



## **FACTUAL HISTORY**

On May 30, 1995 appellant, then a 44-year-old marine equipment repairer, filed a claim alleging that he sustained a right knee injury due to the kneeling required by his job. The Office accepted that appellant sustained a right medial meniscus tear of the posterior horn, right prepatellar and pretibial bursitis and chondromalacia of his right knee.<sup>1</sup> On April 14, 1999 Dr. John C. Kofoed, an attending Board-certified orthopedic surgeon, performed a right medial meniscectomy with debridement which was authorized by the Office. Appellant worked in limited-duty positions and received compensation for periods of disability.<sup>2</sup>

In late 2000 appellant began to participate in an Office-sponsored rehabilitation program. In January 2001 the Office authorized appellant to take classes at Solano Community College with the goal of receiving a certificate in human services. He completed the work for his certificate in May 2002. Appellant began working for the Vacaville Social Services Department as a shelter aid and his compensation was adjusted by the Office based on his actual earnings in this position.

On October 22, 2002 Dr. Jerrold M. Sherman, a Board-certified orthopedic surgeon who served as an Office referral physician, stated that appellant had osteoarthritis involving the patellofemoral and medial compartments of his right knee and would eventually require a total knee prosthesis. He indicated that appellant exhibited symptom magnification as demonstrated by volitional limitation of right knee motion, a new appearing right knee brace despite his claim of wearing it on a daily basis and a complaint of pain with light skin palpation. In early 2003 appellant received schedule awards for a 56 permanent impairment of his right leg.

On April 26, 2006 Dr. Kofoed stated that examination of appellant's knees revealed moderate medial joint tenderness and a full range of motion in both knees. He indicated that appellant had a mild antalgic gait favoring the right side and ambulated with the assistance of a cane. Dr. Kofoed indicated that x-rays of the right knee showed complete loss of medial joint space with some patellofemoral degeneration and diagnosed advanced right knee arthritis.<sup>3</sup>

In August 2006 appellant requested authorization to purchase a motorized cart, mattress and home spa.<sup>4</sup> He submitted price quotes for these items. On September 19, 2006 Dr. Kofoed stated that appellant reported increased right knee symptoms and noted on examination that he had diffuse tenderness in both knees and the lumbosacral area. He made note of appellant's request for a mobilized cart and new mattress. In the "impression" section of the report, Dr. Kofoed stated, "Request for a motorized wheelchair to be used in school in Oregon to help with his chronic

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<sup>1</sup> The Office has also accepted, under separate claim files, that appellant sustained employment-related low back and left knee conditions.

<sup>2</sup> Appellant was terminated from the employing establishment effective September 22, 2000.

<sup>3</sup> Dr. Kofoed deferred examination of appellant's back but included the diagnosis of "low back pain."

<sup>4</sup> It appears that the Office previously authorized the purchase of a mattress and bed frame in August 2002. Appellant requested authorization to purchase a home spa in mid 2002 but the Office did not issue a decision regarding this request in connection with the present claim file.

bilateral knee pain and back pain.”<sup>5</sup> In December 2006 the Office requested that appellant submit medical evidence supporting his request for authorization to purchase a motorized cart, mattress and home spa.

In a January 2, 2007 report, Dr. Kofoed stated that appellant reported obtaining new unloaded braces which were helpful in reducing knee pain and allowed him to participate in prolonged standing and walking and to attend school.<sup>6</sup> He stated that appellant reported, however, that he still needed a motorized cart in order to engage in prolonged walking and standing both on campus and in the course of his other daily activities. Dr. Kofoed indicated that appellant also requested a home spa and mattress to assist with his chronic knee, back and neck pain. He stated that on examination appellant exhibited diffuse tenderness in both knees and mild-to-moderate tenderness in the low back and indicated that his motor, sensory and reflex systems were intact. Dr. Kofoed noted that appellant was ambulatory with the assistance of a cane and was wearing unloaded braces on his knees which seemed to help him with ambulation. He diagnosed chronic back pain due to degenerative disc disease and bilateral knee pain with advanced degenerative changes particularly on the right. Dr. Kofoed recommended that appellant continue with his new unloaded braces, that he have a “spa to assist with relief of his back and knee pain,” that he have “an electric cart such as the PMV 600 Wrangler to assist with ambulation about school and for community ambulation to assist with activities of daily living,” and that he have a “special bed to assist with reduction of his back and knee pain.”

