

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

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**J.T., Appellant**

**and**

**DEPARTMENT OF THE INTERIOR,  
BUREAU OF LAND MANAGEMENT,  
Denver, CO, Employer**

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**Docket No. 08-873  
Issued: November 14, 2008**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
DAVID S. GERSON, Judge  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On February 4, 2008 appellant filed a timely appeal from a January 24, 2008 decision of the Office of Workers' Compensation Programs that denied benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the case.

**ISSUE**

The issue is whether the Office abused its discretion in denying appellant authorization for a health club membership.

**FACTUAL HISTORY**

On February 13, 2007 appellant, then a 51-year-old customer support specialist, sustained injury when he slipped on ice on the sidewalk outside of the employing establishment. He did not stop work. The Office accepted the claim for lumbar dislocation, sacrum dislocation, lumbar

back sprain, muscle spasms, cervical strain, left shoulder strain (resolved) and left hand contusion (resolved).<sup>1</sup> Appellant received appropriate compensation for intermittent disability.

Appellant came under the care of Dr. Susan C. Lan, an osteopath, who first treated him on February 15, 2007. Dr. Lan diagnosed hand contusion, lumbar strain and shoulder strain and returned appellant to full-time modified duty. She recommended chiropractic treatment. Thereafter, appellant sought treatment from Dr. Marc Wolff, a chiropractor, from March 7 to October 5, 2007. Dr. Wolff diagnosed lumbar vertebral subluxation at L2, pelvic subluxation (sacrum) and lumbar hypolordosis. An April 27, 2007 magnetic resonance imaging (MRI) scan of the cervical spine revealed moderate left C5-6 uncovertebral degenerative changes and mild to moderate right C3-4 uncovertebral degenerative changes. An MRI scan of the lumbar spine of the same date revealed mildly degenerated L5-S1 disc displays prominent posterocentral annulus fibrosis bulging which displaces both proximal S1 nerve roots.

On August 1 and 29, 2007 appellant was seen in consultation by Dr. John T. Sacha, Board-certified in physical medicine and rehabilitation, who noted a history of injury and diagnosed lumbosacral radiculopathy and cervical facet syndrome. Dr. Sacha performed an L5-S1 intralaminar epidural injection and a right S1 transforaminal epidural injection. Appellant was also treated by Dr. Allison M. Fall, Board-certified in physical medicine and rehabilitation, on October 1 and 22, 2007. Dr. Fall diagnosed lumbosacral strain with L5-S1 disc bulge and right S1 radiculopathy. On November 2, 2007 she opined that appellant had reached maximum medical improvement with respect to his work-related injuries and provided an impairment evaluation. She noted appellant was interested in a health club membership with which she was in agreement.

On November 5, 2007 Dr. Lan requested authorization for a 12-month gym membership for appellant. She noted that appellant's lumbar, shoulder and left hand were to be treated.

In a letter dated November 21, 2007, the Office requested that Dr. Lan provide an opinion on the medical necessity of a health club membership for treatment of appellant's accepted work-related conditions. It also requested that appellant submit information on the available health club facilities suited to the program recommended by his physician, the cost of the programs, a statement from the health club manager addressing whether the club was equipped to provide the program recommended by his physician and an opinion from his physician describing the nature of the recommended program.

In a report dated November 5, 2007, Dr. Lan treated appellant for persistent symptoms and diagnosed lumbosacral strain at L5-S1 disc bulge and right S1 radiculopathy, improved. She noted that appellant reached maximum medical improvement on November 2, 2007 and provided permanent work restrictions. In a work capacity evaluation dated November 20, 2007, Dr. Lan noted permanent work restrictions of no lifting over 10 pounds.

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<sup>1</sup> By letter dated March 26, 2007, the Office advised appellant that his claim was originally received as a simple, uncontroverted case which resulted in minimal or no time loss from work. It indicated that appellant's claim was administratively handled to allow medical payments up to \$1,500.00; however, the merits of the claim had not been formally adjudicated. The Office indicated that since they received a request for additional treatment his claim would be formally adjudicated. On March 29, 2007 it accepted appellant's claim.

