

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ELIZABETH BOSWELL and DEPARTMENT OF THE AIR FORCE,
PATRICK AIR FORCE BASE, Fla.

*Docket No. 95-2962; Submitted on the Record;
Issued February 2, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs abused its discretion in its refusal to authorize expenses of a hot tub spa recommended by appellant's physician.

Appellant, a 54-year-old sustained a knee strain and back injury at work on November 20, 1990. Following initial physical therapy, diagnostic tests revealed a central disc herniation at L5-S1 and a bulging annulus at L4-5. Dr. Christopher Prusinski, an osteopath, treated appellant and released her to work on December 10, 1990 with a 30-pound lifting restriction. Medical records indicate that appellant continued to receive pain medication, and in February 1991 she obtained additional physical therapy treatment. Appellant was referred to Dr. Gary Weiss, a Board-certified neurologist, who first evaluated appellant in mid-February 1991. One month later, he noted that use of a jacuzzi and a transcutaneous electrical nerve stimulator (tens) unit provided some relief, and he renewed her prescriptions for pain medication.

By letter dated May 22, 1991, appellant requested that the Office approve payment of a jacuzzi and a ski-type exercise machine for her use at home. She noted that she used both the jacuzzi and exercise machine at her neighbor's home and felt that use at her home could allow her to decrease or stop her medication.

In response to a June 1991 request from the Office, Dr. Weiss diagnosed a lumbar strain and an aggravation to a prior left knee condition. Dr. Weiss noted that he agreed with appellant that she should obtain a jacuzzi and the ski machine, but provided no rationale to support his opinion, as the Office had requested. In a July 1991 treatment note, he restated his opinion that appellant should obtain the jacuzzi and ski machine, noting that he would reevaluate her in three months.

Dr. Paul Maluso, an orthopedic surgeon and Office referral physician, evaluated appellant on September 24, 1991 and indicated that appellant's preexisting degeneration had been aggravated by her employment injury. He diagnosed a lumbosacral sprain/strain with central herniation of the L5-S1 disc space, for which surgery was unnecessary. Dr. Maluso stated that he did not believe a jacuzzi or a ski-type machine would cure or give relief, or lessen the period of her work-related disability.

In response to an October 1991 letter from the Office declining payment for the requested modalities, appellant's attorney submitted prescriptions written by Dr. Weiss in mid-September 1991 for the fitness, one ski machine and a jacuzzi. By report dated January 13, 1992, Dr. Weiss noted that appellant continued to have residual left leg radicular symptoms, and that it was his belief that prolonged use of the hydro therapy unit and ski machine would provide a quicker recovery from her injury. He noted that the hydro therapy unit, or jacuzzi, was not available to appellant otherwise.

By letter dated February 27, 1992, the Office advised Dr. Weiss of the accepted claim for strains of the back and left knee, and noted the cost of the jacuzzi. The Office requested further information from Dr. Weiss to support the need of the requested therapy treatments and requested specifically whether appellant would benefit from a spa which fits on the side of a bathtub.

By report dated March 24, 1992, Dr. Weiss stated that he felt the combined effect of heat and massaging pressure would "eventually put her back on the road to recovery with continued use." He addressed spas which fit on a bathtub and indicated that in view of her long commute and normal physical activity with exhaustion at the end of the day, both the jacuzzi and the machine would be beneficial to her. Dr. Weiss noted a lack of therapy in recent months and stated that both the diagnostic tests and second-opinion report confirmed a herniated disc, as opposed to a strain. For the next year, Dr. Weiss remained consistent with his recommendation for a jacuzzi and the ski machine, and provided a permanent rating of impairment based on appellant's continued radicular symptoms down her leg. In a June 1993 report, he described in detail how he felt the components of the hot spring (prodigy) spa would benefit appellant.

