



## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>1</sup> In an April 17, 2002 decision, the Board affirmed an Office hearing representative's February 18, 1999 decision which found that appellant failed to establish that he sustained a recurrence of disability on July 21, 1996 causally related to his February 2, 1994 employment injury or to establish that he was disabled from January 8, 1997 to June 17, 1998 due to his accepted January 8, 1997 consequential injury.<sup>2</sup> The facts and the history relevant to the present appeal are set forth.

On November 19, 2008 appellant requested that the Office authorize the medication Androgel prescribed by an attending physician for his testosterone condition. He contended that the medication had been approved by the Office for two years based on submission of a medical report from an attending physician who stated that the drug was medically necessary.

By letter dated November 19, 2008, the Office advised appellant that its records commencing January 6, 2006 revealed that bills for Androgel had been denied because it was not for treatment of his accepted injuries. It requested that he submit a rationalized medical opinion from an attending physician regarding the necessity of Androgel in order to determine whether he sustained additional medical conditions that required such treatment.

By decision dated November 20, 2008, the Office denied appellant's request for the medication Androgel, finding that it was not for treatment of a medical condition causally related to his February 2, 1994 employment injuries.

In a July 5, 2009 letter, appellant requested reconsideration. A March 25, 2008 report from Dr. Karel Ben-Othmane, a Board-certified neurologist, provided the results of an electromyogram (EMG). He found mild predominantly demyelinating left ulnar neuropathy at the elbow, predominately axonal, sensory more than motor and diffuse polyneuropathy of the upper and lower extremities.

In an August 19, 2008 report, Dr. M. Alvin Lloyd, a Board-certified neurologist, opined that appellant sustained sensory motor polyneuropathy secondary to left low back ulnar neuropathy. He also sustained chronic left ankle dysfunction. Dr. Lloyd advised that the neuropathy condition was not causally related to the February 2, 1994 employment injuries. He stated that the left ankle condition was causally related to the accepted injuries by history. In a November 18, 2008 report, Dr. Lloyd advised that appellant sustained permanent impairment to the whole person and left arm due to his employment-related back and left arm injuries based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5<sup>th</sup> ed. 2001).

---

<sup>1</sup> Docket No. 00-471 (issued April 17, 2002).

<sup>2</sup> The Office accepted that on February 2, 1994 appellant, then a 45-year-old quality assurance specialist, sustained cervical, dorsal and lumbar strains, contusion of the left foot and ankle, ruptured peroneal tendon of the left foot, fracture of tooth 18 and contusion of the left elbow as a result of a motor vehicle accident while in the performance of duty.

In reports dated November 18, 2008 and January 9, 2009, Dr. Steven E. Marks, a Board-certified urologist, advised that appellant was being followed for hypogonadism which was documented by his testosterone level. Studies showed that the condition could be the result of his chronic opioid use. Dr. Marks prescribed Androgel to be used as a replacement treatment.

A December 8, 2008 e-mail from Amy Harnish, a registered nurse, advised appellant to follow up with his pain provider regarding the development of his low testosterone levels due to long-term use of narcotic medications.

In a February 23, 2009 report, Dr. Daniel G. Kean, II, a Board-certified physiatrist, reviewed a history of appellant's February 2, 1994 injuries and medical treatment. He opined that appellant suffered from chronic pain syndrome, lumbosacral neuritis, myofascial pain and abdominal hernia with open wound and wound graft. Dr. Kean advised that appellant would continue to benefit from not only long-term pain medications to reduce his pain level and improve his functions but also hormone replacement therapy to treat decreased testosterone levels which resulted from his long-term opioid use.

By decision dated August 18, 2009, the Office denied modification of the November 20, 2008 decision. It found that the evidence submitted by appellant was insufficient to authorize payment of the medication Androgel. The Office noted that it never paid for the medication based on its bill history starting January 6, 2006.

### **LEGAL PRECEDENT**

Section 8103(a) of the Federal Employees' Compensation Act provides for the furnishing of services, appliances and supplies prescribed or recommended by a qualified physician which the Office, under authority delegated by the Secretary, considers likely to cure, give relief, reduce the degree or the period of disability or aid in lessening the amount of monthly compensation.<sup>3</sup>

In interpreting section 8103, 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 or 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.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup> The fact

---

<sup>3</sup> 5 U.S.C. § 8103(a).

<sup>4</sup> *Dr. Mira R. Adams*, 48 ECAB 504 (1997).

