

FACTUAL HISTORY

This is the fifth appeal before the Board in this case. In the first appeal, the Board affirmed the Office's January 13, 2003 decision¹ denying payment for orthopedic shoes in a decision dated August 26, 1994.² In the second appeal, the Board, in an October 1, 1998 decision, affirmed the Office's October 11, 1995 decision, finding that the Office properly reduced appellant's monetary compensation to zero on the grounds that he failed to cooperate with vocational rehabilitation efforts.³ On May 17, 2002 in appellant's third appeal, the Board found that the Office failed to meet its burden to terminate appellant's compensation for his low back strain after a period of eight weeks,⁴ and that the Office did not abuse its discretion in denying appellant's request for reimbursement of expenses for postage, envelope and travel to the post office and mileage to physical therapy. The Board also found that appellant had not established a consequential injury of a low back condition due to his accepted employment-related anterior ligament right knee tear and that the Office properly denied appellant's request for a merit review on this issue. On July 12, 2004 the Board, in the fourth appeal, affirmed the Office's October 2, 2003 decision which terminated appellant's compensation for his low back strain.⁵ The law and the facts as set forth in the Board's decisions are incorporated by reference.⁶

On April 8, 2008 Dr. James P. Stannard, appellant's treating Board-certified orthopedic surgeon, prescribed orthopedic shoes with inserts. In a clinic note dated April 8, 2008, he noted that appellant required new orthopedic shoes with inserts as a result of wear and tear on his old shoes and inserts.

On April 15, 2008 the Office received an April 24, 2003 report from Dr. Stannard who stated that he recommended that appellant purchase high-top orthopedic shoes and arch support inserts "to help correct an imbalance that is attributing to the problems he has been having with his knees."

¹ The Board affirmed the denial of authorization for the purchase of orthopedic shoes and inserts based upon reports dated February 19 and May 22, 1992 by Dr. Frank J. Hatchett, Jr., an attending Board-certified orthopedic surgeon. In the February 19, 1992 report, Dr. Hatchett indicated that he had prescribed orthopedic shoes and inserts for appellant, "but do not know of any specific reason in which they are directly related to" appellant's employment injury. He noted that the shoes would "help decrease stress on the patient's knees, but they are not directly related to the injury." Dr. Hatchett, in his May 22, 1992 report, stated that he had prescribed orthopedic shoes and inserts for appellant's bilateral pronation of his feet which was unrelated to his employment injury.

² Docket No. 93-1353 (issued August 26, 1994).

³ Docket No. 96-1317 (issued October 1, 1998).

⁴ Docket No. 01-500 (issued May 17, 2002).

⁵ Docket No. 04-609 (issued July 12, 2004).

⁶ On July 6, 1982 appellant, then a 29-year-old public safety officer, filed a traumatic injury claim alleging that on July 5, 1982 he sustained injuries to his upper back, both legs and right side of his neck when the van he was riding was involved in a collision. The Office accepted the claim for cervical strain, right knee anterior ligament tear and bilateral shin contusion, resolved. By letter dated April 6, 1992, it placed appellant on the periodic rolls for temporary total disability.

On April 16, 2008 the Office advised Hanger Prosthetics and Orthotics and appellant that it authorized the purchase of orthopedic shoes and inserts. However, on April 25, 2008 it informed appellant and the company that the authorization was rescinded as the acceptance had been in error. The Office recommended that appellant either pay for the expenses or file a claim with his insurance company for payment.

In a letter dated July 3, 2008, appellant disagreed with the April 25, 2008 letter rescinding approval of authorization for the purchase of orthopedic shoes and inserts.

By decision dated July 28, 2008, the Office denied authorization for the purchase of orthopedic shoes and inserts on the grounds that the medical evidence was insufficient to establish a causal relationship between the orthopedic shoes and inserts and the accepted injuries.

On August 1, 2008 appellant's counsel disagreed with the July 28, 2008 decision and requested a telephonic hearing before an Office hearing representative. A telephonic hearing was held on December 8, 2008 at which appellant, his wife and counsel were present and testimony was given by both appellant and his wife.

