

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

T.F., Appellant)	
)	
and)	Docket No. 24-0721
)	Issued: September 9, 2024
DEPARTMENT OF LABOR, OFFICE OF THE SOLICITOR, Kansas City, MO, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On June 24, 2024 appellant filed a timely appeal from a June 12, 2024 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.

ISSUE

The issue is whether OWCP properly denied appellant's request for reimbursement of health club membership dues.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board.² The facts and circumstances of the case as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On August 1, 1987 appellant, then a 34-year-old attorney, filed a traumatic injury claim (Form CA-1) alleging that on January 16, 1987 he sustained injury when he slipped and fell on snow while in the performance of duty. OWCP accepted this claim, assigned OWCP File No. xxxxxx752, for left sciatica, aggravation of a herniated discs at L3-4, L4-5, and L5-S1, and aggravation of grade 1 spondylolisthesis at L3-4. On November 10, 1989 appellant underwent OWCP-authorized hemilaminectomy at L3-4 on the right with removal of an extruded disc fragment, and a hemilaminectomy and discectomy at L5-S1 on the left.³ He returned to work performing intermittent light-duty work for the employing establishment and OWCP paid him wage-loss compensation for periods of disability.

Beginning in 1991, for discrete periods, OWCP reimbursed appellant for health club membership fees, which allowed him to engage in exercise therapy and swimming at a local facility. Beginning in December 2004, appellant submitted bills for weekly massages he received at the local health club. After initially declining to pay his bills for massage services, OWCP began paying for message treatments that were incurred beginning in late 2004. OWCP also reimbursed appellant for health club membership fees for the discrete year-long period of July 1, 2005 through July 1, 2006.

In a report dated December 30, 2005, Dr. Stephen L. Reintjes, an attending Board-certified neurosurgeon, treated appellant and reported that he was "doing well as a result of his therapeutic exercises, swimming and massages." He recommended that appellant "continue these for the next six months and for the rest of his life."

In a February 18, 2006 report, Dr. Daniel D. Zimmerman, a Board-certified internist serving as an OWCP district medical adviser (DMA), opined that OWCP should not continue to authorize weekly massage therapy sessions as they only provided a transitory reduction in back pain.

By notice dated March 1, 2006, OWCP advised appellant that it proposed to terminate payment for future massage sessions at the local health club. By decision dated April 7, 2006, it finalized its proposed notice of termination effective April 4, 2006. Appellant appealed to the Board and, by decision dated October 19, 2006,⁴ the Board affirmed OWCP's April 7, 2006 decision. Despite the termination of payment for massage sessions, appellant made periodic

² Docket No. 96-2293 (issued September 28, 1998); Docket No. 06-1186 (issued October 19, 2006); Docket No. 11-0763 (issued November 7, 2011).

³ Under a prior claim, assigned OWCP File No. xxxxxx058, appellant had claimed a recurrence of disability on June 30, 1989 due to an October 5, 1984 employment injury. OWCP administratively combined the case files for OWCP File No. xxxxxx058 and OWCP File No. xxxxxx752, with the latter designated as the master file.

⁴ Docket No. 06-1186 (issued October 19, 2006).

requests for reimbursement of health club membership fees, which were approved by OWCP for discrete year-long periods.

On September 15, 2009 appellant underwent OWCP-authorized decompressive lumbar laminectomy at L3-4 with microdissection and a left L5-S1 reexploration and discectomy. He stopped work in late 2009 and retired from the employing establishment effective January 2, 2010.

On August 7, 2010 appellant filed a claim (Form CA-2a) alleging that he sustained a recurrence of disability on January 2, 2010 due to his accepted employment injuries. By decisions dated November 16, 2010 and January 26, 2011, OWCP denied his recurrence of disability claim. Appellant appealed to the Board and, by decision dated November 7, 2011,⁵ the Board affirmed OWCP's January 26, 2011 decision.

In May 2023, appellant requested reimbursement for health club membership dues for a year-long period. He noted that his use of a health club had been interrupted by the COVID-19 pandemic.⁶ The last medical report in the case record prior to the time of appellant's May 2023 request was dated April 15, 2014.

In a June 1, 2023 letter, OWCP informed appellant that he needed to submit a report from an attending physician that demonstrated that health club membership was necessary and appropriate for his specific accepted work-related conditions. It described the necessary information required to be provided by an attending physician, including a detailed description of the exercise/therapy program to be performed at the health club, noting that such information was required even if health club membership had been approved in the past. OWCP also requested information directly from appellant regarding the details of his health club membership.