<sup>5</sup> *See Debra S. King*, 44 ECAB 203 (1992).

<sup>6</sup> *Kennett O. Collins, Jr.*, 55 ECAB 648 (2004).

that the Office authorized and paid for some medical treatment does not establish that the condition for which appellant received treatment was employment related.<sup>7</sup>

### ANALYSIS

The Board finds that the medical evidence is insufficient to establish the necessity of the prescription medication Androgel. The record does not contain a rationalized medical opinion which explains how the use of this medication is for treatment of appellant's accepted cervical, dorsal and lumbar strains, contusion of the left foot and ankle, ruptured peroneal tendon of the left foot, fracture of tooth 18 or contusion of the left elbow.

Dr. Marks prescribed Androgel as replacement therapy to treat appellant's low testosterone condition, hypogonadism. He stated that studies showed the diagnosed condition "could" be the result of appellant's chronic opioid use. The Office has not accepted appellant's hypogonadism condition and he has not established a causal relationship.<sup>8</sup> The opinion of Dr. Marks is equivocal and insufficient to establish that Androgel was necessary for treatment of the effects of the employment-related conditions.<sup>9</sup>

Dr. Kean reviewed a history of appellant's February 2, 1994 employment injuries and medical treatment. He diagnosed chronic pain syndrome, lumbosacral neuritis, myofascial pain and abdominal hernia with open wound and wound graft. Dr. Kean advised that appellant would benefit from long-term medications to reduce his pain level and improve his functions. He also noted that appellant would benefit from hormone replacement therapy for his decreased testosterone levels due to his long-term opioid use. As noted, appellant's claim has not been accepted by the Office for the conditions listed by Dr. Kean. Moreover, the physician's report is not sufficient as Dr. Kean did not adequately address how any medication used by appellant would cause or contribute to low testosterone levels.<sup>10</sup> Dr. Kean did not provide a medical opinion addressing the causal relationship between the accepted conditions and appellant's use of pain medication. He did not explain how or why Androgel was medically necessary to treat the effects of the accepted injuries. The Board finds that his report is insufficient to meet appellant's burden of proof.

Dr. Lloyd found that appellant's sensory motor polyneuropathy was secondary to left low back ulnar neuropathy but was not causally related to the accepted injuries. He opined that appellant's chronic left ankle dysfunction was causally related to the February 2, 1994 employment injuries, by history. On November 18, 2008 Dr. Lloyd noted that appellant sustained permanent impairment to the whole person and left arm due to his employment-related conditions under the A.M.A., *Guides*. These reports are not relevant to the issue on appeal as

---

<sup>7</sup> *Dales E. Jones*, 48 ECAB 648 (1997); *James F. Aue*, 25 ECAB 151 (1974).

<sup>8</sup> For conditions not accepted by the Office as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not the Office's burden to disprove such relationship. *Alice J. Tysinger*, 51 ECAB 638 (2000).

<sup>9</sup> *Ricky S. Storms*, 52 ECAB 349 (2001).

<sup>10</sup> *Alice J. Tysinger*, *supra* note 8.

Dr. Lloyd did not explain how the accepted conditions necessitated the use of Androgel as part of appellant's treatment. Dr. Lloyd did not provide any medical opinion addressing whether the medication was medically necessary to treat the accepted injuries. His reports are of diminished probative value.<sup>11</sup>

Similarly, Dr. Ben-Othmane's EMG report is of diminished probative value. While he addressed appellant's upper and lower extremities conditions, he did not provide any medical opinion explaining how Androgel was medically necessary to treat the effects of appellant's accepted injuries.<sup>12</sup>

The e-mail from Ms. Harnish, a registered nurse, has no probative value in establishing the medical necessity of the medicine to treat the effects of appellant's accepted injuries as a nurse is not a "physician" as defined under the Act.<sup>13</sup>

For these reasons, the Board finds that the Office did not abuse its discretion under section 8103 of the Act by denying authorization of the prescribed medication Androgel. Contrary to appellant's contention on appeal, there is insufficient rationalized medical evidence of record addressing how any pain medication used to treat his accepted injuries caused his low testosterone condition.

### **CONCLUSION**

The Board finds that the Office properly denied authorization of the prescribed medication Androgel.

---

<sup>11</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989). *See also Michael E. Smith*, 50 ECAB 313 (1999).

<sup>12</sup> *Id.*

<sup>13</sup> 5 U.S.C. § 8101(2); *see also G.G.*, 58 ECAB 389 (2007).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 18, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 10, 2010  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board