United States Department of Labor
Employees' Compensation Appeals Board

C.P., Appellant	)	
and	)	**Docket No. 08-1472**
	)	**Issued: March 17, 2009**
DEPARTMENT OF THE AIR FORCE, KELLY AIR FORCE BASE, TX, Employer	)	

Appearances:
Appellant, pro se
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 April 24, 2008 appellant filed a timely appeal of the Office of Workers' Compensation Programs' May 3, 2007 merit decision, denying authorization for medical equipment and a January 28, 2008 nonmerit decision, denying her request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether the Office properly denied authorization for appellant's request for an adjustable car seat and bed, a car with an automatic transmission, rails in her bathroom and other rooms in her house and a Jacuzzi whirlpool bathtub; and (2) whether the Office properly denied appellant's request for further merit review pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

This case has previously been before the Board. In a May 26, 1993 decision, the Board affirmed the Office's May 31, 1991 and January 16, 1992 decisions, which found that appellant did not sustain any disability commencing December 19, 1990 causally related to her accepted May 6, 1982 employment injury or to factors of her employment. It also affirmed the Office's April 3, 1992 decision, denying her request for reconsideration.[1] By order dated September 20, 1993, the Board denied appellant's petition for reconsideration on the grounds that it failed to establish any error of fact or law in the May 26, 1993 decision.[2] The facts and the history relevant to the present appeal are set forth.

In a February 19, 2004 letter, appellant requested that the Office authorize an adjustable driver's car seat and bed, a car with an automatic transmission and a bathroom equipped with handicap rails and a whirlpool bathtub due to her employment-related conditions.

By letter dated March 11, 2004, the Office requested that appellant submit a medical report from an attending physician detailing the modifications that should be made to her car and home as they related to her accepted employment-related lumbar condition.

In reports dated April 19 and June 7, 2004, Sharon Hatch, a physician's assistant for Dr. M. David Dennis, an attending Board-certified orthopedic surgeon, requested that the Office authorize an adjustable car seat and bed, an automatic car transmission, guard rails in appellant's bathroom and other areas of her house and a whirlpool bathtub. She diagnosed lumbar post fusion and chronic lumbar pain syndrome. In a June 21, 2004 prescription, Dr. Dennis also recommended a Jacuzzi whirlpool tub and electronic adjustable bed for appellant's lumbar post fusion and chronic lumbar pain syndrome.

By letter dated October 20, 2004, the Office requested that appellant submit additional medical evidence, including a report from her attending physician describing the basic equipment needed and medical reasons for the equipment, the specific goals or benefits expected from the equipment, how often she would be using the equipment and the expected duration of its use. Appellant was afforded 30 days to submit the requested evidence. She did not respond.

By decision dated December 10, 2004, the Office denied appellant's request for an adjustable driver's car seat and bed, rails in her bathroom and other rooms in her house and a whirlpool bathtub. It found that she failed to submit sufficient medical evidence to establish that the requested equipment was warranted.

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[1] Docket No. 92-1233 (issued May 26, 1993). On May 12, 1982 appellant, then a 27-year-old data transcriber, filed a traumatic injury claim alleging that on May 6, 1982 she injured her left leg and bruised her right hip when she slipped and fell at work. By letter dated July 26, 1982, the Office accepted the claim for right leg and back strain. It authorized a laminectomy, decompression and discectomy of L5 and a bilateral lateral gutter fusion of L5-S1 with autogenous iliac crest bone on the right posterior iliac crest, which were performed on February 7, 1984. Subsequently, the Office accepted appellant's claim for displacement of lumbar intervertebral disc and herniated nucleus pulposus at L5-S1. It paid appellant appropriate compensation. By decision dated March 14, 2002, the Office granted appellant a schedule award for a 25 percent impairment of each lower extremity.

[2] Docket No. 92-1233 (issued September 20, 1993).

Following the issuance of the December 10, 2004 decision, the Office received Dr. Dennis' December 1, 2004 report. Dr. Dennis recommended a Jacuzzi tub because the warm soothing whirlpool helped appellant tremendously with the aches and spasms which contributed to her disability. He stated that the tub would be more cost effective than a health spa membership which was not an option for appellant as she had limitations with ambulation. Dr. Dennis indicated that appellant walked with the assistance of a cane and had a limp due to severe weakness in both lower extremities. He recommended an adjustable bed because appellant experienced trouble with her lower extremities due to edema and weakness. Dr. Dennis opined that she was totally and permanently disabled.

In a December 17, 2004 letter, appellant requested reconsideration of the Office's December 10, 2004 decision. She submitted the rental cost for a motor scooter.

By decision dated December 16, 2005, the Office vacated the December 10, 2004 decision. It found that Dr. Dennis' recommendation regarding durable medical equipment required further review and processing prior to the issuance of a formal decision.

