

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

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B.S., Appellant)	
)	
and)	Docket No. 24-0579
)	Issued: July 5, 2024
DEPARTMENT OF COMMERCE, U.S. CENSUS)	
BUREAU, Bethesda, MD, Employer)	
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Appearances: *Case Submitted on the Record*
*Alan J. Shapiro, Esq., for the appellant*¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On May 8, 2024 appellant, through counsel, filed a timely appeal from an April 8, 2024 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.

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.*

ISSUE

The issue is whether OWCP properly denied appellant's request for authorization of reimbursement for a wheelchair, motorized scooter, and motorized stair lift.

FACTUAL HISTORY

This case has previously been before the Board on a different issue.³ The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On April 5, 2018 appellant, then a 62-year-old program analyst, filed a traumatic injury claim (Form CA-1) alleging that on March 15, 2018 she twisted her right knee and bruised her right index finger when she stepped on loose pavement in the dark and grasped her rolling bag to avoid falling while in the performance of duty.

In an August 23, 2021 report, Dr. Christopher McGee, Board-certified in orthopedic surgery, diagnosed multiple right knee conditions including closed nondisplaced fracture of the femoral condyle, tear of the lateral meniscus, accelerated primary arthritis, arthrofibrosis, and complex regional pain syndrome (CRPS) of the right lower extremity. He recommended aggressive conservative treatment, focusing on physical therapy and pain management.

On February 7, 2022 OWCP accepted the claim for closed nondisplaced fracture of the right femoral condyle; tear of the right knee lateral meniscus; aggravation of preexisting osteoarthritis, right knee; arthrofibrosis, right knee; and CRPS of the right lower extremity.

Appellant submitted January 20, 2023 claims for medical reimbursement (Form OWCP-915) requesting reimbursement of \$1,534.00 for a motorized scooter and \$5,830.00 for a motorized stair lift.

In development letters dated February 10, 2023, OWCP advised appellant that the evidence in the file was insufficient to authorize reimbursement for the motorized scooter and stair lift because the durable medical equipment (DME) did not appear to be medically necessary for and/or causally related to the accepted conditions. It advised her of the type of medical evidence needed and afforded her 30 days to respond.

By decision dated March 13, 2023, OWCP denied authorization for a motorized scooter and motorized stair lift. It found that the evidence of record was insufficient to establish that this equipment was medically necessary to address the effects of appellant's employment injury.

On February 19, 2024 appellant, through counsel, requested reconsideration and submitted medical evidence.

In a report dated February 8, 2024, Dr. Joshua Macht, Board-certified in internal medicine, noted appellant's history of injury and medical treatment. He recounted that appellant had been

³ Docket No. 20-1008 (issued November 13, 2020).

wheelchair-bound since June 2018, when authorization for medical treatment was denied. Dr. Macht noted that appellant presented in a wheelchair with no acute distress. Upon examination, he found moderate tenderness along the lower medial right knee joint line and the infrapatellar right knee area, one centimeter swelling of the right knee joint compared to the left, no instability of the right knee joint, mild crepitus of the bilateral knee joints, no atrophy, and decreased range of motion. Dr. Macht indicated that since the March 15, 2018 employment injury, appellant remained wheelchair-bound and unable to tolerate weight-bearing on the right leg for more than a few seconds. He also recounted that appellant had been diagnosed with CRPS. Dr. Macht concluded that it was medically indicated for appellant to receive medical equipment to help support daily activity, which included a motorized scooter, a wheelchair, and a motorized stair lift. He also concluded that reimbursement for these expenses was directly causally related to appellant's accepted employment injury.

On February 27, 2024 OWCP referred the case record and a statement of accepted facts (SOAF)⁴ to Dr. Jack L. Miller, Board-certified in occupational medicine and physical medicine and rehabilitation serving as the OWCP district medical adviser (DMA), for review and an opinion of whether the requested wheelchair, motorized scooter, and motorized stair lift were medically warranted for appellant's accepted work-related conditions. It asked that Dr. Miller review and specifically comment on Dr. Macht's February 8, 2024 report.

In a March 8, 2024 report, Dr. Miller related that the claim was denied on October 17, 2018, and January 27, 2021. He further noted that a reconsideration request was submitted on November 9, 2021, however, no additional information was provided regarding the reconsideration request. Dr. Miller then opined that "[w]ith this in mind, my opinion is that if the claim was denied again, then no treatment including [durable medical equipment] DME would be authorized. If the appeal reinstated the claim, then the claimant should be under the care of a treating physician. Diagnostic tests, treatment, and DME should be orchestrated by the treating physician."

By decision dated April 8, 2024, OWCP denied modification of the March 13, 2023 decision.

LEGAL PRECEDENT

Section 8103 of FECA 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, or the period of disability, or aid in lessening the amount of monthly compensation.⁵ While OWCP is obligated to pay for treatment of employment-related conditions, the employee

⁴ The SOAF noted that OWCP had accepted as employment related closed nondisplaced fracture of the right femoral condyle; tear of the right knee lateral meniscus; aggravation of preexisting right knee osteoarthritis; right knee arthrofibrosis; and CRPS of right lower extremity.

