United States Department of Labor
Employees' Compensation Appeals Board

E.K., Appellant	)	
and	)	**Docket No. 07-1113**
	)	**Issued: May 16, 2008**
DEPARTMENT OF VETERANS AFFAIRS, JAMES A. HARLEY VETERANS ADMINISTRATION HOSPITAL, Tampa, FL, Employer	)	

Appearances:
Capp P. Taylor, Esq., for the appellant
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 March 19, 2007 appellant filed a timely appeal from merit decisions of the Office of Workers' Compensation Programs dated May 24, 2006 and January 8, 2007 that terminated his compensation benefits and denied medical appliances. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the case.

ISSUES

The issues are: (1) whether the Office met its burden of proof to justify termination of appellant's compensation benefits effective June 28, 2005 for his accepted orthopedic conditions; (2) whether appellant established that he had any continuing disability relating to his accepted orthopedic conditions after June 28, 2005; (3) whether appellant met his burden of proof in establishing that he was totally disabled from January 31 to February 25, 2005 causally related to his accepted employment condition; and (4) whether the Office abused its discretion in denying authorization for a contour pillow, mattress and prescribed medication.

FACTUAL HISTORY

On September 15, 1999 appellant, then a 49-year-old psychiatrist, sustained injury when he slipped on wet stairs and injured his neck and back. He was a part-time temporary employee whose term expired on September 19, 1999. The Office accepted the claim for cervical strain and aggravation of lumbar vertebral fracture at L1, postconcussive syndrome, anxiety disorder and psychosexual dysfunction. Appellant stopped work on September 15, 1999 and returned to part-time work in the private sector in April 2002.[1]

Appellant came under the care of Dr. Luis G. Figueroa, a Board-certified neurologist, who first treated him in 1999 and diagnosed post-traumatic cervical myofascial pain syndrome, postconcussion syndrome, probable Barre-Lieu syndrome and post-traumatic headache. In reports from March 2, 2000 to December 4, 2002, Dr. Figueroa noted persistent sexual dysfunction and features consistent with frontal lobe syndrome. He noted that appellant's cognitive difficulties dramatically improved and, in June 2002, he returned to work six hours per day at a private clinic. On October 5, 2002 appellant began working 10 hours per week. In reports dated February 10, 2000 to September 10, 2001, Dr. Robert Rosen, a clinical psychologist, diagnosed cognitive disorder and adjustment disorder with mixed anxiety and depressed mood. Dr. Kenneth P. Botwin, a Board-certified physiatrist, treated appellant from February 23, 2000 to June 7, 2003. He diagnosed status post work-related injury with persistent but improving cervicothoracic lumbar pain, headaches and sexual dysfunction. Other reports dated May 1, 2002 to June 7, 2003 noted appellant's complaint of neck and back pain and recommended acupuncture, physical therapy and a cervical contoured pillow. A June 24, 2002 lumbar spine magnetic resonance imaging (MRI) scan revealed mild post-traumatic anterior wedge compression of L1, Schmorl's node, degenerative disc disease at T12-L1 and minimal desiccations of L4-5 and L5-S1 discs.

On April 8, 2003 the Office referred appellant to Dr. V.G. Raghavan, a Board-certified orthopedic surgeon, for a second opinion. In a May 5, 2003 report, Dr. Raghavan discussed appellant's work history and indicated that physical examination was essentially normal. He opined that the cervical strain and the aggravation of the L1 compression fracture were due to the September 15, 1999 work injury and that these conditions had resolved. Dr. Raghavan noted that appellant's orthopedic condition had reached maximum medical improvement and he could work full time with restrictions on lifting more than 20 pounds.

On April 8, 2003 the Office referred appellant to Dr. Bala I. Rao, a Board-certified psychiatrist, for a second opinion. In a report dated July 1, 2003, Dr. Rao noted that appellant was alert, cooperative, oriented to time, place and person, his speech was clear and coherent and his insight and judgment were good. He diagnosed adjustment disorder with mixed emotional features, postconcussion syndrome, history of head and back injury in 1999 and stresses related to changes and adjustments. Dr. Rao opined that appellant's postconcussion syndrome resulted from the September 15, 1999 injury and indicated that from a psychiatric standpoint appellant could return to work full time without restrictions.

[1] Appellant did not receive wage-loss compensation after he returned to part-time work.

The Office found that a conflict of medical opinion arose between Drs. Botwin and Figueroa, for appellant, and Dr. Raghavan, for the Office, regarding whether appellant had residuals of his work-related orthopedic injuries and whether he could return to work full time.

