

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

L.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Los Angeles, CA, Employer**

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**Docket No. 07-778
Issued: October 5, 2007**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 29, 2007 appellant filed a timely appeal from a November 1, 2006 decision of the Office of Workers' Compensation Programs denying authorization for the purchase of a zero gravity chair.¹ Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over these issues.

ISSUE

The issue on appeal is whether the Office properly denied authorization for the purchase of a chair.

FACTUAL HISTORY

On September 7, 2000 appellant then a 53-year-old clerk, filed an occupational disease claim alleging that her hands, wrists, arms and shoulders were hurting while working. She

¹ The record also contains a November 15, 2006 schedule award decision; however, appellant has not appealed from this decision.

alleged that on April 22, 2000 she realized that her condition was caused or aggravated by her employment. Appellant stopped work on August 12, 2000.² The Office accepted her claim for bilateral carpal tunnel syndrome, bilateral upper extremity overuse syndrome and cervical herniated nucleus pulposus C6-7. It also authorized bilateral shoulder arthroscopies and a bilateral carpal tunnel release.³ Appellant received appropriate compensation benefits.

On June 16, 2004 Dr. Elliot Gross, a Board-certified neurologist and treating physician, advised that appellant needed an orthopedic recliner chair as it was the only way she could sleep.

By letter dated October 6, 2004, the Office advised appellant that additional information was needed to determine whether the zero gravity chair that she requested was medically necessary. It advised her that she needed to provide a statement from her physician which addressed the basic equipment she would need and the medical reasons for recommending the equipment; the specific goals of or benefits expected from this equipment and a description of how often she would be using the equipment; and the expected duration of its use; and a description of alternative treatment that might provide the same results.

In an October 17, 2004 report, Dr. Gross advised the Office that he was recommending a zero gravity chair because it would allow appellant to sit in a semi-recumbent position and she would be able to do some desk-type work with the appropriate support for her neck. He indicated that appellant would be more functional with this type of equipment and could use it on a daily basis throughout the day. Dr. Gross opined that appellant would need the equipment on a permanent basis. He indicated that he was not aware of any alternative type of treatment. By letter dated November 8, 2004, appellant indicated that she was enclosing two quotes for the chair prescribed by Dr. Elliot.

In a January 3, 2005 report, Dr. Gross repeated the request for a recliner chair and advised that appellant needed it to sleep. By letter dated January 11, 2005, appellant stated that she was trying to obtain authorization for a recliner chair which was recommended by her physician, but had not received a response. She informed the Office that she retired in October 2004. Appellant requested approval for the recliner chair, as she could not sleep without it because of the pain in her shoulders. She also enclosed a copy of an April 15, 2004 prescription from Dr. Gross prescribing a recliner chair.

On January 20, 2005 the Office informed appellant that no decision had been made on her request for an anti-gravity chair as there was a discrepancy in her physician's recommendations. The Office noted that appellant's physician indicated that the chair was needed for appellant to work comfortably while she alleged that she needed it to sleep. Appellant was advised that her claim was referred to the Office medical adviser for an opinion regarding the appropriateness of using the chair to sleep in.

² This case was previously on appeal before the Board. In a decision dated September 30, 2003, the Board found that the Office properly determined that appellant was not entitled to augmented compensation based on claiming her minor grandson as a dependent. Docket No. 03-1820 (issued September 30, 2003).

³ The record reflects that appellant also has an accepted claim for a right shoulder sprain under File No. 131215592.

By letter dated January 25, 2005, appellant advised the Office that she also had left and right rotator cuff surgery and a left carpal tunnel release. She also indicated that her physician prescribed the chair for sleeping. Appellant further noted that she had retired as of October 1, 2004 and was no longer on the rolls.

On June 22, 2005 the Office granted appellant a schedule award for 14 percent impairment of the right upper extremity and 14 percent impairment of the left upper extremity.

On July 11, 2005 the Office received a copy of Dr. Gross's January 3, 2005 report which stated that the recliner chair was needed for appellant to sleep. It also received his March 7 and June 6, 2005 follow-up reports.

By decision dated October 20, 2005, the Office denied authorization for the purchase of a zero gravity chair. The Office found that the chair was recommended for the cure and or relief of appellant's nonindustrial cervical condition, not her hands and shoulders.

The Office received periodic reports from Dr. Gross regarding appellant's condition which he advised was permanent and stationary.

