

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

J.D., Appellant

and

**DEPARTMENT OF LABOR, MINE SAFETY
& HEALTH ADMINISTRATION,
Barbourville, KY, Employer**

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**Docket No. 07-919
Issued: September 14, 2007**

Appearances:
Hugh V. Smith, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 5, 2007 appellant, through his representative, filed a timely appeal of the Office of Workers' Compensation Programs' merit decisions dated November 22, 2006 and January 17, 2007 denying his request for additional physical therapy. Pursuant to 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 request for additional physical therapy.

FACTUAL HISTORY

On January 31, 2006 appellant, then a 56-year-old coal mine inspector, filed a traumatic injury claim alleging that on January 11, 2006 he injured his left shoulder placing a portable printer in the rear seat of his vehicle in the performance of duty. The Office accepted his claim for partial tear and sprain/strain of the left supraspinatus tendon on March 31, 2006.

Appellant began physical therapy on May 11, 2006. The Office authorized physical therapy from May 11 to June 22, 2006. On June 19, 2006 appellant's attending physician, Dr. W. Ben Kibler, a Board-certified orthopedic surgeon, referred him for additional physical therapy due to left rotator cuff tear and adhesive capsulitis through August 14, 2006. The Office authorized this treatment on June 23, 2006. On August 3, 2006 Dr. Kibler indicated that appellant requested physical therapy due to a rotator cuff tear for three or four weeks. In a note dated August 21, 2006, Dr. Kibler indicated that appellant could perform regular duty and that he required additional physical therapy. In a separate note dated August 21, 2006, he diagnosed adhesive capsulitis and indicated that appellant requested physical therapy three times a week for four to six weeks.

The Office requested additional information from appellant in a letter dated September 1, 2006. It noted that his claim was accepted for left shoulder sprain only and that his physician had not submitted additional evidence to support any other diagnosis. In a note dated August 21, 2006, Dr. Kibler stated that appellant had full range of motion in his left shoulder except for limited external rotation of 20 degrees. He stated, "[Appellant] needs to work more vigorously on this external rotation. I think this will be of normal value soon. [Appellant] will continue working on strengthening and range of motion and will return to see me in an as-needed basis."

In a letter dated October 11, 2006, the Office informed appellant that additional medical information was required before further physical therapy could be authorized. The Office provided appellant with a list of questions, including the specific functional deficits to be treated, the specific functional goals of the additional therapy and the expected duration and the frequency of treatment. The Office also inquired whether supervised physical therapy was needed or if a patient-directed home exercise program would be an appropriate alternative. Dr. Kibler examined appellant on November 9, 2006 and diagnosed adhesive capsulitis with continued restricted motion in external rotation and abduction. He stated, "I do think that guided physical therapy will improve the adhesive capsulitis picture with more range of motion and improved function." Dr. Kibler indicated that the functional goal was improved range of motion and strength to allow appellant more use of his arm in overhead positions as well as pushing and pulling. He proposed stretching and capsular mobilization activities for six to eight weeks and stated that these activities would be coordinated with a therapist-directed home exercise program.

By decision dated November 22, 2006, the Office denied appellant's request for additional physical therapy. It stated that no evidence was provided in response to the October 11, 2006 letter. The Office noted that in accordance with its procedures, appellant was entitled to 90 days of physical therapy and that following this 90-day period additional medical justification was required.¹

Dr. Kibler submitted a note dated November 9, 2006 which found that appellant had decreased symptoms and increased strength, but lacked full range of motion in his left shoulder. He reported 40 degrees of external rotation, 95 degrees of abduction and 1,000 degrees of

¹ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Services and Supplies*, Chapter 3.400.5c(2) (April 1992).

forward flexion with restriction of external rotation. Dr. Kibler stated that continued therapy would be beneficial to improve appellant's range of motion. In a report dated November 16, 2006, he stated that physical therapy was necessary to aid appellant in obtaining full range of motion and to improve his conditioning. He stated, "The major problem is decreased range of motion and this would be the major reason to do the physical therapy." Dr. Kibler recommended an additional four to six weeks.

Appellant requested reconsideration of the Office's November 22, 2006 decision on November 29, 2006. By decision dated January 17, 2007, the Office denied modification of the prior decision. It stated that Dr. Kibler did not adequately explain why appellant would be unable to achieve his goals of increased range of motion through a home exercise program. The Office also found that Dr. Kibler did not explain how appellant could perform his full-duty position with limited overhead movement. It concluded, "The medical evidence submitted from Dr. Kibler is not sufficient to substantiate an objective medical rationale for extensive (six- to eight-weeks) [physical therapy] given the fact you were released to regular duty and previously had over three months of physical therapy."

LEGAL PRECEDENT

Section 8103 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."² The Office's obligation to pay for medical treatment under section 8103 of the Act extends only to treatment of employment-related conditions and appellant has the burden of establishing that the requested treatment is for the effects of an employment-related condition. Proof of causal relation must include rationalized medical evidence.³ 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.⁴

² 5 U.S.C. §§ 8101-8193, § 8103(a).

³ *Stella M. Bohlig*, 53 ECAB 341, 343 (2002).

⁴ *Daniel J. Perea*, 42 ECAB 214 (1990).

ANALYSIS

Appellant's attending physician, Dr. Kibler, a Board-certified orthopedic surgeon, recommended that appellant continue with physical therapy after August 14, 2006, the last date approved by the Office. The Office requested additional reasoned medical evidence from Dr. Kibler explaining why this treatment was necessary due to appellant's accepted employment injuries of partial tear and sprain/strain of the supraspinatus tendon. In response, Dr. Kibler noted that appellant had not recovered full external rotation of his shoulder on August 21, 2006. On November 9, 2006 Dr. Kibler diagnosed adhesive capsulitis and stated that appellant had restricted external rotation and abduction. He did not provide an opinion that appellant had developed adhesive capsulitis due to his accepted employment injuries or offer any explanation for his diagnosis. Dr. Kibler did not explain how the accepted employment injuries necessitated the additional period of physical therapy.

Absent a reasoned medical opinion from appellant's physician establishing that the prescribed physical therapy was necessary to treat his accepted employment-related conditions, the Office did not abuse its discretion in denying authorization for an additional period of physical therapy. There is insufficient medical evidence in the record to support continuing physical therapy due to the conditions of partial tear of the left supraspinatus tendon or sprain/strain of the left supraspinatus tendon. As the record does not establish that the prescribed physical therapy was likely to cure, give relief, reduce the degree or period of disability due to the accepted condition or aid in lessening the amount of monthly compensation, the Office properly denied this request for medical treatment.

CONCLUSION

The Board finds that the Office did not abuse its discretion by refusing appellant's request for additional medical treatment.

ORDER

IT IS HEREBY ORDERED THAT the January 17, 2007 and November 22, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 14, 2007
Washington, DC

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

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

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