United States Department of Labor
Employees' Compensation Appeals Board

W.S., Appellant	)	
and	)	**Docket No. 13-1169**
	)	**Issued: April 18, 2014**
U.S. POSTAL SERVICE, POST OFFICE, Tampa, FL, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

JURISDICTION

On April 17, 2013 appellant filed a timely appeal from a February 6, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP), denying his authorization for physical therapy treatment. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether OWCP abused its discretion by denying authorization for physical therapy treatment for the period November 30, 2012 to March 30, 2013.

FACTUAL HISTORY

On October 15, 1984 appellant, then a 33-year-old letter sorting machine operator, began working for the employing establishment. On that same date he experienced pain in his back

[1] 5 U.S.C. § 8101 *et seq.*

with radiation to his right knee as a result of sliding a tray of mail out of a rack. OWCP accepted the claim for lumbosacral strain.

On March 17, 1986 appellant experienced back pain while lifting a sack of mail off a rack at work. OWCP accepted the claim for right sacroiliac strain and herniated nucleus pulposus at L5-S1. On August 26, 1986 appellant underwent laminectomy of L5-S1, bilateral foraminotomies L5-S1 and excision of L5-S1 disc.

On September 3, 1987 appellant experienced back symptoms while bending and throwing bundles at work. OWCP accepted the claim for protruded disc at L4-5.

In January 1989, appellant underwent excision of herniated disc and foraminotomy at L4-5. On September 11, 1995 he underwent a decompressive lumbar laminectomy at L5-S1. On July 13, 2004 appellant underwent decompressive lumbar laminectomy at L3, L4 and L5, discectomy at L3-4 and L3-5 fusion with instrumentation and grafting. On May 12, 2006 Dr. Jorge J. Inga, a Board-certified neurological surgeon, released appellant to work with restrictions.

On June 25, 2006 Dr. Walter E. Afield, a Board-certified psychiatrist, reported that appellant was totally disabled and unable to return to work due to acute depression and anxiety. On July 21, 2006 OWCP accepted appellant's claim for acute situational reaction to stress with depression.

On May 9, 2007 Dr. Inga stated that appellant was permanently disabled and unable to engage in any type of employment. Appellant stopped work in February 2006 and did not return.

On June 23, 2009 appellant was referred to Dr. Ponnavolu D. Reddy, a Board-certified orthopedic surgeon, for a second opinion evaluation. Dr. Reddy reported that appellant appeared to have postlaminectomy syndrome, spinal stenosis of the lumbar spine postspinal fusion and cervical spondylosis. He stated that none of appellant's work-related conditions had resolved and that appellant remained totally disabled with lumbar and cervical stiffness. Dr. Reddy stated that appellant's prolonged disability and disabling symptoms were due to postoperative changes in the lumbar spine resulting in chronic nerve irritation which caused appellant pain. He further noted cervical spine arthritis which caused him pain and limited activity. Dr. Reddy stated that there were no subjective complaints that did not correspond with objective findings. He concluded that appellant was totally disabled and could not return to work. Dr. Reddy recommended home therapy once a month.

Appellant underwent various forms of physical therapy treatments, which were approved by OWCP. Most recently, OWCP approved his physical therapy requests for the period April 12, 2011 through November 30, 2012.

On November 23, 2012 Dr. Inga requested that OWCP authorize treatment for neuromuscular reeducation, massage therapy, therapeutic activities and self-care management training for the period November 30, 2012 to March 30, 2013. He indicated that the requested therapy was to treat the lumbosacral spine in order to reduce pain, improve circulation and increase range of motion as appellant's condition was permanent.

OWCP wrote to Dr. Inga by letter dated November 30, 2012 stating that it had recently authorized physical therapy services for the period July 31 to November 30, 2012 and received a request for neuromuscular reeducation, massage therapy, therapeutic activities and self-care management training for the period December 1, 2012 to March 30, 2013. It informed Dr. Inga that, because appellant was more than eight years postoperative, the therapy requested appeared excessive and further medical information was required before authorization for these services was granted. OWCP requested additional information, including the diagnosis for which physical therapy would be administered, specific functional deficits which were to be treated, how it affected appellant's physical activities, functional goals of the additional therapy, expected duration and frequency of treatment and the appropriateness of home exercise verses supervised physical therapy.

By letter dated December 12, 2012, Dr. Inga responded to OWCP's request stating that appellant suffered from degenerated bulging disc at L2-3, bulging disc at T12-L1, bulging disc and status post lumbar laminectomies, discectomies and fusion with spinal instrumentation at L3-4, L4-5 and L5-S1. He noted that appellant continued to have lumbar pain which was exacerbated by prolonged sitting, radiation going down into the sacroiliac joints on both sides and radiation going over the anterior aspect of the right thigh down to the knee. On examination appellant had tenderness in the paraspinal muscles of the lumbar region with reflex spasm and restrictions to range of motion of the lumbar spine. Dr. Inga stated that the specific functional goals of physical therapy were to improve appellant's persistent residual lumbar symptomatology. He noted that, after receiving therapy, appellant had significant relief of part of his symptomatology.