On February 8, 2006 Dr. Dennis prescribed an electric wheelchair with an elevating leg rest for appellant's postsurgery lumbar condition. In a March 2, 2006 report, he noted that appellant initially sustained a work-related back injury in February 1992, which required multiple surgeries resulting in permanent back pain and a limp due to severe weakness in both lower extremities. Appellant encountered increasing problems with daily living activities and extremely limited movement. Dr. Dennis stated that the cane appellant used was no longer adequate or practical for her mobility and support. He stated that a motorized wheelchair would give her a more mobile lifestyle and peace of mind about not having to worry about falling and reinjuring herself. Dr. Dennis stated that the wheelchair would definitely accommodate appellant's medical condition. He reiterated his prior opinion that she was totally and permanently disabled.

On June 28, 2006 Dr. Ronald Blum, an Office medical adviser, reviewed the case record. He advised that the requested durable medical equipment was not medically warranted. Dr. Blum noted that the use of a motorized wheelchair was not indicated unless appellant could not use her upper extremities to propel a standard wheelchair. He further stated that a car with an adjustable seat and automatic transmission were not likely to cure, give relief or shorten the time of her disability. Dr. Blum related that the use of handrails could be accomplished with the use of furniture and a walker around the house. An adjustable bed could be accomplished with the judicious use of pillows. Regarding a whirlpool tub, Dr. Blum stated that the same results could be achieved with the use of a warm bath. He stated that the addition of agitation of the water did not add to the therapeutic value of moist heat.

By decision dated August 7, 2006, the Office denied authorization for the requested medical equipment pursuant to 5 U.S.C. § 8103 based on Dr. Blum's June 28, 2006 opinion. In a September 6, 2006 letter, appellant requested a review of the written record by an Office hearing representative.

By decision dated January 4, 2007, an Office hearing representative affirmed the December 10, 2004 decision. The hearing representative found that the evidence failed to

establish the requested Jacuzzi, motorized wheelchair, mobility railing and adjustable bed and driver's car seat were medically necessary. In a letter dated February 2, 2007, appellant requested reconsideration.

In a January 3, 2007 report, Dr. Dennis stated that, on physical examination, appellant demonstrated a right antalgic gait with a boot and used a cane for support. Appellant experienced positive tenderness to palpation to the bilateral posterior superior iliac spines and sciatic notch tenderness bilaterally. On neurological examination, Dr. Dennis found no gross motor or sensory deficits. He reported slight reduction in global motor strength. Dr. Dennis related that appellant could not heel/toe walk secondary to the boot on her right foot but related that her sensation was intact throughout the lower extremities. He reiterated the diagnosis of lumbar post fusion and chronic pain syndrome. Dr. Dennis also diagnosed a right foot injury.

By decision dated May 3, 2007, the Office denied modification of the January 4, 2007 decision. It found that the evidence failed to establish that the requested medical equipment was necessary as a result of appellant's accepted employment-related injuries.

In a December 18, 2007 letter, appellant requested reconsideration. She submitted forms from the Texas Department of Aging and Disability Services, which found that she was eligible for community attendant services pending medical approval, an emergency response system unit and one daily home delivered meal, five days per week. A service agreement indicated that the monitoring service was installed due to appellant's poor ambulation.

By decision dated January 28, 2008, the Office denied appellant's request for reconsideration on the grounds that it neither raised substantive legal questions nor included new and relevant evidence and, thus, it was insufficient to warrant a merit review of its prior decisions.

LEGAL PRECEDENT -- ISSUE 1

Section 8103 of the Federal Employees' Compensation Act[3] 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.[4]

In interpreting section 8103 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 her injury to the fullest extent possible in the shortest amount of time. It has broad administrative discretion in choosing means to achieve this goal. The only limitation on the Office's authority is that of reasonableness.[5] Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of

[3] 5 U.S.C. § 8101 *et seq.*

[4] 5 U.S.C. § 8103.

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

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 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 an employment-related injury or condition.[8] Proof of causal relation must include rationalized medical evidence.[9]

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained employment-related right leg and back strain, displacement of lumbar intervertebral disc and herniated nucleus pulposus at L5-S1 and authorized a laminectomy, decompression and discectomy of L5 and a bilateral lateral gutter fusion of L5-S1 with autogenous iliac crest bone on the right posterior iliac crest. Appellant requested authorization for an adjustable driver's car seat and bed, a car with an automatic transmission, handicap rails in her bathroom and other areas of her house, a Jacuzzi whirlpool bathtub and an electric wheelchair. She has the burden of proof to establish that the Office abused its discretion by denying authorization for the equipment she requested.

The prescription notes of Dr. Dennis recommended a Jacuzzi whirlpool tub, an adjustable bed and electric wheelchair for appellant's lumbar post fusion and chronic lumbar pain syndrome. His December 1, 2004 report stated that the warm soothing Jacuzzi whirlpool tub would help appellant tremendously with the aches and spasms which contributed to her disability. Dr. Dennis advised that the tub would be more cost effective than a health spa membership, which was not an option for appellant as she had limitations with ambulation. He stated that she walked with the assistance of a cane and had a limp due to severe weakness in both lower extremities. Dr. Dennis recommended an adjustable bed because appellant experienced problems with her lower extremities due to edema and weakness. On March 2, 2006 he stated that a motorized wheelchair would also provide her a more mobile lifestyle and peace of mind with not having to worry about falling and reinjuring herself. Dr. Dennis opined that the wheelchair would definitely accommodate appellant's work-related condition. While he recommended the whirlpool tub, adjustable bed and motorized wheelchair for appellant's chronic lumbar pain syndrome and edema, the Board notes that the Office has not accepted these conditions as employment related. Further, Dr. Dennis did not fully explain how the whirlpool tub, adjustable bed or motorized wheelchair would cure, give relief or reduce the degree or period of appellant's disability. He did not explain why appellant's employment-related