In a letter dated November 26, 2007, appellant requested Dr. Lan prescribe a one-year health club membership so that he could fully recover from his injuries and return to normal health. He submitted a brochure for 24 Hour Fitness Club.

On November 27, 2007 Dr. Lan addressed the medical necessity of the health club membership and noted that the exercise/therapy program was a home exercise program as prescribed by the physical therapist. She described the frequency of the regimen as three to six days per week with a goal of maintaining a level of activity and strength to prevent further injury. Dr. Lan anticipated the duration of the program would be one year and noted the regimen was very effective compared to alternative modes. The equipment required was access to professional gym equipment at a fitness center with a treadmill and weights. Dr. Lan noted that the regimen could be performed without help and as an independent home exercise program.

On December 12, 2007 the Office referred appellant to Dr. Alfred C. Lotman, a Board-certified orthopedic surgeon, for a second opinion evaluation on the nature of his condition, the extent of disability and the appropriate treatment. It provided Dr. Lotman with appellant's medical records, a statement of accepted facts and a description of his work duties. The Office also referred appellant for a functional capacity evaluation.

Appellant was treated by Dr. Fall on December 3, 2007 for complaints of persistent back pain with radiculopathy. In a December 18, 2007 report, Dr. Lan noted treating appellant for persistent back pain with leg symptoms. She dispensed a foam roller, cervical and lumbar supports and a ball to assist appellant with a home exercise program.

On December 27, 2007 appellant underwent a functional capacity evaluation which determined that he could perform at the medium physical demand level. The physical therapist noted that appellant was limited by fatigue, low back and right leg pain and demonstrated inconsistencies during the evaluation which suggested that he may be capable of performing at a greater physical demand level than that exhibited during the evaluation. The therapist further noted that the psychometrics evaluation suggested the presence of nonorganic problems and a possible need for further evaluation or psychological evaluation.

In a January 10, 2008 report, Dr. Lotman reviewed the records provided and performed a physical examination. He discussed appellant's work history and noted that the physical examination was essentially normal with no gait disturbances, no alignment abnormalities of the cervical, thoracic or lumbar spine, some patchy decreased sensation in the upper and lower extremities, breakaway weakness in the upper and lower extremities and no paravertebral muscle spasms. Dr. Lotman advised that appellant had exaggerated pain behaviors. He opined that appellant continued to have residuals of the work-related fall related to the low back and lumbar spine and his prognosis was guarded due to the depressive component of his condition. Dr. Lotman opined that the health club membership was not medically necessary and that appellant was able to safely complete the home physical therapy program. He did not believe continuing physical therapy through a health club membership would be beneficial to treat appellant's condition. In a supplemental report dated January 15, 2008, Dr. Lotman reviewed the findings of the functional capacity evaluation and opined that the results did not change his prior report or opinion.

Appellant submitted a January 7, 2008 report from Dr. Fall who noted appellant's complaints of low back, right leg and left upper trapezius pain. Dr. Fall diagnosed lumbosacral strain with L5-S1 disc bulge with right S1 radiculopathy.

In a January 24, 2008 decision, the Office denied appellant's request for a health club membership. It found the weight of the medical evidence was represented by Dr. Lotman and did not establish that the membership was medically necessary for his accepted condition.

