

FACTUAL HISTORY

This case has previously been before the Board.¹ By decision dated June 2, 2003, the Board affirmed an April 26, 2002 Office decision finding that appellant's reconsideration request was untimely filed and failed to demonstrate clear evidence of error.² The facts and the circumstances of the case are hereby incorporated by reference.

On August 30, 2005 due to pain in his right shoulder and neck, appellant underwent a magnetic resonance imaging (MRI) scan of the cervical spine. Dr. Larry Braustein, a radiologist, interpreted the study as showing significant hypertrophy of the right unvertebral joint at C3-4 with probable impingement during the exiting right C4 nerve. He also interpreted an MRI scan of the right shoulder taken on that date as unremarkable with no evidence of rotator cuff abnormality.

On March 7, 2006 Dr. Mark J. Lobitz, an osteopath, referred appellant for physical therapy. He diagnosed right shoulder pain. In a physical therapy evaluation dated March 9, 2006, a physical therapist noted the diagnoses of right shoulder pain and shoulder stiffness and that appellant had complained of right shoulder pain since September 2005. The physical therapist noted that cervical screening was negative for reproduction of right shoulder symptoms. The physical therapist noted that appellant would be treated three times a week for four to six weeks. The record establishes that appellant received physical therapy from March 9 through May 16, 2006.

In an April 30, 2006 report, Dr. Lobitz diagnosed herniated cervical disc disease with chronic pain, herniated lumbar disc disease with multiple spinal compression fractures and chronic pain, chronic modest affective disorder secondary to chronic pain and exacerbation of migraine secondary to cervical disc disease. Appellant had daily discomfort in the cervical and low back regions and bilateral shoulder pain, greater on the right, with an impaired range of motion that were related to the July 13, 1989 injury. Dr. Lobitz noted that imaging studies show significant narrowing of the right neural foramen with impingement on right C4 nerve root, as well as broad-based disc herniation with joint atrophy. Physical examination revealed cervical spine paravertebral spasm, focal tenderness over the right shoulder posteriorly, and decreased extension and rotation in the cervical spine. Dr. Lobitz noted decreased range of motion with active movement.

In a June 21, 2006 report, Dr. V. Benjamin Nakkache, a Board-certified neurologist, advised that appellant had persistent neck problems for the prior 18 to 20 years after a work injury. Appellant had many symptoms on the left side, pain in both shoulders and was known to have bursitis. Dr. Nakkache reviewed appellant's MRI scan, which disclosed cervical spondylosis, particularly marked at C3-4 and C6-7 and which was a long-standing problem but

¹ On July 13, 1989 appellant, then a 31-year-old clerk, sustained a severe bruise on his left back when he slipped on a wet floor. He stopped work and has not returned. The Office accepted appellant's claim for low back strain and an aggravation of degenerative disc disease. On October 26, 2006 it accepted his claim for psychogenic pain and dysthymic disorder.

² Docket No. 02-1390 (issued June 2, 2003).

not causing any spinal cord compression. There was only questionable nerve root compression unlikely to get better with surgical intervention. Dr. Nakkache did not recommend surgery or nerve blocks, which were unlikely to give appellant any long-term benefit.

By letter dated August 23, 2006, the Office denied appellant's request for physical therapy because his physician did not explain how the need for the treatment resulted from the employment injury. On November 2, 2006 it issued a decision denying physical therapy with appeal rights. However, the Office did not properly image the decision into appellant's record. On December 6, 2006 appellant appealed to this Board.

In an order dismissing appeal dated August 2, 2007, the Board noted that the November 2, 2006 decision was not in the file. There was no evidence of any decision that was issued one year prior to the December 6, 2006 appeal.³

By decision dated March 20, 2008, the Office denied authorization for physical therapy services. It explained that the request was not accompanied by the need for the treatment resulting from the accepted employment injuries. The Office requested a more current medical report regarding disability and the relationship, if any, to the employment-related conditions.

In a document received by the Office on March 26, 2008, Dr. Anthony Veglia, a Board-certified internist, recommended physical therapy for appellant's back and neck and noted that it was for a workers' compensation injury. In an April 14, 2008 note, he advised that appellant had been under his care since August 6, 2007. Dr. Veglia diagnosed a sprain of the lumbosacral joint; aggravation of a lumbar or lumbosacral intervertebral disc; aggravation of a cervical intervertebral disc and dysthymic disorder. He reported that all of these conditions were related to the July 13, 1989 injury and that appellant would benefit from physical therapy to slow down the degeneration in his neck and back and to reduce the necessity of pain medication.

By decision dated May 30, 2008, the Office denied physical therapy. It found that there was no evidence demonstrating how the requested therapy was due to the accepted employment-related conditions. By letter dated June 3, 2008, appellant, through his attorney, requested written review of the record.

By decision dated December 16, 2008, an Office hearing representative affirmed the May 30, 2008 decision denying payment for physical therapy services for his right upper extremity during the period March 9 through May 11, 2006.

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.⁴ The Office's obligation

³ Docket No. 07-488 (issued August 2, 2007).

⁴ 5 U.S.C. §§ 8101-8193, § 8103(a).

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.⁵ 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. It 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.⁶

ANALYSIS

In the instant case, the Office accepted appellant's claim for low back strain, aggravation of degenerative disc disease, other psychogenic pain and dysthymic disorder. Appellant seeks payment for physical therapy services received from March 9 through May 16, 2006.

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.⁷ 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 any employment-related injury or condition.⁸

There is evidence in the file that appellant received physical therapy during this time period. However, there is no evidence in the record explaining why the physical therapy was necessary to treat appellant's accepted employment-related injuries. Dr. Lobitz, appellant's treating osteopath, referred appellant on March 9, 2006 for physical therapy for right shoulder pain. However, he did not include any statement addressing how treatment was for the accepted conditions in this case. Dr. Lobitz did not address appellant's need for physical therapy in his April 30, 2006 report. Dr. Nakkache noted that appellant had pain in his shoulders but did not discuss his need for physical therapy. Dr. Braustein did not comment on the need for physical therapy and noted that appellant's August 30, 2005 MRI scan of his right shoulder was unremarkable. Dr. Veglia addressed appellant's need for physical therapy in March 2008 but not for the period March 9 through May 16, 2006. On April 14, 2008 he again requested physical therapy and explained that it would aid in slowing down the degeneration to appellant's neck and

⁵ *Stella M. Bohlig*, 53 ECAB 341, 343 (2002).

⁶ *Daniel J. Perea*, 42 ECAB 214 (1990).

⁷ *See Debra S. King*, 48 ECAB 504 (1997).

⁸ *Kennett O. Collins, Jr.*, 55 ECAB 648, 654 (2004).

back and lessen the need for pain medication. Although Dr, Veglia provided an explanation to support his request, he did not address physical therapy during the period in question, March 9 through May 11, 2006. As such, his report is insufficient to establish that appellant required physical therapy in 2006 for treatment of his accepted conditions. The notes from appellant's physical therapist are not probative in that a physical therapist is not a physician as defined under the Act.⁹

Appellant did not submit medical evidence establishing the need for physical therapy from March 9 to May 16, 2006. The Office properly denied payment for physical therapy received during this period.

CONCLUSION

The Board finds that the Office properly declined appellant's request for physical therapy from March 9 through May 11, 2006.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated December 16, May 30 and March 20, 2008 are affirmed.

Issued: December 11, 2009
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

⁹ A.C., 60 ECAB __ (Docket No. 08-1453, issued November 18, 2008) (records from a physical therapist do not constitute competent medical opinion in support of causal relation as a physical therapist is not a physician as defined by the Act).