Appellant currently received physical therapy two times a week for 12 weeks at a time. Dr. Inga recommended that appellant continue with this mode of treatment for two to three times a year since it provided significant relief of his symptoms following these therapy sessions. He noted that physical therapy included heat packs, massage, ultrasound to the lumbar spine and strengthening exercises to both lower extremities. Dr. Inga further noted that appellant should continue with this physical therapy program for the next 12 weeks because of relief to his present residual lumbar symptoms and also be instructed on a home exercise program for strengthening exercises to both lower extremities.

In a December 18, 2012 medical report, Dr. Afield reported that he reviewed OWCP's November 30, 2012 letter and Dr. Inga's December 12, 2012 report. He noted that appellant suffered from bulging discs and had lumbar laminectomies, discectomies and fusion with spinal instrumentation at L3-4, L4-5 and L5-S1. Dr. Afield reported that appellant's failed back syndrome and surgery had done nothing to improve his condition as he continued to have pain which was exacerbated by prolonged sitting. Appellant was most recently provided with a zero gravity chair by OWCP, which allowed him to sit for longer periods of time. Dr. Afield noted Dr. Inga's findings and reported that he reached the same conclusions upon physical examination. He further stated that the goal of therapy was to improve appellant's persistent residual lumbar symptomology, namely to help him with his failed back, which was never going to improve and could get worse. The therapy appellant had received provided him with significant relief of some of his residual lumbar symptoms. Dr. Afield concluded that he agreed with Dr. Inga's report and recommendation for therapy, noting that massage therapy was probably the best form of physical therapy for treatment of appellant's symptoms.

On January 28, 2013 OWCP referred the case to a district medical adviser (DMA) to determine whether further medical treatment, specifically physical therapy, was necessary. It noted that appellant's accepted conditions included herniated nucleus pulposus (HNP) L5-S1, lumbar disc disorder and acute situational reaction to stress with depression. OWCP stated that it had previously authorized an extended period of therapy from April 12, 2011 through November 30, 2012 and received a request for additional therapy for muscular reeducation, massage therapy, therapeutic activities and self-care management training for the period November 30, 2012 to March 30, 2013. It requested that the DMA provide a response as to whether the physical therapy request was appropriate and warranted for treatment of the accepted conditions.

In a January 29, 2013 note, the DMA reported that appellant had been receiving physical therapy and massage therapy for a prolonged period which had not resulted in a significant improvement of his condition. Thus, the DMA opined that nothing would be gained by continuing this treatment.

By decision dated February 6, 2013, OWCP denied appellant's request for continued physical therapy treatments finding that the medical evidence of record failed to establish that such additional treatment was reasonable and medically necessary for his accepted work injury. It noted that OWCP had already approved what was allowable under its program for extended therapy in the treatment of his accepted conditions and it had not been demonstrated how the continued therapies would improve his conditions.

LEGAL PRECEDENT

Section 8103(a) of FECA provides for the furnishing of services, appliances and supplies prescribed or recommended by a qualified physician which OWCP, under authority delegated by the Secretary, considers likely to cure, give relief, reduce the degree or the period of disability or aid in lessening the amount of monthly compensation.[2] In interpreting the section 8103(a), the Board has recognized that OWCP has broad discretion in approving services provided under FECA to ensure that an employee recovers from his or her injury to the fullest extent possible in the shortest amount of time.[3] OWCP has administrative discretion in choosing the means to achieve this goal and the only limitation on OWCP's authority is that of reasonableness.[4] Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are 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.[5]

While OWCP is obligated to pay for treatment of employment-related conditions, appellant has the burden of establishing that the expenditure is incurred for treatment of the

[2] 5 U.S.C. § 8103; *see Thomas W. Stevens*, 50 ECAB 288 (1999).

[3] *W.T.*, Docket No. 08-812 (issued April 3, 2009); *A.O.*, Docket No. 08-580 (issued January 28, 2009).

[4] *D.C.*, 58 ECAB 629 (2007); *Mira R. Adams*, 48 ECAB 504 (1997).

[5] *L.W.*, 59 ECAB (2008); *P.P.*, 58 ECAB 673 (2007); *Daniel J. Perea*, 42 ECAB 214 (1990).

effects of an employment-related injury or condition.[6] Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.[7] Therefore, in order to prove that the physical therapy is warranted, appellant must submit evidence to show that the procedure was for a condition causally related to the employment injury and that the treatment was medically warranted.[8]

ANALYSIS

The Board finds that this case is not in posture for decision.

On November 23, 2012 Dr. Inga requested that OWCP authorize treatment for neuromuscular reeducation, massage therapy, therapeutic activities and self-care management training for the period November 30, 2012 to March 30, 2013. He indicated that the requested therapy was to treat the lumbosacral spine in order to reduce pain, improve circulation and increase range of motion as appellant's condition was permanent.

In a detailed letter dated November 30, 2012, OWCP requested that Dr. Inga provide additional information regarding the need for physical therapy treatments including how it affected appellant's physical activities and the functional goals of the additional therapy.

