

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

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**D.J., Appellant**

**and**

**DEPARTMENT OF THE NAVY, NAVAL  
AVIATION DEPOT, Alameda, CA, Employer**

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**Docket No. 05-1727  
Issued: August 23, 2006**

*Appearances:*  
*D.J., pro se*  
*Office of the Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge

**JURISDICTION**

On August 19, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' July 26, 2005 merit denial of her claim. Under 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 the Office properly denied appellant's claim for compensation for intermittent dates from January 1 to April 8, 2005.

**FACTUAL HISTORY**

Appellant was employed by the employing establishment as a laborer. She sustained injuries to her head and back on October 30, 1987; an injury to her cervical spine on February 26, 1988; and an injury to her thoracic and lumbar spine on November 19, 1991. The claim was accepted for neck strain, lumbar strain, concussion, cervical stain and thoracic strain. Appellant missed work intermittently and the Office paid compensation for appropriate periods. She eventually terminated her employment with the employing establishment, obtained

subsequent employment but continued to receive wage-loss compensation for time missed from work for physical therapy.

Appellant submitted CA-7 forms for compensation on account of disability dated February 7 and 28, April 17 and May 5, 2005, requesting wage-loss compensation for time lost from work attending physical therapy for the periods January 1 to 31, February 1 to 28, March 1 to 31 and April 1 to 8, 2005. Appellant submitted a handwritten list of appointment dates from April 2004 through March 2005, written on stationery from Pacific Orthopaedic Sports and Rehabilitation.

By letter dated May 25, 2005, the Office informed appellant that a list purporting to verify the dates she attended medical appointments was not sufficient for her to attain compensation. It advised appellant that it required medical evidence, an actual report of the visit signed by the provider, to support her claims for reimbursement for physical therapy. The Office advised appellant that although as a courtesy it had paid her such compensation in the past without the required documentation it would no longer continue to do so. Appellant submitted a May 17, 2005 report from Dr. Richard A. Nolan, a Board-certified orthopedic surgeon and attending physician, prescribing physical therapy to treat her employment-related conditions, several handwritten progress notes, chart notes and treatment notes from March and April 2005.

By decision dated July 26, 2005, the Office denied appellant's claim for reimbursement for physical therapy for the periods January 1 to 31, February 1 to 28, March 1 to 31 and April 1 to 8, 2005 causally related to her accepted conditions. The Office found that she failed to submit the requested documentation required to establish that she attended physical therapy on the dates indicated.

### **LEGAL PRECEDENT**

Section 8103 of the Federal Employees' Compensation Act<sup>1</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>2</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 Office has the general objective of ensuring that an employee recovers from his injury to the fullest extent possible in the shortest amount of time. The Office, therefore, has broad administrative discretion in choosing means to achieve this goal. The only limitation on the Office's authority is that of reasonableness. 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>3</sup>

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> 5 U.S.C. § 8103.

<sup>3</sup> *Daniel J. Perea*, 42 ECAB 214 (1990).

With respect to claimed disability for medical treatment, section 8103 of the Act provides for medical expenses, along with transportation and other expenses incidental to securing medical care, for injuries.<sup>4</sup> Appellant would be entitled to compensation for any time missed from work due to medical treatment for an employment-related condition.<sup>5</sup> However, the Office's obligation to pay for medical expenses and expenses incidental to obtaining medical care, such as loss of wages, extends only to expenses incurred for treatment of the effects of any employment-related condition. Appellant has the burden of proof, which includes the necessity to submit supporting rationalized medical evidence.<sup>6</sup>

### ANALYSIS

The Board finds that the case is not in posture for decision on the issue of whether appellant is entitled to wage-loss compensation for intermittent time lost from work for physical therapy during the period from January 1 to April 8, 2005.

In the instant case, the Office had been paying compensation for wage loss during therapy treatments based on CA-7 forms she submitted. Appellant had attached reports from her treating physician, Dr. Richard A. Nolan, a Board-certified orthopedic surgeon, who prescribed physical therapy to treat her work-related lumbar and cervical conditions. The Office had initially authorized these therapy sessions. Appellant requested compensation for wage loss for additional physical therapy on February 7 and 28, April 17 and May 5, 2005. In support of this request, appellant submitted reports from Dr. Nolan dated January 25 and March 22, 2005, which prescribed physical therapy to treat her employment-related conditions. Appellant also submitted a handwritten list of appointment dates from April 2004 through March 2005, written on stationary from Pacific Orthopaedic Sports and Rehabilitation, which indicated that appellant underwent physical therapy for her accepted lumbar, cervical and thoracic conditions on these dates. As noted above, the only restriction on the Office's authority to authorize medical treatment is one of reasonableness.<sup>7</sup>

The Office, however, by letter dated May 25, 2005, informed appellant that hereafter it required medical evidence consisting of an actual report of the visit signed by the provider. Appellant submitted a May 17, 2005 report from Dr. Nolan, which prescribed physical therapy to treat her employment-related conditions in addition to progress notes, chart notes and treatment notes from March and April 2005, which indicated that appellant underwent physical therapy during this period for her accepted lumbar, cervical and thoracic conditions. Based on these documents that appellant submitted, it thus appears that appellant's physical therapy may have been authorized by her treating physician, in which case she would be entitled to compensation for time lost from work undergoing such prescribed treatment.

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<sup>4</sup> 5 U.S.C. § 8103(a).

<sup>5</sup> *Vincent E. Washington*, 40 ECAB 1242 (1989).

<sup>6</sup> *Dorothy J. Bell*, 47 ECAB 624 (1996).

<sup>7</sup> *See Francis H. Smith*, 46 ECAB 392 (1995).

The case will, therefore, be remanded to the Office. On remand, the Office should review Dr. Nolan's January 25, March 22 and May 17, 2005 reports, to determine whether he authorized or prescribed physical therapy for appellant and, if so, whether the services rendered were "likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation." The Office should then determine whether appellant has established that she is entitled to wage-loss compensation as a result of time lost from work undergoing the authorized physical therapy.

**CONCLUSION**

The Board finds that appellant has provided evidence sufficient to establish that she was entitled to reimbursement for physical therapy for the periods January 1 to 31, February 1 to 28, March 1 to 31 and April 1 to 8, 2005, causally related to her accepted conditions.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 26, 2005 decision of the Office of Workers' Compensation Programs be set aside and the case remanded for further action consistent with this decision of the Board.

Issued: August 23, 2006  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board