

letter dated August 28, 2007, the Office informed appellant that a prescription for the medication Truvada could not be paid. The relevant medical evidence includes an emergency room report dated February 23, 2007 in which Jordana Z. Grussgott, a nurse practitioner, provided a history that appellant was stuck by a discarded hypodermic needle that day. Ms. Grussgott diagnosed blood-borne pathogen exposure due to a puncture wound of the right palm and prescribed a seven-day course of the medication Truvada, to be taken daily for prophylaxis. In a March 1, 2007 report, Joey Merrifield, a nurse practitioner, noted the history of injury and diagnosis and advised that appellant should continue a full 28-day course of Truvada. By report dated April 2, 2007, Dr. Corey L. Casper, Board-certified in internal medicine and infectious disease, noted his review of the history of injury and treatment. He advised that he was in complete agreement with Mr. Merrifield's treatment regimen. An April 6, 2007 report noted that appellant's human immunodeficiency virus (HIV) and hepatitis C tests were negative. Final HIV and hepatitis C test reports were reported as negative on May 18 and 21, 2007 respectively.

By decision dated February 1, 2008, the Office denied authorization for payment of Truvada.

LEGAL PRECEDENT

Section 8103 of the Federal Employees' Compensation Act² 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.³ 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.⁴

In interpreting this section of the Act, the Board has recognized that the Office has broad discretion in approving services provided under section 8103, with the only limitation on the Office's authority being that of reasonableness.⁵ 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 In order to be entitled to reimbursement for medical expenses, a claimant must establish that the

² 5 U.S.C. §§ 8101-8193.

³ 5 U.S.C. § 8103; *see Dona M. Mahurin*, 54 ECAB 309 (2003).

⁴ *Kennett O. Collins, Jr.*, 55 ECAB 648 (2004).

⁵ *D.C.*, 58 ECAB ____ (Docket No. 06-2161, issued July 13, 2007).

⁶ *Minnie B. Lewis*, 53 ECAB 606 (2002).

expenditures were incurred for treatment of the effects of an employment-related injury.⁷ Proof of causal relationship must include supporting rationalized medical evidence.

Section 10.303(a) of Office regulations provides that simple exposure to a workplace hazard, such as an infectious agent, does not constitute an injury entitling an employee to medical treatment under the Act unless the employee has sustained an identifiable injury or medical condition as a result of that exposure.⁸ Section 10.313(b) provides that the Office can authorize treatment where there is “actual or probable exposure to a known contaminant due to an injury, requiring disease specific measures against the infection.”⁹ Chapter 805.8 of Office procedures, addressing high-risk employment, note that certain kinds of employment routinely present situations which may lead to infection by contact with animals, human blood, bodily secretions and other substances. Conditions such as HIV infection and hepatitis B more commonly represent a work hazard in health care facilities, correctional institutions and drug treatment centers, among others, than in federal workplaces as a whole. For claims based on transmission of a communicable disease where the means of transmission and the incubation period are medically feasible, the Office should, if the source of infection is a known or probable carrier of the disease, accept the case for the physical injury involved and authorize prophylactic treatment.¹⁰

Chapter 3.400.7 of Office procedures provides that the Act does not authorize preventive measures such as vaccines and inoculations and, in general, preventive treatment is the responsibility of the employing establishment except that preventive care can be authorized by the Office for complications of preventive measures which are provided or sponsored by the agency, such as adverse reaction to prophylactic immunization and or an injury involving actual or probable exposure to a known contaminant.¹¹

ANALYSIS

The Board finds that the Office did not abuse its discretion in denying authorization for the medication Truvada. The Office accepted that appellant sustained an employment-related needle stick from a used hypodermic needle on February 23, 2007, and Truvada was prescribed for prophylaxis.¹² However, it is not required to pay for prophylactic treatment under section 8103 of the Act. Rather, appellant’s physician must satisfy the Office that the expenditure was

⁷ *Cathy B. Mullin*, 51 ECAB 331 (2000).

⁸ 20 C.F.R. § 10.303(a).

⁹ *Id.* at § 10.313(b).

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.8 (October 1995); *N.S.*, 59 ECAB ____ (Docket No. 07-1652, issued March 18, 2008).

¹¹ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Services and Supplies*, Chapter 3.400.7 (April 1992).

¹² The Board notes that nurse practitioners are not considered under the Act. 5 U.S.C. § 8101(2); *see Sean O’Connell*, 56 ECAB 195 (2004). In this case, while Nurses Grussgott and Merrifield prescribed Truvada, Dr. Casper noted his agreement with their care.

incurred for treatment of the effects of the accepted employment injury. As noted by the Office in its February 1, 2008 decision, reimbursement was denied because no disease or illness had been diagnosed in connection with the accepted needle stick. This is not a case where appellant worked in the type of employment, such as a health care facility, correctional institution, or drug treatment facility, which could routinely present a situation that could lead to infection by contact with animals, human blood, bodily secretions or other substances.¹³ Furthermore, this is not a case where there was a known contaminant. Simple exposure to a workplace hazard does not constitute an injury that would entitle appellant to medical treatment under the Act.¹⁴ The record does not contain a rationalized medical opinion that explains the necessity for use of Truvada in treating appellant's accepted needle stick. In the February 23, 2007 report, Ms. Grussgott stated that Truvada was prescribed for prophylaxis. It was represcribed by Mr. Merrifield, and their treatment was approved by Dr. Casper. These reports, at best, provide speculative support for the medical necessity of the medication. The medical record is therefore insufficient to establish that Truvada was likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation.¹⁵

CONCLUSION

The Board finds that the Office did not abuse its discretion in denying reimbursement for the medication Truvada.

¹³ *Supra* note 9.

¹⁴ 20 C.F.R. §§ 10.303(a), 10.313(b).

¹⁵ *Supra* note 3.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 1, 2008 be affirmed.

Issued: February 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