved or expected as a result of this treatment. Functional improvement, *i.e.*, the ability to cure or reduce the period of disability, is not the only standard by which medical treatment is approved or denied under the Act. The Office must also consider whether the treatment will give relief. In this case, all of the medical evidence of record establishes that physical therapy will give relief of appellant's accepted employment injuries. Therefore, the Board finds that the Office abused its discretion by terminating authorization for physical therapy.

The decision of the Office of Workers' Compensation Programs dated February 7, 1996 is hereby reversed.

³ *Id.*

⁴ Although he opined that the physical therapy was not related to appellant's accepted employment injuries, the Office medical adviser offered no medical rationale in support of his conclusion and the Office did not rely on this assertion in terminating authorization.

Dated, Washington, D.C.
June 29, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member