### **LEGAL PRECEDENT**

Section 8103 of the Federal Employees' Compensation Act<sup>2</sup> 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>3</sup>

In interpreting section 8103, the Board has recognized that the Office has broad discretion in approving services provided under the Act. The Office has the general objective of ensuring that an employee recovers from his or her injury to the fullest extent possible, in the shortest amount of time. It, therefore, has broad administrative discretion in choosing means to achieve this goal. The only limitation on the Office's authority is that of reasonableness.<sup>4</sup> 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 by submitting rationalized medical evidence that supports such a connection and demonstrates that the treatment is necessary and reasonable.<sup>5</sup> While the Office is obligated to pay for treatment of employment-related conditions, the employee has the burden of establishing that the expenditure is incurred for treatment of the effects of an employment-related injury or condition.<sup>6</sup>

Regarding membership in a health club or spa, the Office's procedure manual provides that health club memberships may be authorized if needed to treat the effects of an injury, that such memberships may be approved only for periods of six months at a time and that the treating physician must describe the specific therapy and exercise routine needed, the anticipated duration of the recommended regimen, the specific equipment or facilities needed, the treatment goals, the actual or anticipated effectiveness of the regimen, the frequency of examinations to determine the ongoing need for the program and whether the exercise routine can be performed at home.<sup>7</sup>

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> 5 U.S.C. § 8103(a).

<sup>4</sup> *Dr. Mira R. Adams*, 48 ECAB 504 (1997).

<sup>5</sup> *See Debra S. King*, 44 ECAB 203 (1992).

<sup>6</sup> *Kennett O. Collins, Jr.*, 55 ECAB 648, 654 (2004).

<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.15 (July 2000).

## ANALYSIS

The Office accepted that appellant sustained employment-related lumbar dislocation, sacrum dislocation, lumbar back sprain, muscle spasms, cervical strain, left shoulder strain (resolved) and left hand contusion (resolved). Appellant requested a health club membership that the Office denied in its January 24, 2008 decision.

The Office referred appellant to Dr. Lotman who found that his physical examination was essentially normal but revealed exaggerated pain behaviors. Dr. Lotman opined that the health club membership was not medically necessary and that appellant was capable of safely completing a home physical therapy program. He opined that physical therapy through a health club membership would not be beneficial to treat appellant's injuries. In a report dated January 15, 2008, Dr. Lotman reviewed the findings of a functional capacity evaluation which revealed that appellant could perform at the medium physical demand level. He advised that the results did not change his opinion.

In a November 2, 2007 report, Dr. Fall offered diagnoses and opined that appellant had reached maximum medical improvement with respect to his work-related injuries. He noted appellant's interest in a health club membership with which she was in agreement. However, Dr. Fall did not provide any medical rationale explaining the reasons why the health club membership was necessary or useful in treating appellant's accepted cervical and lumbar conditions.<sup>8</sup>

On November 5, 2007 Dr. Lan recommended a maintenance gym membership for 6 to 12 months; however, she did not provide any reasoning to support the necessity of her recommendation. In a November 27, 2007 report, she noted that the exercise/therapy program was prescribed by the physical therapist with a frequency of three to six days per week with a goal of maintaining a level of activity and strength to prevent further injury. Dr. Lan noted that the equipment necessary to perform the regimen was in a professional gym which had a treadmill and weights and the regimen could also be performed without help as an independent home exercise program. She did not address the basis for her conclusion that a health club membership was medically necessary and reasonable for treatment or how it might alleviate appellant's cervical and lumbar condition. Dr. Lan did not explain the medical reasons why a health club membership would likely cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation. Moreover, she indicated that appellant would also benefit from a home exercise program that could be done independently without help. Without medical reasoning explaining this apparent contradiction, Dr. Lan's report is insufficient to establish that a health club membership is necessary and reasonable for treating appellant's accepted conditions. No other medical evidence of record provides a well-reasoned opinion explaining why a health club membership is necessary and reasonable for the treatment of his accepted conditions.

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<sup>8</sup> See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

Because appellant did not submit medical evidence explaining why the health club membership was necessary for treatment of his accepted conditions, the Office properly denied authorization for the membership.

**CONCLUSION**

The Board finds that the Office did not abuse its discretion in refusing to authorize payment for a health club membership.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated January 24, 2008 is affirmed.

Issued: November 14, 2008  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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