

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MELVIN STANLEY and DEPARTMENT OF THE AIR FORCE,  
HILL AIR FORCE BASE, Utah

*Docket No. 96-1929; Submitted on the Record;  
Issued July 27, 1998*

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DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion in refusing to authorize payment for an extension of appellant's health club membership.

On November 19, 1991 appellant, then a 50-year-old computer specialist, filed a traumatic injury claim (Form CA-1) alleging that on November 14, 1991, he injured his neck, shoulders, back and right arm while lifting and moving boxes of personal computer equipment. Appellant stated that he aggravated a previous condition of cervical disc problems.

The Office accepted appellant's claim for permanent aggravation of cervical degenerative disc disease and a cervical discectomy which was performed on February 20, 1992.

In an undated letter, appellant requested that the Office approve enrollment in a health club to engage in exercises to keep his pain and stiffness under control. Appellant's letter was accompanied by a disability certificate from Dr. James S. Heiden, a Board-certified neurosurgeon, indicating that appellant had a herniated cervical disc at C4-5 and C5-6, and residual neck pain. Dr. Heiden recommended physical therapy, range of motion exercises, an ultrasound and transcutaneous electrical nerve stimulation unit.

By letter dated June 29, 1994, the Office advised Dr. Heiden that appellant had requested payment for a health club membership and requested that Dr. Heiden provide specific information as to the medical necessity for the requested program. In a letter of the same date, the Office advised appellant to submit specific factual and medical evidence to support his request for payment of a health club membership. In another letter of the same date, the Office advised Dr. Heiden that it had approved his prescription for physical therapy for 90 days.

In a July 6, 1994 response to the Office's June 29, 1994 letter, Dr. Heiden noted appellant's February 20, 1992 back surgery and his findings on physical examination.

Dr. Heiden stated that if physical therapy helped appellant, then he would concur with appellant's request for a health club membership.

By letter dated July 26, 1994, the Office advised appellant that it had approved his request for transcutaneous electrical nerve stimulation equipment for 30 days. The Office further advised appellant that Dr. Heiden returned incomplete forms regarding health club membership because he wished to evaluate the need for this membership after appellant completed physical therapy. The Office then advised appellant that it declined to respond to his request for payment of the health club membership.

In a letter dated August 15, 1994, appellant requested payment for a one year health club membership accompanied by an August 15, 1994 statement from Ken Buckmiller, a physical therapist, indicating the type of equipment that appellant would need for continued rehabilitation, a membership agreement with a health club, the Office's June 29, 1994 letter, and appellant's statement of available and preferred facilities.

In a September 28, 1994 letter, Dr. Heiden informed the Office that appellant's supervised rehabilitation would be completed on October 7, 1994, that appellant had made excellent progress and that appellant had a significant reduction in his symptoms. Dr. Heiden stated that appellant had discovered that a vigorous physical exercise program controlled his symptoms. Dr. Heiden also stated that upon discharge, appellant would need no further close supervision, but that appellant would need to continue to exercise for the rest of his life. Dr. Heiden then stated that appellant would not see the maximum benefit of this type of rehabilitation for another six months and requested that the Office pay for a health club membership for at least six months. Dr. Heiden stated that such membership would benefit appellant greatly and reduce significantly the risk of reinjury or further exacerbation of his symptoms which would also benefit the insurer.

By letter dated October 11, 1994, the Office approved appellant's request for a health club membership for a period of six-months based on Dr. Heiden's recommendation. The Office noted that if appellant's physician recommended an extension, then appellant should advise the Office to determine whether the membership could be extended.

In an undated letter, appellant requested that the Office renew his health club membership accompanied by Dr. Heiden's April 3, 1995 prescription for a one year membership. By letter dated April 21, 1995, the Office advised appellant that its program requirements did not allow approval for more than a six-month membership. The Office further advised appellant to submit a medical report from his physician addressing the progress he had made and his physician's support for an extension for a specified period of time. The Office also advised appellant that after it received a report from his physician, the case would be referred to an Office medical adviser to determine whether an extension was necessary.

In response, appellant submitted Dr. Heiden's May 2, 1995 letter indicating appellant's 1992 back surgery. Dr. Heiden stated that appellant had benefited from his participation in a health club and that prior to his club membership, appellant had been in extensive physiotherapy. Dr. Heiden recommended an extension of appellant's health club membership for an additional six months.

On June 12, 1995 an Office medical adviser reviewed a statement of accepted facts and the evidence of record, and opined that an extension of six more months should be sufficient for appellant.

By letter dated June 13, 1995, the Office advised appellant that his health club membership was approved for one additional period of six months beginning May 1, 1995. In an undated letter, appellant advised the Office that the six-month period should cover the period July through December 1995 because he had to drop his membership while the Office reapproved it. By letter dated August 3, 1995, the Office advised appellant that the six-month period for July through December 1995 was approved.

