

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

W.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Fort Worth, TX, Employer**

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**Docket No. 11-1182
Issued: November 23, 2011**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On April 19, 2011 appellant filed a timely appeal from an April 5, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his request for a massage chair. Pursuant to the Federal Employees' Compensation Act (FECA)¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether OWCP abused its discretion in denying appellant's request for a massage chair.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On February 5, 2007 appellant, then a 58-year-old letter carrier, filed a traumatic injury claim, alleging that he twisted his back on February 2, 2007 while lifting trays. Appellant's claim was accepted for lumbar strain and aggravation of lumbar disc degeneration.²

On October 13, 2010 appellant's treating physician, Dr. Darryl N. Steele, Board-certified in family practice, recommended that appellant test various massage chairs to determine which worked best on his neck and back. He stated that a massage chair would help appellant's chronic pain. In an October 25, 2010 report, Dr. Steele noted that appellant had tested several massage chairs and that 30 minutes of massage had resulted in relaxation. He noted that he would try to get the chair approved as it "could prevent further deterioration or loss of quality of life."

On January 4, 2011 OWCP requested that Dr. Steele provide further information regarding the necessity of the massage chair. He was asked to explain the regime that appellant would follow in the chair, the goals and benefits of the chair, and the effectiveness of a massage chair, compared to other modes of treatment. Dr. Steele responded on January 10, 2011 that the chair prescribed for appellant would decrease his instances of muscle spasms and inflammation to the neck and lumbosacral areas. He stated that the massage chair would be more beneficial than alternative modes of treatment, while noting that appellant had been using a nonimpact exercise machine as part of his treatment.

On March 28, 2011 OWCP referred appellant's claim to the district medical adviser (DMA) to determine if the purchase of the requested medical equipment was warranted. The DMA replied on March 31, 2011, stating:

"While massage therapy is not discouraged, the long[-]term effectiveness of such treatment does not show a significant measurable improvement in patients with failed back syndrome. Simpler means (hot tub baths, gentle exercises, etc.) are probably just as effective. At this time the recommended treatment for this disorder seems to favor a multidisciplinary approach, and even then, there is a limited outcome. In my opinion, massage therapy is unlikely to improve the claimant's condition.... The purchase of the proposed chair will not significantly alter the claimant's outcome, give significant relief, or reduce his disability. Therefore, the purchase should not be authorized."

In an April 5, 2011 decision, OWCP denied appellant's request for the massage chair, finding that the weight of the medical evidence established that the prescribed massage chair is not warranted as appellant was not likely to be cured, obtain relief, or reduce the period of disability.

² Appellant stopped work on February 2, 2007 and was subsequently placed on the periodic rolls in receipt of wage-loss compensation. He underwent surgery for lumbar spine fusion on August 5 and 12, 2008.

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. In interpreting 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 its authority is that of reasonableness.⁴ It is not enough to show that the evidence could be construed so as to produce a contrary factual conclusion.⁵

Section 10.310 (a) of the implementing regulations provide that the 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.⁶ OWCP procedures provide that nonmedical equipment such as waterbeds, saunas, weight-lifting sets, exercise bicycles, *etc.*, 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.⁷

ANALYSIS

Section 8103(a) of FECA provides for the furnishing of 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. The Board finds that Dr. Steele did not adequately explain how the purchase of a massage chair would cure, reduce the period of disability or aid in lessening the amount of monthly compensation. Dr. Steele generally recommended the massage chair to relieve appellant's symptoms of pain, spasm and inflammation. He did not explain how the massage chair would physiologically reduce appellant's pain, spasms and inflammation; he merely offered a conclusory opinion. Dr. Steele noted that appellant relaxed while sitting in a massage chair for 30 minutes; but provided no medical explanation as to how the massage chair would give any long-term relief to appellant's chronic low back condition for any period of time, beyond the time spent in the chair. Dr. Steele also did not explain why appellant's condition required medical treatment that could only be accommodated by the purchase of this specific piece of equipment or why relief could not be obtained through soaking in a hot tub of water, or through his previously prescribed exercise therapy. He did not explain how the chair would aid

³ *Dale E. Jones*, 48 ECAB 648, 649 (1997).

⁴ *Daniel J. Perea*, 42 ECAB 214, 221 (1990); *D.A.*, Docket No. 09-936 (issued January 13, 2010).

⁵ *See P.L.*, Docket No. 09-594 (issued November 10, 2009).

⁶ 20 C.F.R. § 10.310(a).

⁷ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Services and Supplies*, Chapter 3.400.3(d)(5) (August 2011).

in returning appellant to the workforce. The Board finds that Dr. Steele's opinion is insufficient to establish that the requested massage chair was medically necessitated for treatment of the diagnosed conditions. OWCP did not abuse its discretion in denying appellant's request to authorize purchase of a massage chair based on the recommendation of OWCP's medical adviser.⁸

CONCLUSION

The Board finds that OWCP properly denied authorization for purchase of a massage chair.

ORDER

IT IS HEREBY ORDERED THAT the April 5, 2011 decision of the Office of Workers Compensation Programs is affirmed.

Issued: November 23, 2011
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

⁸ *Accord, J.P.*, Docket No 10-1356 (issued January 10, 2011) (OWCP did not abuse its discretion in denying authorization of massage therapy); *P.L., supra* note 5 (additional massage therapy denied).