⁵ 5 U.S.C. § 8103; *see B.C.*, Docket No. 20-0566 (issued March 8, 2022); *R.P.*, Docket No. 17-0428 (issued April 19, 2018); *Thomas W. Stevens*, 50 ECAB 288 (1999).

has the burden of proof to establish that the expenditure is incurred for treatment of the effects of an employment-related injury or condition.⁶

Section 10.310(a) of OWCP's implementing regulations provides that an employee is entitled to receive all medical services, appliances or supplies which a qualified physician prescribes or recommends and which OWCP considers necessary to treat the work-related injury.⁷ OWCP procedures provide that nonmedical equipment may be authorized only if recommended by the attending physician and if OWCP finds that the item is likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of monthly compensation.⁸

OWCP must exercise discretion in determining whether the particular service, appliance, or supply is likely to affect the purposes specified in FECA.⁹ The only limitation on OWCP's authority is that of reasonableness.¹⁰

ANALYSIS

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

On February 27, 2024 OWCP referred Dr. Macht's February 8, 2024 report to Dr. Miller, the DMA, and requested that he provide an opinion as to whether Dr. Macht had provided sufficient rationale in support of causal relationship and medical necessity for the requested DME. In a March 8, 2024 report, Dr. Miller related that the claim was denied on October 17, 2018, and January 27, 2021. He further noted that a reconsideration request was submitted on November 9, 2021, however, no additional information was provided regarding the reconsideration request. Dr. Miller then opined that "[w]ith this in mind, my opinion is that if the claim was denied again, then no treatment including [durable medical equipment] DME would be authorized. If the appeal reinstated the claim, then the claimant should be under the care of a treating physician. Diagnostic tests, treatment, and DME should be orchestrated by the treating physician."

The Board finds, however, that Dr. Miller's opinion is of diminished probative value as it was not based on a proper factual background.¹¹ Dr. Miller's notation that appellant's claim was denied on October 17, 2018 and remained in a denied posture contradicts the SOAF, which documented that OWCP had accepted as employment related closed nondisplaced fracture of the

⁶ See *R.P., id.*; *Kennett O. Collins, Jr.*, 55 ECAB 648 (2004); *Zane H. Cassell*, 32 ECAB 1537 (1981).

⁷ 20 C.F.R. § 10.310(a).

⁸ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Services and Supplies*, Chapter 3.400.3.d(5) (October 1995); see also Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.17.h (September 2020).

⁹ OWCP has broad discretionary authority in the administration of FECA and must exercise its discretion to achieve the objectives of section 8103. *T.B.*, Docket No. 15-0061 (issued October 27, 2015); *Marjorie S. Greer*; 39 ECAB 1099 (1988); see also *L.M.*, Docket No 15-0818 (August 4, 2015).

¹⁰ *Daniel J. Perea*, 42 ECAB 214 (1990); see also *D.M.*, Docket No. 15-0814 (issued July 16, 2015).

¹¹ *M.D.*, Docket No. 20-0007 (issued May 13, 2020); *T.T.*, Docket No. 18-1622 (issued May 14, 2019).

right femoral condyle; tear of the right knee lateral meniscus; aggravation of preexisting right knee osteoarthritis; right knee arthrofibrosis; and CRPS of right lower extremity. The Board has previously explained that if a physician selected by OWCP does not use the SOAF as the framework in forming his or her opinion, the probative value of the opinion is seriously diminished or negated altogether.¹²

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter.¹³ While the claimant has the responsibility to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence. It has the obligation to see that justice is done.¹⁴ As it undertook development of the evidence by referring the medical authorization request to its DMA, it had an obligation to do a complete job and obtain a proper evaluation and report that would resolve the issue in this case.¹⁵

The case must, therefore, be remanded for further development. On remand, OWCP shall refer the case for a supplemental opinion from the DMA, Dr. Miller, which is appropriately based on the framework of the SOAF. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

¹² *R.L.*, Docket No. 24-0475 (issued June 7, 2024); *R.W.*, Docket No. 19-1109 (issued January 2, 2020); *supra* note 8 at Chapter 3.600.3 (October 1990).

¹³ *N.L.*, Docket No. 19-1592 (issued March 12, 2020); *M.T.*, Docket No. 19-0373 (issued August 22, 2019); *B.A.*, Docket No. 17-1360 (issued January 10, 2018).

¹⁴ *S.S.*, Docket No. 18-0397 (issued January 15, 2019); *Donald R. Gervasi*, 57 ECAB 281, 286 (2005); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

¹⁵ *G.M.*, Docket No. 19-1931 (issued May 28, 2020); *W.W.*, Docket No. 18-0093 (issued October 9, 2018).

ORDER

IT IS HEREBY ORDERED THAT the April 8, 2024 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: July 5, 2024
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board