In an undated letter, appellant inquired about the status of his October 13, 1995 request for renewal of his health club membership since the membership was scheduled to expire on December 31, 1995. Appellant's letter was accompanied by Dr. Heiden's October 12, 1995 medical report which appellant stated in his letter that he had previously sent to the Office with his October 13, 1995 request. In this report, Dr. Heiden noted appellant's previous back surgery and that appellant had been going to a health club on a regular basis. Dr. Heiden stated that appellant had been working on strengthening his upper extremity, range of motion of his neck and general conditioning which had been beneficial for appellant. Dr. Heiden noted his findings on physical examination, appellant's medical treatment and that he gave appellant a slip for renewal of his health club membership for one year. Appellant's letter was also accompanied by Dr. Heiden's October 12, 1995 disability certificate indicating that appellant had a cervical myeloradiculopathy at C4-5 and C5-6, and recommending a one year renewal of appellant's membership.

On December 21, 1995 an Office medical adviser reviewed a statement of accepted facts and the evidence of record, and opined that there were no unusual or compelling reasons for another year of a health club membership, and that appellant should have been instructed for adequate self-care and exercise.

By decision dated January 12, 1996, the Office denied appellant's request for an extension of his health club membership. The Office found that there was no detailed medical report of record that verified that the membership was still needed for the effects of appellant's employment injury. The Office further found that the Federal Employees' Compensation Act only paid for the effects of a specific injury rather than future preventative care. The Office also found that there was no evidence of record addressing why the recommended exercise routine could not be performed at appellant's home.

In an April 7, 1996 letter, appellant requested reconsideration of the Office's decision. Appellant's letter was accompanied by Dr. Heiden's March 18, 1996 medical report revealing appellant's prior back surgery, appellant's complaints of right shoulder pain since he was not able to continue an exercise program at the health club and his findings on physical examination. Dr. Heiden recommended that appellant restart an exercise and strengthening program at the health club because appellant had residual physical problems resulting from the employment injury. Dr. Heiden stated that appellant required a "self-directed" exercise program to manage pain and his symptoms. Dr. Heiden further stated that this program should include water and pool therapy, as well as, upper extremity strengthening and range of motion exercises for

appellant's neck. Appellant's letter was also accompanied by Mr. Buckmiller's October 6, 1994 final work capacity evaluation.

An Office medical adviser reviewed Dr. Heiden's March 18, 1996 medical report. The Office medical adviser stated that appellant underwent back surgery four years ago in 1992 and that he could see no compelling reason to approve appellant's request for an extension of his health club membership. The Office medical adviser further stated that this treatment was mostly if not all preventive. The Office medical adviser concluded that appellant may have some permanent residual after all this time, but that "self-directed" home exercise as recommended by Dr. Heiden should be adequate for appellant.

By decision dated May 17, 1996, the Office denied appellant's request for modification based on a merit review of the claim. In an accompanying memorandum, the Office found that the weight of the medical evidence rested with the opinion of the Office medical adviser. The Office further found that the expected positive result from health club memberships was anticipated to be accomplished within a normal six-month period and that appellant already had one year of such treatment. The Office also found that the record indicated that the prescribed treatment was more preventive rather than curative.

The Board finds that the Office did not abuse its discretion in refusing to authorize payment for an extension of appellant's health club membership.

Section 8103 of the Act 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 the Office considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation.<sup>1</sup> In interpreting this section of the Act, the Board has recognized that the Office has broad discretion in approving services provided under the Act. The only limitation on the Office's authority is that of reasonableness.<sup>2</sup>

In this case, Dr. Heiden, a Board-certified neurosurgeon, did not explain in his March 18, 1996 medical report how an exercise and strengthening program at the health club would help in the treatment of appellant's residuals that were caused by his employment injury. Further, although Dr. Heiden recommended that appellant participate in an exercise and strengthening program at the health club, he stated that appellant required a "self-directed" exercise program to manage pain and his symptoms.

An Office medical adviser reviewed Dr. Heiden's March 18, 1996 medical report noting that appellant's back surgery was performed four years prior in 1992. The Office medical adviser opined that there was no compelling reason to approve appellant's request for an extension of his health club membership. The Office medical adviser also opined that this type of treatment was mostly if not all preventive and that although appellant may have some permanent residuals of the employment injury, "self-directed" home exercise as recommended

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<sup>1</sup> 5 U.S.C. § 8103.

<sup>2</sup> *Daniel J. Perea*, 42 ECAB 214 (1990).

by Dr. Heiden should be adequate for appellant. The Board finds that the Office medical adviser provided a rationalized opinion based on a review of the pertinent medical evidence of record. Generally, an abuse of discretion is 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.<sup>3</sup> It cannot be found that the Office abused its discretion in refusing to authorize payment for an extension of appellant's health club membership.

The May 17 and January 12, 1996 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, D.C.  
July 27, 1998

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>3</sup> *Id.*