In a January 25, 2007 decision, the Office denied appellant’s request for authorization to purchase a motorized cart, mattress and home spa. The Office found that Dr. Kofoed did not provide sufficient explanation as to how appellant’s employment-related medical condition “worsened based on objective findings” such that he required the requested motorized cart, mattress and home spa. The Office stated that medical evidence of record did not show that the requested items were likely to cure, give relief, reduce the degree or the period of disability or aid in lessening the amount of the monthly compensation.

On March 15, 2007 appellant requested reconsideration of the Office’s January 25, 2007 decision. In a February 13, 2007 report, Dr. Kofoed indicated that appellant reported knee and back pain and that he had difficulty ambulating with his knee braces and cane. On examination appellant exhibited tenderness in the medial joint space of both knees, more on the right, and moderate tenderness in the low back with some periodic referred pain. Dr. Kofoed provided diagnoses which were similar to those contained in his prior reports. He stated:

“Based on ongoing complaints of pain, limitations with regard to activities of daily living, we are recommending an orthopedic bed to help with his back pain and to get in and out of bed with less problems and discomfort. We are also recommending a mobility cart to assist with his community ambulation while

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<sup>5</sup> Appellant had moved to Oregon and was attending Oregon Junior College. It appears that his attendance at this college was authorized by the Department of Veterans Affairs. Appellant asserted that he needed the motorized cart to get around the college campus. He indicated that Solano Community College had provided such carts but that Oregon Junior College did not.

<sup>6</sup> In October 2006 the Office authorized appellant’s request for purchase of two knee orthoses.

attending school which is quite difficult for him because of his bilateral knee pain and low back pain. Finally, a spa is recommended for him to deal with his chronic pain issues when he has flares of his back and knee pain. These problems are chronic and degenerative and the spa would provide symptomatic relief for flares without having to obtain authorization to attend a physical therapy program for massage and/or spa treatment.”

Appellant also submitted a previously submitted x-ray report, a quote of scooter prices and a January 30, 2007 letter in which an official from Umpqua Community College in Oregon stated that the college had a limited supply of motorized carts available to students.<sup>7</sup>

In an April 19, 2007 decision, the Office denied appellant’s request for further review of the merits of his claim.

### **LEGAL PRECEDENT -- ISSUE 1**

Section 8103(a) of the Federal Employees’ Compensation Act 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>8</sup> The Board has found that the Office has great discretion in determining whether a particular type of treatment is likely to cure or give relief.<sup>9</sup> The only limitation on the Office’s authority is that of reasonableness.<sup>10</sup>

### **ANALYSIS -- ISSUE 1**

The Office accepted that appellant sustained a right medial meniscus tear of the posterior horn, right prepatellar and pretibial bursitis and chondromalacia of his right knee.<sup>11</sup> Appellant requested authorization to purchase a motorized cart, mattress and home spa. The Office denied the request, finding that he had not submitted sufficient medical evidence justifying the purchases.

The Board finds that the Office did not abuse its discretion in denying appellant’s request to purchase a motorized cart, mattress or home spa. In its January 25, 2007 denial of appellant’s request, the Office explained that the medical evidence of record, including the January 2, 2007

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<sup>7</sup> It is unclear when appellant started attending Umpqua Community College rather than Oregon Junior College.

<sup>8</sup> 5 U.S.C. § 8103.

<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. *Bertha L. Arnold*, 38 ECAB 282, 284 (1986). Proof of causal relationship in a case such as this must include supporting rationalized medical evidence. *Vicky C. Randall*, 51 ECAB 357 (2000); *Zane H. Cassell*, 32 ECAB 1537, 1540-41 (1981); *John E. Benton*, 15 ECAB 48, 49 (1963).

