

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

G.S., Appellant)

and)

TENNESSEE VALLEY AUTHORITY,)
JOHNSONVILLE STEAM PLANT,)
New Johnsonville, TN, Employer)

**Docket No. 08-1821
Issued: February 10, 2009**

Appearances:
Appellant, pro se
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 June 11, 2008 appellant filed a timely appeal from the April 10, 2008 merit decision of the Office of Workers' Compensation Programs, which denied authorization for a lift chair. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case.

ISSUE

The issue is whether the Office properly denied authorization for a lift chair.

FACTUAL HISTORY

On June 25, 1988 appellant, then a 60-year-old coal tower foreman, sustained an injury in the performance of duty when he stepped on a piece of concrete on gravel, turned his right ankle and fell. He felt sharp pain through his lower back. The Office accepted his claim for a permanent aggravation of diffuse lumbar and cervical disc disease. Appellant received compensation for temporary total disability on the periodic rolls.

On April 5, 2007 appellant advised the Office that a spring on his lift chair was worn out. He requested a new lift chair. Appellant submitted an April 5, 2007 note from his attending neurosurgeon, Dr. Timothy P. Schoettle:

“[Appellant] indicates to me that a lift chair provided for his spinal condition through workers’ comp[ensation] in 1980 has completely worn out and is nonfunctional at the present time. I do n[o]t have those records but I certainly think that 27 years exceeds the maximum one would expect from a lift chair and it would be appropriate given his ongoing clinical condition to get him a new lift chair under the auspice of workers’ comp[ensation].”

On February 21, 2008 the Office requested that appellant submit additional medical evidence within 30 days: “Also, since a lift chair is being requested; the medical evidence provided should include the justification for this equipment.”

In a decision dated April 10, 2008, the Office denied authorization for a lift chair. It found that appellant did not provide his treating physician’s response “as to the need for this lift chair and the accepted medical conditions in this claim.”

LEGAL PRECEDENT

Section 8103(a) of the Federal Employees’ Compensation Act¹ 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 Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of any disability, or aid in lessening the amount of any monthly compensation. The Office must therefore exercise discretion in determining whether the particular service, appliance, or supply is likely to effect the purposes specified in the Act.²

ANALYSIS

Appellant provided documentation from his neurologist, Dr. Schoettle, stating that “it would be appropriate given his ongoing clinical condition to get him a new lift chair.” Because Dr. Schoettle did not explain why it would be appropriate given appellant’s ongoing clinical condition, the Office asked appellant to have his doctor provide justification for the equipment requested. Having received no response, the Office denied appellant’s request for durable medical equipment.³

¹ 5 U.S.C. § 8103(a).

² See *Marjorie S. Geer*, 39 ECAB 1099 (1988) (the Office has broad discretionary authority in the administration of the Act and must exercise that discretion to achieve the objectives of section 8103).

³ On appeal, appellant submitted an April 3, 2008 report from Dr. Schoettle. However, the Board has no jurisdiction to review this evidence because it was not before the Office when it issued its April 10, 2008 decision. 20 C.F.R. § 501.2(c). Appellant retains the right to request reconsideration by the Office.

The Board finds that Dr. Schoettle's April 5, 2007 note was sufficiently vague in addressing how a lift chair would benefit appellant and his accepted permanent aggravation of diffuse lumbar and cervical disc disease. It was reasonable for the Office to ask for additional medical rationale to support the purchase. The Board finds that, having received none, the Office properly denied appellant's request. The Office acted within its broad discretion under section 8103 of the Act. The Board will affirm the Office's April 10, 2008 decision.

CONCLUSION

The Board finds that the Office properly denied authorization for a lift chair.

ORDER

IT IS HEREBY ORDERED THAT the April 10, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 10, 2009
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