By decision dated February 2, 2009, the Office hearing representative affirmed the denial of the authorization for the purchase of orthopedic shoes with inserts.

LEGAL PRECEDENT

Section 8103 of the Federal Employees' Compensation Act⁷ 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 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.⁸ In interpreting section 8103, the Board has recognized that the Office has broad discretion in approving services provided under the Act.⁹ The only limitation on the Office's authority is that of reasonableness.¹⁰ 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.¹¹

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

⁷ 5 U.S.C. §§ 8101-8193.

⁸ 5 U.S.C. § 8103; *see R.L.*, 60 ECAB ____ (Docket No. 08-855, issued October 6, 2008); *Thomas W. Stevens*, 50 ECAB 288 (1999).

⁹ *A.O.*, 60 ECAB ____ (Docket No. 08-580, issued January 28, 2009).

¹⁰ *D.C.*, 58 ECAB ____ (Docket No. 06-2161, issued July 13, 2007); *Mira R. Adams*, 48 ECAB 504 (1997).

¹¹ *L.W.*, 59 ECAB ____ (Docket No. 07-1346, issued April 23, 2008); *P.P.*, 58 ECAB ____ (Docket No. 07-1045, issued September 5, 2007); *Daniel J. Perea*, 42 ECAB 214 (1990).

injury.¹² This burden of proof includes providing supporting rationalized medical evidence. Thus, in order to be authorized for the purchase of orthopedic shoes, appellant must submit evidence to show that these are for a condition causally related to the employment injury and that these were medically warranted. Both of these criteria must be met in order for the Office to authorize payment.¹³

ANALYSIS

The Office accepted the claim for cervical strain, right knee anterior ligament tear and bilateral shin contusion, resolved. The Board in an August 26, 1994 decision affirmed the Office's denial of payment for orthopedic shoes. The question to be resolved is whether the evidence submitted since the Board's 1994 decision establishes that the Office abused its discretion in denying appellant's request for reimbursement for the purchase of orthopedic shoes with inserts.

The relevant recent evidence includes an April 24, 2003 report and a clinic note and prescription for orthopedic shoes and inserts dated April 8, 2008 from Dr. Stannard, appellant's treating Board-certified orthopedic surgeon. In his April 24, 2003 report, he stated that the orthopedic shoes with inserts were necessary to correct appellant's imbalance due to his knee problems. In a clinic note dated April 8, 2008, Dr. Stannard noted that appellant required new orthopedic shoes with inserts as a result of wear and tear on his old shoes and inserts. None of his reports related why appellant's accepted conditions of cervical strain, right knee anterior ligament tear and bilateral shin contusion, resolved, would require orthopedic shoes with inserts. Dr. Stannard has never explained why the orthopedic shoes with inserts are necessary to cure or give relief from appellant's accepted conditions of cervical strain, right knee anterior ligament tear and bilateral shin contusion, resolved. A medical opinion not fortified by rationale is of diminished probative value.¹⁴ Thus, Dr. Stannard's report, clinic note and prescription are of diminished probative value and insufficient to find abuse of discretion by the Office in denying appellant's request.

As discussed, the Office has the discretion to authorize medical services, appliances and supplies pursuant to section 8103.¹⁵ The function of the Board on appeal is to determine whether there has been an abuse of discretion. Generally, abuse of discretion is shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logical and probable deductions from known facts.¹⁶ The Board finds that the Office acted within its discretion in denying appellant's request for authorization for the purchase of orthopedic shoes with inserts.

¹² *Cathy B. Mullin*, 51 ECAB 331 (2000).

¹³ *See R.L.*, *supra* note 8.

¹⁴ *Mary E. Marshall*, 56 ECAB 420 (2005).

¹⁵ *See Joseph P. Hofmann*, 57 ECAB 456 (2006).

¹⁶ *See Lottie M. Williams*, 56 ECAB 302 (2005).

CONCLUSION

The Board finds that the Office did not abuse its discretion in denying appellant's request for the purchase of orthopedic shoes with inserts.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 2, 2009 be affirmed.

Issued: December 7, 2009
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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