On August 1, 2023 OWCP received a July 24, 2023 statement wherein appellant asserted that the requested information had been provided by his physicians in the past. He discussed several medical reports of attending physicians produced between 1981 and 1991. Appellant stated, "Unfortunately, all of my doctors from that time period, are either deceased, retired or no longer living in this area. It is virtually impossible for me to get this information which has been previously provided." He asserted that his physicians had repeatedly advised that his condition was permanent and that swimming, walking, and related exercise would be needed for life to mitigate his disability. Appellant also submitted a brochure and membership dues receipt from another health club in Overland Park, Kansas, where he formerly was a member. He indicated that he would be switching to another health club.

In a January 29, 2024 letter, OWCP renewed its request for information from a physician in order to determine whether the requested health club membership was necessary and appropriate for effective treatment of his accepted work conditions.

⁵ Docket No. 11-0763 (issued November 7, 2011).

⁶ The last period for which OWCP approved health club membership was December 11, 2018 through December 10, 2019.

Appellant submitted another copy of his July 24, 2023 statement, a membership dues receipt from the new health club in the amount of \$445.00, and a claim for medical reimbursement (Form OWCP-915) for health club membership dues from May 3, 2022 through May 3, 2023 in the amount of \$445.00.

In a February 16, 2024 letter received by OWCP on February 26, 2024, appellant indicated that he had contacted a medical office, but had been advised that OWCP needed to contact the provider to set up an initial medical appointment.

By decision dated June 12, 2024, OWCP denied appellant's request for reimbursement of health club membership dues. It indicated that it had denied the request as appellant failed to submit sufficient evidence to establish that health club membership was necessary to address the effects of his employment injury.

LEGAL PRECEDENT

Section 8103(a) of FECA states in pertinent part: "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 the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation."⁷

The Board has found that OWCP has broad discretion in determining whether a particular type of treatment is likely to cure or give relief.⁸ The only limitation on OWCP's authority is that of reasonableness.⁹ 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.¹⁰ In order to be entitled to reimbursement of medical expenses, it must be shown that the expenditures were incurred for treatment of the effects of an employment-related injury or condition.¹¹ Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.¹²

ANALYSIS

The Board finds that OWCP properly denied appellant's request for reimbursement of health club membership dues.

⁷ 5 U.S.C. § 8103.

⁸ *R.C.*, Docket No. 18-0612 (issued October 19, 2018); *Vicky C. Randall*, 51 ECAB 357 (2000).

⁹ *B.L.*, Docket No. 17-1813 (issued May 23, 2018); *Lecil E. Stevens*, 49 ECAB 673, 675 (1998).

¹⁰ *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *Rosa Lee Jones*, 36 ECAB 679 (1985).

¹¹ *J.R.*, Docket No. 17-1523 (issued April 3, 2018); *Bertha L. Arnold*, 38 ECAB 282, 284 (1986).

¹² *Zane H. Cassell*, 32 ECAB 1537, 1540-41 (1981); *John E. Benton*, 15 ECAB 48, 49 (1963).

In May 2023, appellant requested reimbursement for health club membership dues for a year-long period. In June 1, 2023 and January 29, 2024 statements, OWCP requested the submission of medical evidence from an attending physician in support of the request. Appellant submitted a brochure and membership dues receipt from a health club, as well as a document regarding his attempt to schedule future medical appointments, but he did not submit any medical evidence in support of his request for reimbursement of health club membership dues. He asserted that previous medical evidence of record would support the present reimbursement request, but the most recent medical evidence in the case record is from 2014. Appellant failed to present contemporaneous medical evidence demonstrating that health club membership would be likely to provide a cure, give relief, or lessen disability or compensation paid with respect to an accepted work-related condition.¹³

As noted above, the Board has found that OWCP has broad discretion in determining whether a particular type of treatment is likely to cure or give relief, and the only limitation on OWCP's authority is that of reasonableness.¹⁴ The Board finds that OWCP's denial of appellant's request for reimbursement of health club membership dues does not constitute an abuse of its discretion.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 properly denied appellant's request for reimbursement of health club membership dues.

¹³ See *supra* note 7. See also *J.F.*, Docket No. 22-0164 (issued November 28, 2022); *H.S.*, Docket No. 23-0557 (issued October 5, 2023).

¹⁴ See *supra* notes 8 and 9.

¹⁵ See *S.Y.*, Docket No. 24-0443 (issued May 28, 2024); *H.S.*, *supra* note 13; *K.M.*, Docket No. 23-0446 (issued September 26, 2023).

ORDER

IT IS HEREBY ORDERED THAT the June 12, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 9, 2024
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board