To resolve the conflict the Office referred appellant to Dr. Howard L. Schuele, a Board-certified orthopedic surgeon, selected as the impartial medical specialist. In an August 28, 2003 report, Dr. Schuele reviewed the record and the history of appellant's work-related injury and medical treatment. He noted that the low back showed no signs of spasm or list, full range of motion, equal power of extensor hallucis longus, negative straight leg raises and no sign of atrophy. With regard to the cervical spine, there was full range of motion, the wrists, biceps, triceps, jerks, pulses and grasps are equal right and left with no pathologic reflexes. Dr. Schuele diagnosed paracervical ligamentous strain and sprain on the left, lumbosacral ligamentous muscle strain and sprain, central low back and compression fracture at L1, healed. He noted that subjective and objective evidence showed that appellant's physical injuries had resolved as appellant had full range of motion of the neck and back, deep tendon reflexes were intact, and there were no pathologic reflexes and no tension signs. Dr. Schuele opined that, orthopedically, appellant could resume his date-of-injury job as a psychiatrist without permanent work restrictions. He noted that recent MRI scans for appellant's neck and back were ordered and would be available in one week.

Appellant submitted August 12 and November 11, 2003 reports from Dr. Botwin who noted that appellant experienced worsening pain in the neck and low back and diagnosed cervicothoracic myofascial pain, T1 compression fracture, secondary to occupational injury. Reports from Dr. Figueroa dated August 12 to November 11, 2003, noted appellant complaints of severe pain in the spinal axial region and depression.

On November 12, 2003 the Office proposed to terminate compensation benefits for appellant's accepted cervical strain and aggravation of lumbar vertebral fracture at L1.

By decision dated December 19, 2003, the Office terminated appellant's compensation benefits for the accepted cervical strain and aggravation of lumbar vertebral fracture at L1. It found that the weight of the medical evidence established that appellant had no continuing orthopedic disability resulting from his accepted employment injury. The Office noted that appellant remained entitled to compensation benefits for the accepted psychiatric conditions of postconcussive syndrome, anxiety disorder and psychosexual dysfunction.

Appellant requested an oral hearing and submitted a January 16, 2004 attending physician's report from Dr. Figueroa who diagnosed cognitive disorder, postconcussion disorder and pain disorder. Dr. Figueroa checked a box "yes" that appellant's condition was due to the September 15, 1999 fall at work. He noted that appellant could work 10 hours a week. On April 20, 2004 Dr. Figueroa noted that appellant could work 20 hours per week. Also submitted were April 6 to August 3, 2004 reports from Dr. Botwin who noted that appellant's neck symptoms were improved after facet joint injections and diagnosed cervical myofascial pain, thoracolumbar myofascial pain and L1 compression fracture.

On October 18, 2004 a hearing representative set aside the December 19, 2003 decision and remanded the case for the Office to request that Dr. Schuele clarify whether appellant had

residuals of the paracervical ligamentous muscle strain and review the findings of the MRI scan he referenced in his August 28, 2003 report.

On March 1, 2005 appellant claimed total disability from January 31 to February 25, 2005. He submitted reports from Dr. Botwin dated January 18 to March 2, 2005. Dr. Botwin diagnosed cervicothoracic myofascial pain, lumbar degenerative joint disease, cervical degenerative joint disease and L1 compression deformity and noted that a lumbar MRI scan revealed an old compression fracture with Schmorl's nodule formation and a possible left neurofibroma in L1-2. On March 4, 2005 the Office advised appellant that he must submit medical evidence establishing his disability for the claimed period. In a March 29, 2005 report, Dr. Figueroa diagnosed closed head injury, frontal lobe syndrome, cervicothoracic and lumbar myofascial pain syndrome and history of L1 compression fracture. Appellant submitted an April 12, 2005 report from Dr. Donald A. Smith, a Board-certified neurosurgeon, who diagnosed probable neurofibroma or schwannoma in the left L1-2 neural foramen.

