

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

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**M.S., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Denver, CO, Employer**

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**Docket No. 13-1614  
Issued: November 25, 2013**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On June 27, 2013 appellant filed a timely appeal from the January 22, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 authorization of an orthopedic mattress.

**FACTUAL HISTORY**

OWCP accepted that on August 26, 2008 appellant, then a 44-year-old city letter carrier, sustained a lumbar sprain due to reaching for an item in his delivery vehicle. It later accepted that on July 18, 2012 he sustained another lumbar sprain due to getting a piece of tape from a

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

dispenser.<sup>2</sup> Appellant received disability compensation on the supplemental rolls for these injuries.

Appellant returned to modified work for the employing establishment shortly after his July 18, 2012 work injury and he continued to receive treatment from Dr. Jack L. Rook, an attending Board-certified physical medicine and rehabilitation physician. He participated in OWCP-authorized physical therapy and massage therapy sessions and was totally disabled for intermittent periods.

In an October 2, 2012 report, Dr. Rook noted that appellant reported that he was having trouble sleeping and awoke every one or two hours due to back pain and he stated, "Today I recommended an orthopedic mattress and I gave him a prescription for a sleep number bed."<sup>3</sup> On November 12, 2012 he noted that appellant reported that his biggest problem was sleeping and that he had to sleep in a reclining chair. Dr. Rook stated, "I have in the past given him a prescription for an orthopedic mattress."

In late November 2012, appellant requested authorization for an orthopedic mattress. Price estimates were submitted for three brands of mattresses: Sleep Number king mattress/base, Comfort Renewal king mattress/base or Tempur-Pedic Cloud king mattress/base.<sup>4</sup>

In a December 18, 2012 work restrictions form, Dr. Rook diagnosed lumbosacral pain and spasm and indicated that appellant could work for five and half hours a day with restrictions such as lifting, pushing and pulling no more than 10 pounds. In a December 18, 2012 report, he indicated that appellant was still waiting for approval of an orthopedic mattress.

On December 18, 2012 OWCP requested that Dr. Morley Slutsky, a Board-certified occupational medicine physician serving as an OWCP medical adviser, review the medical evidence and provide an opinion on whether appellant's request for authorization of an orthopedic mattress should be approved.<sup>5</sup>

In a December 27, 2012 report, Dr. Slutsky discussed appellant's accepted work conditions and provided an extensive summary of the medical records detailing the treatment of his back condition. He noted that he had reviewed all the relevant evidence and stated:

"The requested mattress is not necessary, appropriate and/or within the realm of accepted medical practice for the accepted work injuries. A mattress is not medical treatment and not used as standard treatment for the accepted conditions in this case. The effectiveness of any mattress for comfort (not medical

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<sup>2</sup> Prior to sustaining his July 18, 2012 work injury, appellant was released to return to modified work duties at the employing establishment.

<sup>3</sup> The record contains a prescription slip in which Dr. Rook prescribed a "Sleep Number bed" without elaboration.

<sup>4</sup> The estimated prices of the mattresses (with bases) ranged from \$4,350.00 to \$7,435.00.

<sup>5</sup> OWCP asked Dr. Slutsky to indicate whether the mattress was necessary, appropriate and within the realm of accepted medical practices for appellant's accepted lumbar sprains.

treatment) is subjective and depends on personal preference and individual factors. Evidence[-]based medical studies do not show that a particular mattress is curative or will significantly improve an individual's medical condition related to the low back. Based upon this the mattress discussed above is not necessary, appropriate and or within the realm of accepted medical practice for the accepted work injuries.”

In a January 22, 2013, OWCP denied appellant's request for authorization of an orthopedic mattress. It found that authorization was denied because the medical evidence does not establish that such treatment is medically necessary, appropriate or within the realm of accepted medical practice for his accepted work 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.”<sup>6</sup>

The Board has found that OWCP has great discretion in determining whether a particular type of treatment is likely to cure or give relief.<sup>7</sup> The only limitation on the OWCP's authority is that of reasonableness.<sup>8</sup> 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.<sup>9</sup>

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.<sup>10</sup> Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.<sup>11</sup>

### **ANALYSIS**

OWCP accepted that appellant sustained a work-related lumbar sprains on August 26, 2008 and July 18, 2012. Appellant submit a request to OWCP for authorization of an orthopedic mattress.

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<sup>6</sup> 5 U.S.C. § 8103.

<sup>7</sup> *Vicky C. Randall*, 51 ECAB 357 (2000).

<sup>8</sup> *Lecil E. Stevens*, 49 ECAB 673, 675 (1998).

<sup>9</sup> *Rosa Lee Jones*, 36 ECAB 679 (1985).

<sup>10</sup> *Bertha L. Arnold*, 38 ECAB 282, 284 (1986).

<sup>11</sup> *Zane H. Cassell*, 32 ECAB 1537, 1540-41 (1981); *John E. Benton*, 15 ECAB 48, 49 (1963).

The Board finds that OWCP properly denied appellant's request for authorization of an orthopedic mattress. Appellant did not show that the medical evidence supported authorization of an orthopedic mattress. OWCP did not abuse its discretion in such matters when it denied his request.

Appellant did not submit rationalized medical evidence showing that an orthopedic mattress was necessary to treat his work-related conditions. In his October 2, 2012 report, Dr. Rook noted that appellant reported that he was having trouble sleeping due to back pain and he stated, "Today I recommended an orthopedic mattress and I gave him a prescription for a Sleep Number bed." He completed a prescription slip in which he prescribed a "Sleep Number bed" without elaboration. On November 11, 2012 Dr. Rook noted that appellant continued to have sleeping problems and stated, "I have in the past given him a prescription for an orthopedic mattress." The Board notes that his recommendation for an orthopedic mattress is of limited probative value because he did not provide medical rationale explaining how the mattress was likely to cure or give relief for appellant's accepted work injuries.<sup>12</sup>

Moreover, Dr. Slutsky, OWCP's medical adviser, indicated that appellant's request for authorization of an orthopedic mattress should not be approved. Dr. Slutsky determined that the requested orthopedic mattress was not necessary, appropriate and/or within the realm of accepted medical practice for appellant's accepted work injuries. A mattress was not medical treatment and was not used as standard treatment for appellant's accepted conditions. Dr. Slutsky noted that the effectiveness of any mattress for comfort, as opposed to medical treatment, was subjective and depended on personal preference and individual factors. He stated that evidence based medical studies did not show that a particular mattress was curative or would significantly improve an individual's low back condition from a medical standpoint.

On appeal, appellant asserted that an orthopedic mattress would improve his back condition, but his own opinion would not be a substitute for rationalized medical evidence. For these reasons, OWCP properly denied appellant's request for authorization of an orthopedic mattress.

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 authorization of an orthopedic mattress.

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<sup>12</sup> See *supra* notes 7, 10 and 11.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 22, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 25, 2013  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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