In a December 12, 2012 report, Dr. Inga responded to OWCP's request stating that appellant suffered from degenerated bulging disc at L2-3, bulging disc at T12-L1, bulging disc and status post lumbar laminectomies, discectomies and fusion with spinal instrumentation at L3-4, L4-5 and L5-S1. He noted that appellant continued to have lumbar pain and radiation into the sacroiliac joints and the anterior aspect of the right thigh down to the knee. Upon physical examination, appellant had tenderness in the paraspinal muscles of the lumbar region with reflex spasm and restrictions to the range of motion of the lumbar spine. Dr. Inga stated that the specific functional goal of physical therapy was to improve appellant's persistent residual lumbar symptomatology. He noted that, after receiving therapy, appellant had significant relief of part of his symptomatology.

In a December 18, 2012 medical report, Dr. Afield agreed with Dr. Inga's findings. He further noted that the goal of therapy was to improve appellant's persistent residual lumbar symptomology, namely to help him with his failed back, which was never going to improve and could get worse. Dr. Afield stated that the therapy appellant had received provided him with significant relief of some of his residual lumbar symptoms.

OWCP referred the case to a DMA to determine whether appellant required further physical therapy treatment for his accepted conditions of HNP L5-S1, lumbar disc disorder and acute situation reaction to stress with depression. It noted that it had previously authorized an extended period of therapy from April 12, 2011 through November 30, 2012 and received a

[6] *See Dona M. Mahurin*, 54 ECAB 309 (2003); *see also Debra S. King*, 44 ECAB 203, 209 (1992).

[7] *See Debra S. King*, *id*.; *Bertha L. Arnold*, 38 ECAB 282 (1986).

[8] *See Dona M. Mahurin*, *supra* note 6; *see also Cathy B. Millin*, 51 ECAB 331, 333 (2000).

request for additional therapy for muscular reeducation, massage therapy, therapeutic activities and self-care management training for the period November 30, 2012 to March 30, 2013.

In a January 29, 2013 report, the DMA reported that appellant had been receiving physical therapy and massage therapy for a prolonged period which had not resulted in a significant improvement in his condition. Thus, the DMA opined that nothing would be gained by continuing this treatment.

Pursuant to section 8103 of FECA,[9] medical treatment shall be authorized by OWCP to "give relief" of symptoms of the accepted injury and not only to cure or reduce the effects of the accepted injury.[10] Therefore, in *Richard A. Reece*,[11] the Board noted that in determining whether physical therapy shall be authorized, OWCP should obtain a medical opinion as to whether the treatment was necessary to provide relief from pain or symptoms of the employment injury, or reduce disability due to the employment-related injury. While a total lack of objective findings may indicate that a claimant's pain complaints are without physical basis, where some functional impairment exists accompanied by pain symptoms, therapy is appropriate for relief of such symptoms.[12] Thus, OWCP must consider whether the treatment will give relief.[13]

The Board finds a conflict of medical opinion between the DMA, the physician for OWCP, and Dr. Inga and Dr. Afield, appellant's treating physicians. Similar to the case of *Lori E. Rayner-Brown*, the Board found a conflict of medical opinion between appellant's treating physician who recommended continued physical therapy, and OWCP's referral physician who recommended physical therapy cease.[14]

In this instance, Dr. Inga's November 23, 2012 physical therapy request noted that the requested therapy was to treat the lumbosacral spine in order to reduce pain, improve circulation and increase range of motion as appellant's condition was permanent. Both Dr. Inga and Dr. Afield provided findings on physical examination and reported that continued physical therapy improved appellant's persistent residual lumbar symptomology. Dr. Afield further noted that appellant's condition could worsen without continued physical therapy. The DMA, however, opined that prolonged periods of physical therapy had not resulted in significant improvement of appellant's condition. Despite having indicated some improvement with physical therapy, the DMA concluded that nothing would be gained by continued treatment. Given that OWCP did not resolve the disagreement between the attending physicians and the DMA before issuing its decision on the matter, the Board finds that OWCP abused its discretion

[9] *Supra* note 2.

[10] *Valerie H. Von Evans*, Docket No. 95-1547 (issued June 20, 1997).

[11] 42 ECAB 829 (1991).

[12] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing & Evaluating Medical Evidence*, Chapter 2.810.19 (October 2010).

[13] *John F. Erjavec*, Docket No. 96-1640 (issued June 29, 1998).

[14] Docket No. 02-375 (issued July 12, 2002); *see also Barbara E. Harsh*, Docket No. 95-2003 (issued March 9, 1998).

in denying authorization.[15] Based on this conflict of medical opinion, OWCP should obtain an opinion from an impartial medical specialist on whether appellant should continue to receive physical therapy.[16] Following this and any other further development as deemed necessary, OWCP shall issue an appropriate merit decision on appellant's request for continued physical therapy beginning November 30, 2012.

CONCLUSION

The Board finds that this case is not in posture for a decision.

ORDER

IT IS HEREBY ORDERED THAT the February 6, 2013 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development consistent with this decision.

Issued: April 18, 2014
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

[15] *Supra* note 14 and 15.

[16] *Supra* note 15.