On April 4, 2005 the Office requested a supplemental report from Dr. Schuele. In an April 13, 2005 response, Dr. Schuele noted that the MRI scan examinations were ordered by appellant's treating physicians and advised that he had no need to review the reports as he based his conclusions on the history, physical examination and data at the time of examination. In a letter dated April 20, 2005, the Office requested that Dr. Schuele clarify the basis of his opinion. In a report dated April 28, 2005, Dr. Schuele noted that he based his opinion that appellant's conditions of paracervical ligamentous strain and sprain on the left, lumbosacral ligamentous muscle strain and sprain, central low back and compression fracture at L1 had resolved on the objective findings upon physical examination. He specifically noted that appellant's back examination revealed no spasms, full range of motion, deep tendon reflexes were intact and equal, power of the musculature was intact, there were no tension signs with straight leg raises, no atrophy and no weakness as appellant was able to heel walk, toe walk and do deep knee bends. Dr. Schuele further noted that the neck examination revealed full range of motion, deep tendon reflexes were intact and no pathological reflexes were present.

In a letter dated May 12, 2005, appellant requested that the Office approve the prescription medication Namenda prescribed by Dr. Figueroa for his cognitive problems and reimburse him for an orthopedic pillow and mattress.

On May 19, 2005 the Office proposed to terminate compensation for appellant's accepted cervical strain and aggravation of lumbar vertebral fracture at L1 on the grounds that Dr. Schuele's reports established no orthopedic residuals of the employment injury.

Appellant disputed the proposed termination of benefits and requested expansion of his claim to include cervicothoracic myofascial pain syndrome, lumbar myofascial pain syndrome and thoracolumbar myofascial pain syndrome. In a June 15, 2005 letter, he indicated that he was only able to work part time since August 20, 2003 because of his head trauma and brain injury. Appellant submitted a July 30, 2002 report from Dr. Rosanna Garner, a Board-certified neurologist and psychiatrist, who noted that appellant had an automobile accident on March 29, 1999. Dr. Garner also noted the work injury on September 15, 1999 and diagnosed traumatic brain injury with residual frontal lobe impairment. Appellant submitted a report from Dr. Gary K. Arthur, a Board-certified psychiatrist, dated November 26, 2002. Dr. Arthur noted

that, following the March 29, 1999 automobile accident, appellant experienced mild cognitive difficulties and pain but was able to work 10 hours per week. He opined that appellant had residuals from his September 15, 1999 work injury but could work 15 to 20 hours weekly. On January 18, 2005 Dr. Figueroa diagnosed impairment of concentration, postconcussion disorder and cognitive disorder and opined that appellant's partial disability was permanent.

By decision dated June 28, 2005, the Office terminated appellant's compensation benefits effective June 28, 2005 for the accepted cervical strain and aggravation of lumbar vertebral fracture at L1. The Office found that Dr. Schuele's opinion established that appellant had no continuing orthopedic disability due to these accepted conditions.

In a decision dated June 29, 2005, the Office denied appellant's request for the prescription medication Namenda, as it was not a treatment for his accepted condition. It also denied reimbursement for a contour pillow and mattress, as Dr. Botwin did not address the basis of appellant's need for those items.

Appellant requested an oral hearing and submitted reports from Dr. Eric J. Carbonell, a Board-certified neurologist, dated April 8, 2005 to April 12, 2006. Dr. Carbonell treated appellant for post-traumatic stress disorder, anxiety disorder, depression and insomnia. In reports dated June 8, 2005 to March 6, 2006, Dr. Figueroa treated appellant for postconcussive syndrome and frontal lobe syndrome. He prescribed the medication Namenda for appellant's cognitive difficulties. Other reports from Dr. Botwin dated July 12 to December 19, 2005, noted neck and low back pain.

In a decision dated July 18, 2005, the Office denied appellant's claim for compensation for the period January 31 to February 25, 2005.

On July 27, 2005 appellant requested an oral hearing which was held on January 25, 2006. He testified that he returned to part-time employment in the private sector in 2002. From June 28, 2005 to May 13, 2006 Dr. Rosen treated appellant for depression and insomnia. Dr. Diana L. Pollack, a Board-certified neurologist, treated appellant from March 30 to April 27, 2006 for cognitive dysfunction and progression of dementia.

In a decision dated May 24, 2006, the hearing representative affirmed the Office decisions of June 28 and 29 and July 18, 2005.

On October 4, 2006 appellant requested reconsideration. He submitted reports from Dr. Figueroa dated March 6 to December 6, 2006. On June 14, 2006 Dr. Figueroa diagnosed postconcussion syndrome manifested primarily as a frontal lobe syndrome and opined that this condition was related to appellant's September 15, 1999 work injury. On September 5, 2006 he diagnosed frontal lobe syndrome and postconcussion syndrome causing cognitive deficits. Dr. Figueroa opined that the accident of September 15, 1999 caused an aggravation and worsening of appellant's cognitive difficulties and he was totally disabled from September 15, 1999 to June 15, 2002 and partially disabled after June 15, 2002.

