

underwent removal of an anterior cervical plate and screws from C4 to C6. The Office accepted appellant's claim for a cervical strain, cervicgia, aggravation of preexisting degenerative disc disease and related surgery.

In a July 2, 2004 report, Dr. Robert E. Holladay, IV, an attending Board-certified orthopedic surgeon, provided findings on physical examination. He stated that appellant slept in a recliner because he was unable to find a comfortable position for his neck and shoulder in a bed. Dr. Holladay stated:

“[Appellant] continues to have a moderate amount of symptoms in his neck and shoulder. He has good days and bad days. [Appellant] has presented me with specific information in regards to a bed. He has gone and tried out several beds and has obtained detailed information.”

In a July 27, 2004 report, Dr. Holladay stated:

“[Appellant] has tried several adjustable beds, which will support his neck and shoulders and upper back to the point that it helps relieve the pressure on his neck. He has found such an item at the Relax-The-Back store.

“I am prescribing and recommending an adjustable bed from [t]he Relax-The-Back store. The particular bed is medically necessary to allow the exact posture and position, which will allow [appellant] to be able to sleep in a bed and relieve the pressure in his neck and shoulders and allow him to sleep instead of sleeping in a recliner. The upper portion of the bed will elevate the upper body, which will relieve pressure on the neck and shoulders. This will improve his quality of sleep and thereby decreasing his pain and hopefully decreasing his need for medication. In addition to the bed, I am also prescribing a foam component mattress from Relax-The-Back store, which has a unique pattern, which will help in relieving stress in the neck, the shoulders and lower back. This will likewise improve quality of sleep, decreasing clinical symptoms and decreasing the need for further medical therapy.”

On April 13, 2005 appellant requested authorization for an adjustable bed and a foam mattress for treatment of his accepted cervical condition.

In a July 18, 2005 report, Dr. Clifton W. Shepherd, an attending Board-certified orthopedic surgeon and specialist in pain management, provided a history of appellant's condition and findings on physical examination. He indicated that appellant had constant neck pain radiating to the right trapezius and right scapular area. The pain was worse when he attempted to sleep because he customarily slept on his side and lateral bending of his neck was very painful.

In an August 4, 2005 memorandum, Dr. Ronald H. Blum, an Office medical adviser, reviewed appellant's medical records. He stated that the benefits of an adjustable bed and foam mattress could be achieved with judicious use of appropriately placed bolsters and pillows. Dr. Blum recommended that the Office deny authorization for an adjustable bed and mattress.

By decision dated August 8, 2005, the Office denied appellant's request for an adjustable bed and mattress.

Appellant requested reconsideration and submitted an August 16, 2005 report from Dr. Shepherd who provided information regarding appellant's cervical pain. He did not address the issue of an adjustable bed.

By decision dated November 14, 2005, the Office denied modification of the August 8, 2005 decision.

LEGAL PRECEDENT

Section 8103(a) of the Federal Employees' Compensation Act provides for furnishing an injured employee "the services, appliances and supplies prescribed or recommended by a qualified physician," which the Office, under authority delegated by 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." The Office has great discretion in determining whether a particular type of treatment is likely to cure or give relief.¹

The Office procedure manual discusses requests for equipment not commonly obtainable from medical supply sources or prescribed for treatment such as waterbeds, weight-lifting sets, saunas, tape decks, vibrating chairs and exercise bicycles.² The Office must evaluate the pertinent information received from the claimant and his physician and determine whether the equipment is necessary to treat the effects of the work-related injury and that its use will be consistent with the claimant's restrictions and safety.³

ANALYSIS

Appellant contends that it was medically necessary for him to have an adjustable bed and mattress for treatment of his May 12, 1994 employment injury, cervical strain, cervicgia and aggravation of preexisting degenerative disc disease.

Dr. Holladay, appellant's attending physician, stated that he had a history of problems with his neck and back. He noted that appellant slept in a recliner rather than a bed because he could not get into a comfortable position. Dr. Holladay recommended that the Office approve an adjustable bed and foam mattress, stating that they would help in relieving stress to the neck, shoulders and low back and improve the quality of sleep.

Dr. Blum, the Office medical adviser, opined that the benefits of an adjustable bed and foam mattress could be achieved with the use of appropriately placed bolsters and pillows and recommended that the Office deny authorization for an adjustable bed and mattress.

¹ *Thomas Lee Cox*, 54 ECAB 509 (2003); *Stella M. Bohlig*, 53 ECAB 341 (2002).

² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.15.b (July 2000).

³ *Id.*

The Board finds that there is a conflict in the medical opinion evidence between Dr. Holladay and Dr. Blum on the issue of appellant's request for authorization for an adjustable bed and mattress. Section 8123(a) of the Act provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.⁴ The implementing regulation states that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an Office medical adviser or consultant, the Office shall appoint a third physician to make an examination.⁵ The Board will remand the case for resolution of the conflict in the medical evidence.

CONCLUSION

The Board finds that this case is not in posture for a decision. On remand, the Office should refer appellant to an appropriate medical specialist for an examination and evaluation on the issue of whether an adjustable bed and mattress would be likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation in appellant's case. After such further development as the Office deems necessary, it should issue an appropriate decision.

⁴ 5 U.S.C. § 8123(a); *see also* *Raymond A. Fondots*, 53 ECAB 637 (2002); *Rita Lusignan (Henry Lusignan)*, 45 ECAB 207 (1993).

⁵ 20 C.F.R. § 10.321.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated November 14 and August 8, 2005 are set aside and the case remanded for further development consistent with this decision.

Issued: July 14, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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