

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

L.S., Appellant)	
)	
and)	Docket No. 18-1746
)	Issued: April 9, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Wilkes-Barre, PA, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 17, 2018 appellant filed a timely appeal from an August 14, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether OWCP has abused its discretion by denying authorization for physical therapy after June 30, 2018.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the August 14, 2018 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.*

FACTUAL HISTORY

On April 1, 2003 appellant, then a 54-year-old sales and service associate, filed a traumatic injury claim (Form CA-1) alleging that he sustained a low back injury when he picked up a package and placed it in a bin, while in the performance of duty. By decision dated May 7, 2003, OWCP accepted appellant's claim for a lumbosacral strain. Appellant received intermittent wage-loss compensation on the supplemental rolls commencing May 17, 2003. By decision dated July 27, 2007, OWCP additionally accepted appellant's claim for exacerbation of underlying degenerative disc disease of the lumbar spine.

On November 30, 2017 OWCP referred appellant to Dr. Peter A. Feinstein, Board-certified in orthopedic surgery, for a second opinion evaluation, to determine the extent of appellant's current disability and need for ongoing medical treatment of his accepted conditions.

In a report dated October 20, 2017, Dr. Paul Horchos, Board-certified in physical medicine and rehabilitation, indicated that he had examined appellant due to complaints of low back pain. He related that appellant had increased pain in his lumbar spinal region and increased pain particularly with hyperextension, which was consistent with a lumbar facet joint problem. Dr. Horchos diagnosed low back pain.

In a report dated January 8, 2018, Dr. Feinstein indicated that he reviewed appellant's medical history and a statement of accepted facts. Upon physical examination, he related that appellant's subjective findings included a limp, positive straight leg raising, and limitation of forward flexion of the lumbar spine. Dr. Feinstein also noted that his objective findings included a muscle spasm in the lumbar spine. He indicated that appellant's diagnostic testing was consistent with degenerative disc disease, spinal stenosis, and chronic low back syndrome. Dr. Feinstein diagnosed exacerbation of underlying degenerative disc disease. He noted that the employment-related condition of myofascial sprain/strain had resolved, but that appellant still sustained ongoing conditions of exacerbation or irritation of underlying preexisting degenerative disc disease and degenerative joint disease in the lumbar spine. Dr. Feinstein indicated that appellant had been at maximum medical improvement for some time. He related that appellant did not need continued lumbar injections, physical therapy, or chiropractic treatment because they were palliative and would not provide any curative input. Dr. Feinstein concluded that more than adequate physical therapy and chiropractic treatment had been provided.

In a report dated April 9, 2018, Dr. Horchos reported impressions of lumbar spondylosis, lumbar radiculopathy, and lumbar intervertebral disc degeneration. He recommended that appellant participate in aquatic-based physical therapy including flexibility training and spinal stability training.

In a letter to Dr. Horchos dated June 5, 2018, OWCP authorized aquatic physical therapy for the period May 31 to June 30, 2018. It noted that if physical therapy was medically necessary after that time, authorization would be contingent upon receipt of additional medical information.

In a letter dated July 11, 2018, OWCP responded to a July 10, 2018 voicemail requesting authorization for physical therapy. It related that it had not received the medical documentation requested in the June 5, 2018 letter for continued authorization of physical therapy.

In a report dated June 11, 2018, Dr. Horchos indicated that he examined appellant and diagnosed spondylosis without myelopathy or radiculopathy in the lumbosacral region, lumbar radiculopathy, lumbosacral intervertebral disc degeneration, low back pain, and lumbosacral spondylosis with radiculopathy. He related that appellant's lumbar pain levels had significantly improved with aquatic therapy, as had his tolerance and activity of movement.

On July 19 and 24, 2018 appellant requested authorization for additional physical therapy treatments.

In a July 24, 2018 report, Dr. Horchos related that appellant was seen in follow-up regarding his low back discomfort. He related that appellant's aquatic therapeutic program had strengthened his overall mobility functions in the water. Dr. Horchos concluded that appellant had a poor exercise tolerance on land, but on water he did better, therefore, continued water therapy was warranted.

By decision dated August 14, 2018, OWCP denied authorization for aquatic physical therapy because the evidence of record did not support that it was medically necessary to address the effects of appellant's employment-related condition. It found that Dr. Feinstein's second opinion evaluation dated January 8, 2018 carried the weight of the medical evidence.

LEGAL PRECEDENT

Section 8103 of FECA³ 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 or recommended by a qualified physician, which OWCP considers likely to cure, give relief, reduce the degree of the period of disability, or aid in lessening the amount of monthly compensation.⁴ In interpreting this section of FECA, the Board has recognized that OWCP has broad discretion in approving services provided under section 8103, with the only limitation on its authority being that of reasonableness.⁵ 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.⁶ In order to be entitled to reimbursement for medical expenses, a claimant must establish that the expenditures were incurred for treatment of the effects of an employment-related injury.⁷

³ *Supra* note 1.