<sup>10</sup> *Lecil E. Stevens*, 49 ECAB 673, 675 (1998)

<sup>11</sup> The Office has also accepted, under separate claim files, that appellant sustained employment-related low back and left knee conditions.

report of Dr. Kofoed, did not show that the requested items 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 Board notes that, in his January 2, 2007 report, Dr. Kofoed recommended that appellant continue with his new unloaded braces, that he have a “spa to assist with relief of his back and knee pain,” that he have “an electric cart such as the PMV 600 Wrangler to assist with ambulation about school and for community ambulation to assist with activities of daily living,” and that he have a “special bed to assist with reduction of his back and knee pain.” He did not provide any further explanation for these recommendations.

Dr. Kofoed did not adequately explain how the motorized cart, mattress and home spa were necessitated by appellant’s employment-related right knee condition or otherwise explain the medical process through which they would provide additional relief. Such explanation is particularly necessary because, as noted by the Office in its January 25, 2007 decision, Dr. Kofoed did not show that appellant’s employment-related condition had worsened such that these requested items were now needed. Over the course of the several years prior to appellant’s request, Dr. Kofoed had reported similar findings on examination, namely that appellant had bilateral knee pain with low back tenderness related to degenerative processes. With respect to the motorized cart request, he did not explain why such a device would be needed given that he had stated that appellant was ambulatory with the assistance of a cane and wore knee braces which appeared to help him with ambulation.

For these reasons, the Office did not abuse its discretion in denying appellant’s request to authorize the purchase of a motorized cart, mattress and home spa. The Office explained that Dr. Kofoed provided a limited explanation for the necessity of these items and the Board finds that it was not unreasonable for the Office to deny authorization for their purchase.

### **LEGAL PRECEDENT -- ISSUE 2**

To require the Office to reopen a case for merit review under section 8128(a) of the Act,<sup>12</sup> the Office’s regulations provide that the evidence or argument submitted by a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.<sup>13</sup> To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.<sup>14</sup> When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.<sup>15</sup> The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis

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<sup>12</sup> Under section 8128 of the Act, “[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application.” 5 U.S.C. § 8128(a).

<sup>13</sup> 20 C.F.R. § 10.606(b)(2).

<sup>14</sup> 20 C.F.R. § 10.607(a).

<sup>15</sup> 20 C.F.R. § 10.608(b).

for reopening a case.<sup>16</sup> The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>17</sup>

### **ANALYSIS -- ISSUE 2**

In support of his March 15, 2007 reconsideration request, appellant submitted a February 13, 2007 report of Dr. Kofoed. The Board notes that submission of this report did not require reopening appellant's case for merit review because it contains a discussion regarding appellant's need for medical devices which are essentially duplicative to that contained in his January 25, 2007 report which was considered by the Office.<sup>18</sup> In his February 13, 2007 report, Dr. Kofoed merely asserted, as he had in his January 25, 2007 report, that appellant needed a motorized cart, mattress and home spa in order to alleviate knee and back pain and to help with mobility at school and perform the activities of daily living. Appellant also submitted a quote of scooter prices and a statement from an official at Umpqua Community College indicating that the college had a limited supply of motorized carts available to students. However, these documents do not require the reopening of appellant's claim as they are not relevant to the underlying issue of the present case which is medical in nature, *i.e.*, whether the Office abused its discretion when it determined that appellant did not submit sufficient medical evidence to justify purchase of a motorized cart, mattress and home spa.<sup>19</sup>

In the present case, appellant has not established that the Office improperly denied his request for further review of the merits of its January 25, 2007 decision under section 8128(a) of the Act, because the evidence and argument he submitted did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office, or constitute relevant and pertinent new evidence not previously considered by the Office.

### **CONCLUSION**

The Board finds that the Office did not abuse its discretion in denying appellant's request to authorize purchase of a motorized cart, mattress and home spa. The Board further finds that the Office properly denied appellant's request for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

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<sup>16</sup> *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

<sup>17</sup> *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

<sup>18</sup> See *supra* note 16 and accompanying text. Appellant also submitted a copy of a previously submitted x-ray report, but the Office had already considered this document.

<sup>19</sup> See *supra* note 17 and accompanying text.

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' April 19 and January 25, 2007 decisions are affirmed.

Issued: October 22, 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