In a January 8, 2007 decision, the Office denied modification of its May 24, 2006 decision. The Office found that the medical evidence did not support employment-related total disability from January 31 to February 25, 2005, or the need for reimbursement for an orthopedic

pillow and mattress or for the prescription drug Namenda. The Office noted that appellant remained entitled to benefits for the accepted psychiatric conditions of postconcussive syndrome, anxiety disorder and psychosexual dysfunction.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.[2] After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.[3] The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must establish that a claimant no longer has residuals of an employment-related condition, which requires further medical treatment.[4]

ANALYSIS -- ISSUE 1

The Office accepted appellant's claim for orthopedic conditions of cervical strain and aggravation of lumbar vertebral fracture at L1. The Office subsequently developed the medical evidence and determined that a conflict in medical opinion existed between appellant's attending physicians, Drs. Botwin and Figueroa, who disagreed with Dr. Raghavan an Office referral physician concerning whether appellant had continuing work-related orthopedic residuals. Consequently, the Office referred appellant to Dr. Schuele to resolve the conflict.[5]

Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.[6]

The Board finds that the opinion of Dr. Schuele is sufficiently well rationalized and based upon a proper factual background such that it is entitled to special weight and establishes that appellant's work-related orthopedic conditions resolved. In an August 28, 2003 report, Dr. Schuele reviewed appellant's history, reported findings and noted that both subjective and objective medical evidence established that his physical injuries resolved. He noted findings upon physical examination of full range of motion of both the neck and back, deep tendon reflexes were intact, no pathologic reflexes and no tension signs. Dr. Schuele diagnosed paracervical ligamentous strain and sprain on the left, lumbosacral ligamentous muscle strain and sprain, central low back and compression fracture at L1, healed. He opined that, from an orthopedic standpoint, appellant could not resume his date-of-injury job as a psychiatrist without

[2] *Gewin C. Hawkins*, 52 ECAB 242 (2001).

[3] *Mary A. Lowe*, 52 ECAB 223 (2001).

[4] *Id.; Leonard M. Burger*, 51 ECAB 369 (2000).

[5] *See* 5 U.S.C. § 8123(a).

[6] *Solomon Polen*, 51 ECAB 341 (2000).

permanent work restrictions. In supplemental reports dated April 13 and 28, 2005, Dr. Schuele noted that he based his opinion that appellant's conditions had resolved on the objective findings made upon physical examination. He reiterated that appellant's back examination revealed no spasms, full range of motion, deep tendon reflexes were intact and equal, power of the musculature was intact, there were no tension signs with straight leg raises, no atrophy and no weakness as appellant was able to heel walk, toe walk and do deep knee bends. Dr. Schuele further noted that the cervical examination revealed full range of motion, deep tendon reflexes were intact and no pathological reflexes were present. He found no basis on which to attribute any continuing orthopedic residuals to the September 15, 1999 work injury.

Appellant submitted reports from Dr. Botwin dated August 12, 2003 to March 2, 2005, who noted that appellant had worsening symptoms and offered diagnoses. Reports from Dr. Figueroa dated August 12, 2003 to March 29, 2005, noted that appellant's condition was essentially stable but he experienced pain and depression. On January 16, 2004 he diagnosed cognitive disorder, postconcussion disorder and pain disorder and opined that appellant's condition was caused by the September 15, 1999 fall. However, neither Drs. Botwin nor Figueroa specifically explained how the accepted orthopedic conditions caused or contributed to continuing disability. Additionally, Drs. Botwin and Figueroa were on one side of a conflict that was resolved by Dr. Schuele. Their reports do not otherwise provide new findings or medical rationale sufficient to establish that any continuing orthopedic residuals was causally related to the September 15, 1999 work injury.[7]

The Board finds that Dr. Schuele had full knowledge of the relevant facts and evaluated the course of appellant's condition. He is a specialist in the appropriate field. At the time benefits were terminated, Dr. Schuele opined that appellant had no residuals or disability attributable to his accepted orthopedic conditions. His opinion is found to be probative evidence and reliable. The Board finds that Dr. Schuele's opinion represents the weight of the medical evidence and is sufficient to support the Office's termination of appellant's benefits for the accepted conditions of cervical strain and aggravation of lumbar vertebral fracture at L1 effective June 28, 2005.