⁴ 5 U.S.C. § 8103; *C.W.*, Docket No. 17-1636 (issued April 25, 2018); *see also Thomas W. Stevens*, 50 ECAB 288 (1999).

⁵ *C.W., id.*; *Joseph P. Hofmann*, 57 ECAB 456 (2006).

⁶ *B.J.*, Docket No. 17-1825 (issued February 23, 2018); *Claudia L. Yantis*, 48 ECAB 495 (1997).

⁷ *Cathy B. Mullin*, 51 ECAB 331 (2000).

OWCP procedures provide:

“For most orthopedic injuries, PT [physical therapy] services within the first 120 days after a traumatic injury are allowed without any prior authorization required, and it is also customary to automatically authorize PT postoperatively for orthopedic surgeries, usually for a period of 60 days postsurgery. If a request for therapy beyond these time frames is received, OWCP needs to review the file to determine whether further services should be authorized.”⁸

To determine whether a claimant requires physical therapy beyond the initial authorization period, OWCP reviews the record to determine whether the need for PT is due to the accepted work injury and whether the additional therapy is expected to yield functional improvement. Additionally, its procedures provide, “To authorize additional physical therapy for pain or to maintain function, OWCP should ensure that the pain is associated with measurable objective findings such as muscle spasm, atrophy and/or radiologic changes in joints, muscles, or bones, or that pain has placed measurable limitations upon the claimant’s physical activities.”⁹

While OWCP is obligated to pay for treatment of employment-related conditions, the employee has the burden of proof to establish that the expenditure is incurred for treatment of the effects of an employment-related injury or condition.¹⁰

ANALYSIS

The Board finds that OWCP has not abused its discretion in denying appellant’s request for aquatic physical therapy after June 30, 2018.

In his January 8, 2018 examination, Dr. Feinstein, serving as the second opinion physician, diagnosed an exacerbation of underlying degenerative disc disease in appellant’s lumbar spine. However, he related that appellant did not require continued lumbar injections, physical therapy, or chiropractic treatment because they were palliative and would not provide any curative input. Dr. Feinstein noted that he had received more than adequate physical therapy and chiropractic treatment. Dr. Feinstein’s opinion, which is detailed and well rationalized, represents the weight of the evidence and establishes that OWCP has not abused its discretion in denying appellant’s request for additional physical therapy.¹¹

In a report dated April 9, 2018, Dr. Horchos reported impressions of lumbar spondylosis, lumbar radiculopathy, lumbar intervertebral disc degeneration, and recommended that appellant participate in aquatic physical therapy. He did not, however, explain how aquatic physical therapy

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Physical Therapy*, Chapter 2.810.19 (September 2010).

⁹ *Id.*

¹⁰ See *J.L.*, Docket No. 18-0990 (issued March 5, 2019); see also *J.G.*, Docket No. 15-1784 (issued October 2, 2015); *Kennett O. Collins, Jr.*, 55 ECAB 648 (2004).

¹¹ See *D.D.*, Docket No. 09-1603 (issued April 8, 2010).

would cure, provide relief, or reduce appellant's disability as a result of his accepted conditions.¹² As discussed above, OWCP accepted lumbosacral strain and exacerbation of underlying degenerative disc disease of the lumbar spine, and appellant has not demonstrated that he sustained additional conditions as a result of the April 1, 2003 employment injury.

There is no other rationalized medical evidence supporting physical therapy as necessary to address the effects of appellant's employment-related condition. In a letter dated June 5, 2018, OWCP authorized physical therapy from May 31 to June 30, 2018, but noted that if physical therapy was medically necessary after that time, authorization would be contingent upon receipt of additional medical information. In his June 11, 2018 report and subsequent July 19 and 24, 2018 physical therapy authorization requests, Dr. Horchos merely concluded that appellant had significant improvement in mobility, in the water, with the use of aquatic therapy. He did not relate any specific objective findings which noted that appellant's accepted condition had improved or would improve in the future due to continued aquatic therapy. Also, Dr. Horchos did not address the specific functional goals of additional therapy or find the therapy necessary due to the accepted employment injury.¹³

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.¹⁴ The Board finds that OWCP properly relied upon the opinion of Dr. Feinstein, who provided a well-rationalized opinion that appellant did not require additional physical therapy.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 has not abused its discretion in denying appellant's request for physical therapy after June 30, 2018.

¹² See *C.W.*, *supra* note 4; see also *R.A.*, Docket No. 09-1169 (issued January 14, 2010).

¹³ See *supra* note 8.

¹⁴ *J.G.*, *supra* note 10; see also *Daniel J. Perea*, 42 ECAB 214 (1990).

¹⁵ See *S.S.*, Docket No. 15-1880 (issued June 16, 2016).

ORDER

IT IS HEREBY ORDERED THAT the August 14, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 9, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board