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

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

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

[9] *Id.*; *Bertha L. Arnold*, 38 ECAB 282 (1986).

accepted conditions required medical treatment which could only be accommodated by the purchase of this equipment. The Board has held that an opinion without supporting rationale is of diminished probative value.[10] To the extent that Dr. Dennis stated that appellant worried about falling and reinjuring herself, the Board has held that fear of future injury is not compensable under the Act.[11] Moreover, he did not provide any opinion as to why appellant required a car with an adjustable seat and automatic transmission. The Board finds that Dr. Dennis' opinion is insufficient to establish that the requested equipment was medically necessitated by appellant's accepted employment-related conditions.

Dr. Blum, an Office medical adviser, opined that the requested medical equipment was not medically warranted. He explained that use of a motorized wheelchair was not necessary unless appellant was unable to use her upper extremities to propel a standard wheelchair. The Board notes that there is no evidence of record establishing that appellant could not use her upper extremities. Dr. Blum explained that a car with an adjustable seat and automatic transmission were not likely to cure, give relief or shorten the time of appellant's disability. He related that, instead of handrails, appellant could place furniture or use a walker around the house. Dr. Blum stated that a judicious use of pillows would serve the purpose of an adjustable bed. He advised that the use of a warm bath would produce the same results as a whirlpool tub, noting that the addition of water agitation did not add to the therapeutic value of moist heat. The Board finds that Dr. Blum provided a rationalized explanation for why the requested medical equipment was not necessary.[12] Therefore, the Board finds that, under these circumstances, the Office acted within its discretion under section 8103(a) of the Act to deny authorization of appellant's request for an adjustable driver's car seat and bed, an automatic car transmission, handicap rails in her bathroom and other areas of her house, a Jacuzzi whirlpool bathtub and an electric wheelchair.[13]

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128 of the Act,[14] the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.[15] To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.[16] When a claimant fails to meet one of the above

[10] *Willa M. Frazier*, 55 ECAB 379 (2004).

[11] *See Andy J. Paloukos*, 54 ECAB 712 (2003); *Calvin E. King*, 51 ECAB 394 (2000).

[12] *Cathy B. Millin*, 51 ECAB 331 (2000).

[13] *Thomas Lee Cox*, 54 ECAB 509 (2003); *Stella M. Bohlig*, 53 ECAB 341 (2002).

[14] 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, [t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application. 5 U.S.C. § 8128(a).

[15] 20 C.F.R. § 10.606(b)(1)-(2).

[16] *Id.* at § 10.607(a).

standards, the Office will deny the application for reconsideration without reopening the case for review of the merits.

ANALYSIS -- ISSUE 2

In a December 18, 2007 letter, appellant disagreed with the Office's May 3, 2007 decision denying authorization for an adjustable driver's car seat and bed, an automatic car transmission, handicap rails in her bathroom and other areas of her house, a Jacuzzi whirlpool bathtub and an electric wheelchair. The relevant issue in the case, whether the Office abused its discretion by denying authorization for the stated equipment, is medical in nature.

The notification forms of the Texas Department of Aging and Disability Services stated that appellant was eligible for community attendant services pending medical approval, an emergency response system unit and one daily home delivered meal, five days per week. The service agreement indicated installment of the monitoring service due to appellant's poor ambulation. However, this evidence is not relevant to the issue of whether the Office abused its discretion by denying authorization for an adjustable driver's car seat and bed, an automatic car transmission, handicap rails in appellant's bathroom and other areas of her house, a Jacuzzi whirlpool bathtub and an electric wheelchair. The Board has held that the submission of evidence which does not address the particular issue involved in the case does not constitute a basis for reopening the claim.[17] The state notification forms regarding appellant's eligibility for disability services and monitoring service agreement are not relevant to this claim.

The evidence submitted by appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office or constitute relevant and pertinent new evidence not previously considered by the Office. As she did not meet any of the necessary regulatory requirements, the Board finds that she is not entitled to further merit review.[18]

CONCLUSION

The Board finds that the Office properly denied authorization for appellant's request for an adjustable driver's car seat and bed, automatic car transmission, rails in her bathroom and other rooms in her house and a Jacuzzi whirlpool bathtub. The Board further finds that the Office properly denied appellant's request for a merit review of her claim pursuant to 5 U.S.C. § 8128(a).

[17] *D. Wayne Avila*, 57 ECAB 642 (2006).

[18] *See* 20 C.F.R. § 10.608(b); *Richard Yadron*, 57 ECAB 207 (2005).

ORDER

IT IS HEREBY ORDERED THAT the January 28, 2008 and May 3, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 17, 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