LEGAL PRECEDENT -- ISSUE 2

As the Office met its burden of proof to terminate appellant's compensation benefits, the burden shifts to appellant to establish that he had continuing disability causally related to his accepted employment injury.[8] To establish a causal relationship between the condition, as well as any disability claimed and the employment injury, the employee must submit rationalized medical opinion evidence, based on a complete factual background, supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be

[7] *See Michael Hughes*, 52 ECAB 387 (2001); *Howard Y. Miyashiro*, 43 ECAB 1101, 1115 (1992); *Dorothy Sidwell*, 41 ECAB 857 (1990).

[8] *Manuel Gill*, 52 ECAB 282 (2001); *George Servetas*, 43 ECAB 424, 430 (1992).

one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[9]

ANALYSIS -- ISSUE 2

The Board finds that appellant has not established that he has any continuing orthopedic residuals causally related to his accepted employment injuries on or after June 28, 2005. Appellant submitted reports from Drs. Carbonell, Rosen and Pollack who treated him for post-traumatic stress disorder, anxiety disorder, depression and insomnia and memory disorder. However, these reports do not establish that appellant had any continuing orthopedic disability due to the accepted conditions as the physicians did not specifically address disability due to the orthopedic injuries. Rather, the physician's addressed appellant's psychiatric condition.

Reports from Dr. Botwin dated July 12, 2005 to November 7, 2006, noted treatment for neck and low back pain. As noted, Drs. Figueroa and Botwin were on one side of the conflict that was resolved by Dr. Schuele.[10] Their treatment notes do not otherwise provide new medical rationale sufficient to establish continuing disability due to the orthopedic conditions related to the September 15, 1999 work injury.

Other reports from Dr. Figueroa dated June 8, 2005 to December 6, 2006, noted appellant's treatment for frontal lobe syndrome and cognitive dysfunction. In a September 5, 2006 statement, he diagnosed frontal lobe syndrome and postconcussion syndrome causing cognitive deficits. Dr. Figueroa opined that the injury of September 15, 1999 caused partial disability after June 15, 2002. However, the Office did not accept that appellant sustained frontal lobe syndrome or cognitive deficits as a result of the September 15, 1999 work injury.[11] Moreover, those reports do not pertain to the orthopedic conditions accepted in this case.

None of the reports submitted by appellant after the termination of benefits included a rationalized opinion regarding the causal relationship between any disability and his accepted work-related orthopedic injury of September 15, 1999. Therefore the Board finds that the reports from Drs. Carbonell, Rosen, Pollack, Figueroa and Botwin are insufficient to overcome that of Dr. Schuele or to create a new medical conflict.

[9] *See Connie Johns*, 44 ECAB 560 (1993); *James Mack*, 43 ECAB 321 (1991).

[10] *See Michael Hughes*, *supra* note 7.

[11] For conditions not accepted by the Office as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not the Office's burden to disprove such relationship. *Alice J. Tysinger*, 51 ECAB 638 (2000). Furthermore, the Office only terminated appellant's benefits for his orthopedic conditions and did not purport to terminate benefits for his accepted postconcussion syndrome.

LEGAL PRECEDENT -- ISSUE 3

A claimant has the burden of proving by a preponderance of the evidence that he or she is disabled for work as a result of an accepted employment injury and submit medical evidence for each period of disability claimed.[12] Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues.[13] The issue of whether a particular injury causes disability for work must be resolved by competent medical evidence.[14]

ANALYSIS -- ISSUE 3

After the Office terminated compensation on June 28, 2005 it found that appellant had not otherwise established his claim for wage-loss compensation for partial disability due to his orthopedic condition for the period January 31 to February 25, 2005. The Board finds that the medical evidence submitted is insufficient to establish that the claimed period of partial disability was caused or aggravated by the accepted employment injury.

Appellant submitted reports from Dr. Botwin dated January 18 to March 2, 2005. He noted appellant's symptoms of neck and back pain and diagnosed cervicothoracic myofascial pain, lumbar degenerative joint disease, cervical degenerative joint disease and L1 compression deformity. Although these reports indicated that appellant was disabled from work, Dr. Botwin failed to provide an opinion on causal relationship between the claimed period of disability and the accepted employment injury of September 15, 1999. This is important since the record also supports that appellant has conditions such as frontal lobe syndrome and cognitive deficits that are not accepted as employment related.