After appellant requested a hearing, a hearing representative, in a February 22, 2006 decision, determined that the case was not in posture for decision regarding the authorization of zero gravity chair and of appellant's claim for a cervical condition. The Office hearing representative noted that a second opinion was needed to determine whether appellant's cervical condition arose as a result of her accepted condition or injury. The Office hearing representative set aside and remanded the October 20, 2005 decision.

On September 6, 2006 the Office expanded appellant's claim to include a cervical condition, a herniated nucleus pulposus at C6-7.

By letter dated September 9, 2006, appellant's representative requested clarification from the Office regarding appellant's accepted conditions and repeated the request for a zero gravity chair.

On September 26, 2006 the Office referred appellant for a second opinion, together with a statement of accepted facts, a set of questions and the medical record, to Dr. Bunsri T. Sophon, an orthopedic surgeon. In a report dated October 13, 2006, Dr. Sophon, described appellant's history of injury and treatment. He indicated that he "was not familiar with and [had] no information regarding the zero gravity chair for [appellant's] use for sleeping." Dr. Sophon noted that the record contained a prescription from Dr. Gross, in which he prescribed a recliner chair.⁴ He advised the Office that, instead of a recliner, appellant could use alternative methods such as a pillow to support and position her body in a reclining position which was what she has been doing since 2002, when "she last used the worn out recliner."

⁴ While Dr. Sophon noted that it was dated April 15, 2004, it appears that he was referencing the June 16, 2004 prescription.

By decision dated November 1, 2006, the Office found that the medical evidence was insufficient to support appellant's request for a zero gravity recliner.

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.⁵

ANALYSIS

Appellant contended that the purchase of a zero gravity chair or recliner was necessary as she could not sleep because of the pain in her shoulders. Nonmedical equipment may be authorized if recommended by a claimant's treating physician and if the Office finds that such an item is likely to cure, give relief and reduce the degree or the period of disability or aid in lessening the amount of monthly compensation.⁶

The Office's procedure manual addresses 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.⁷ It must evaluate the pertinent information received from appellant and her 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.⁸

On June 16, 2004 Dr. Gross, a Board-certified neurologist and treating physician, advised that appellant needed an orthopedic recliner chair as it was the only way she could sleep. On October 17, 2004 Dr. Gross indicated that a zero gravity chair would allow appellant to sit in a semi-recumbent position and she would be able to do some desk-type work with the appropriate support for her neck and that she would be more functional with this type of equipment and could use it on a daily basis throughout the day. He also indicated that he was not aware of any alternative type of treatment. Dr. Gross repeated the request on January 3, 2005 and advised that appellant needed it to sleep. In his September 25, 2006 report, he noted that he had previously recommended the use of a zero gravity chair which would allow appellant to sit in a semi-recumbent position and give her appropriate support for her neck condition which she would need on a permanent basis. While Dr. Gross noted that it would allow her to sit in a semi-

⁵ *Thomas Lee Cox*, 54 ECAB 509 (2003); *Stella M. Bohlig*, 53 ECAB 341 (2002).

⁶ See U.S.C. § 8103(a).

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

⁸ *Id.*

recumbent position, he did not explain how this would cure, give relief or reduce the degree of period of disability. He did not explain why appellant's employment-related accepted conditions required medical treatment which could only be accommodated by purchase of a zero gravity chair or recliner. The Board has held that an opinion without supporting rationale is of diminished probative value.⁹

In a report dated October 13, 2006, Dr. Sophon, the second opinion physician, indicated that he was not familiar with the zero gravity chair in relation to being used for sleeping. He indicated that, instead of a recliner, appellant could use alternative methods such as a pillow to support and position her body in a reclining position and that she had been doing so since 2002. Dr. Sophon found no basis on which he could recommend the purchase of such a chair and he supported his opinion with rationale that the zero gravity chair or recliner was not needed as relief could be provided by other less expensive means, such as a pillow. The Board finds that the Office did not abuse its discretion in denying medical benefits for the zero gravity chair or recliner.

An 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.¹⁰ The Office has broad discretion pursuant to section 8103 of the Act to determine whether purchase of a zero gravity chair/recliner is likely to cure or give relief for the accepted employment-related injury. The evidence does not establish that the Office abused its discretion in this case.¹¹

CONCLUSION

The Board finds that the Office properly denied authorization for the purchase of a zero gravity chair or recliner.

⁹ *Willa M. Frazier*, 55 ECAB 379 (2004).

¹⁰ *Gerald A. Carr*, 55 ECAB 225 (2004).

¹¹ *See supra* note 5.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 1, 2006 is affirmed.

Issued: October 5, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board