In May 1994, appellant's attorney provided a written description from the manufacturer relating to the hot spring portable spa which appellant requested. The attorney also asserted that appellant had sustained a torn medial meniscal tear and requested a schedule award for this condition, as well as the radiculitis. The Office referred the evidence to Dr. Phillip W. Horn, an Office medical adviser and Board-certified internist. Dr. Horn reviewed the medical evidence on June 13, 1994 and opined that appellant had sustained a medial meniscus tear, for which he calculated a three percent impairment of the left leg. By decision dated July 6, 1994, the Office granted appellant a schedule award for three percent impairment of the left leg. In response to a further request by telephone for the jacuzzi ski machine, the Office referred the medical evidence to Dr. Horn. Dr. Horn noted in a July 19, 1994 report, that information provided at an international conference on rheumatology in May 1990 indicated that the effect of hydrotherapy on arthritic joints was temporary in nature and was due to the heat element of the therapy. He noted a lack of prolonged improvement over ordinary water above the body temperature and

indicated that appellant's attending physician should provide current literature supporting his view of permanent relief to support the payment of the expense.

By letter dated August 4, 1994, the Office provided appellant's attorney with the July 19, 1994 report by Dr. Horn. In reports dated September 16, 1994 and April 24, 1995, Dr. Weiss noted that he continued to recommend a hot spring spa and that an over-the-tub portable whirlpool would be sufficient if the water remained warm. He noted in April 1995 appellant's inability to go to physical therapy at that time.

By decision dated July 3, 1995, the Office denied appellant's request for a home hot tub spa, on the grounds that the effect of the spa would be temporary only.

The Board finds that the Office did not abuse its discretion in its refusal to authorize expenses of a hot tub spa recommended by appellant's physician.

Section 8103(a) of the Federal Employees' Compensation Act provides for the furnishing of "services, appliances and supplies prescribed or recommended by a qualified physician," which the Office, under authority delegated by the Secretary, "considers likely to cure, give relief, reduce the degree of the period of any disability, or aid in lessening the amount of any monthly compensation."¹ In interpreting this section, the Board has recognized that the Office has broad discretion in approving services under the Act.² The only limitation on the Office's authority is that of reasonableness.³

The Board finds that while Dr. Weiss, a Board-certified neurologist, recommended beginning February 1991 both a hot tub spa and an exercise machine, he did not provide any rationale for his recommendation when asked by the Office during the summer of 1991.⁴ In his further response in March 1992, he provided conflicting information on whether a hot tub spa which fit over the tub would suffice. In a handwritten note he indicated that if it were large enough it would suffice. This information conflicted with the information provided in a typewritten note, indicating that such an over-the-tub spa would not suffice. The reason provided by Dr. Weiss for his recommendation for the hot tub spa was the relief it would provide to appellant in view of her complaints of exhaustion at the end of the day. He later explained how the spa with both the heat and massage elements would help to decrease appellant's aching pain and tension. The Office obtained an opinion from Dr. Maluso, an orthopedic surgeon, who felt that the spa would not provide any curative or lasting relief, or lessen the period of disability in appellant's case. The Office also obtained an opinion from Dr. Horn, a Board-certified

¹ 5 U.S.C. § 8103(a).

² *Marla Davis*, 45 ECAB 828 (1994); *Patsy R. Tatum*, 44 ECAB 490 (1993); *Daniel J. Perea*, 42 ECAB 214 (1990).

³ *Id.*

⁴ *Cf. Lenard E. Fritz*, 39 ECAB 170 (1987) (where the Board found that the Office properly refused reimbursement of a hot spa installed by appellant prior to the recommendation or prescription of his attending physician, notwithstanding the opinion of the second opinion physician who found that temporary relief would be sustained).

internist and Office medical adviser who reviewed the medical record. Dr. Horn cited medical information provided at an international rheumatology conference almost five years prior to his review, on the limited temporal benefits of hydrotherapy treatment for pain associated with degenerative disc disease, without any permanent lasting effect. Appellant's physician provided no further information to support any lasting relief from the recommended spa. Accordingly, the Office did not abuse its discretion in denying the recommended hot tub spa, based on the lack of support from Dr. Weiss to show that the spa would aid in appellant's recovery other than providing temporary relief.

The decision of the Office of Workers' Compensation Programs dated July 3, 1995 is hereby affirmed.

Dated, Washington, D.C.
February 2, 1998

George E. Rivers
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member