The remainder of the medical evidence, including a lumbar MRI scan and a March 29, 2005 report from Dr. Figueroa similarly did not address the relationship between the claimed disability and the accepted employment injury of September 15, 1999. Consequently, the medical evidence did not establish that the claimed period of disability was due to appellant's employment injury of September 15, 1999.

LEGAL PRECEDENT -- ISSUE 4

Section 8103 of the Federal Employees' Compensation Act[15] 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

[12] *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

[13] *Id.*

[14] *See Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[15] 5 U.S.C. §§ 8101-8193.

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.[16]

In interpreting section 8103, 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 or her injury to the fullest extent possible, in the shortest amount of time. The Office has broad administrative discretion in choosing means to achieve this goal. The only limitation on the Office's authority is that of reasonableness.[17] In order to be entitled to reimbursement for medical expenses, a claimant must establish that the expenditures were incurred for treatment of the effects of an employment-related injury by submitting rationalized medical evidence that supports such a connection and demonstrates that the treatment is necessary and reasonable.[18] While the Office is obligated to pay for treatment of employment-related conditions, the employee has the burden of establishing that the expenditure is incurred for treatment of the effects of an employment-related injury or condition.[19] The fact that the Office authorized and paid for some medical treatment does not establish that the condition for which appellant received treatment was employment related.[20]

ANALYSIS -- ISSUE 4

The Board finds that the medical evidence is insufficient to establish the necessity of the contour pillow, mattress or prescription medication Namenda. In support of his request, appellant submitted a report from Dr. Botwin dated February 25, 2003. Dr. Botwin diagnosed status post occupational injury, thoracolumbar myofascial pain, cervicothoracic myofascial pain and L1 compression fracture. He recommended a cervical contoured pillow to help with neck pain and symptoms. However, Dr. Botwin provided no medical rationale to support his conclusion that use of a contour pillow or mattress was medically necessary and reasonable for appellant's treatment. He did not address why it would alleviate appellant's neck and back condition. Because appellant did not submit medical evidence explaining why the pillow and mattress were necessary for treatment of his accepted conditions, appellant is not entitled to reimbursement for the purchase of the contour pillow and mattress.

Appellant requested that the medication Namenda be authorized for treatment of his accepted psychiatric condition. The Board finds that the record does not contain a rationalized medical opinion which explains the necessity for use of this medication in treating appellant's accepted postconcussive syndrome, anxiety disorder or psychosexual dysfunction. In correspondence dated June 14, 2005, appellant indicated that Dr. Figueroa prescribed Namenda for his "cognitive impairment"; however, the Office has not accepted that appellant developed a

[16] 5 U.S.C. § 8103(a).

[17] *Dr. Mira R. Adams*, 48 ECAB 504 (1997).

[18] *See Debra S. King*, 44 ECAB 203 (1992).

[19] *Kennett O. Collins, Jr.*, 55 ECAB 648, 654 (2004).

[20] *Dales E. Jones*, 48 ECAB 648 (1997); *James F. Aue*, 25 ECAB 151 (1974).

cognitive impairment as a result of his September 15, 1999 work injury.[21] In a June 8, 2005 report, Dr. Figueroa noted that there was some medical literature which suggest that Namenda "may" be of use in the context of traumatic brain injuries and believed it would be medically appropriate to prescribe. The Board notes that Dr. Figueroa's report at best, provides only speculative support for the medical necessity of the medication. He qualified his opinion by noting that the literature suggests that Namenda "may" be of use for traumatic brain injuries. Dr. Figueroa provided no medical reasoning to support his opinion that this medication was medically necessary to treat appellant's accepted conditions. Therefore, this report is insufficient to establish that Namenda was used for treatment of the effects of employment-related conditions.

Generally, an abuse of discretion is 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 cannot be found that the Office abused its discretion in denying medical benefits for the contour pillow, mattress and the prescription medication Namenda.

CONCLUSION

The Board finds that the Office met its burden of proof to terminate benefits effective June 28, 2005 for appellant's accepted orthopedic condition and that appellant failed to establish that he had any continuing disability due to his accepted orthopedic condition after June 28, 2005. It further finds that the evidence does not establish that he was totally disabled from January 31 to February 25, 2005 due to his accepted employment conditions and that the Office did not abuse its discretion in refusing to authorize payment for the contour pillow, mattress and prescription medication, Namenda.

[21] *See Alice J. Tysinger*, *supra* note 11.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated January 8, 2007 and May 24, 2006 are affirmed.

Issued: May 16, 2008
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