

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

_____)	
E.J., Appellant)	
)	
and)	Docket No. 10-743
)	Issued: November 2, 2010
DEPARTMENT OF DEFENSE, DEFENSE)	
FINANCE & ACCOUNTING SERVICE,)	
Columbus, OH, Employer)	
_____)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 25, 2010 appellant filed an appeal from a November 5, 2009 decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether the Office properly denied appellant's request for authorization for purchase of a home Jacuzzi.

On appeal, appellant's attorney asserts that the decision is contrary to fact and law.

FACTUAL HISTORY

On November 13, 2003 appellant, then a 34-year-old accounting technician, filed a traumatic injury claim, alleging that she injured her left hand that day when it was caught in a door. She returned to light duty on November 24, 2003 and began working part time in January 2004. Appellant stopped work on September 6, 2004 and did not return. The Office

accepted multiple employment-related conditions and she was placed on the periodic compensation rolls.¹

In 2006 appellant moved to Georgia and came under the care of Dr. Stephanie J. Smith, Board-certified in anesthesiology and pain medicine, and Dr. Kela Y. Henry, Board-certified in family medicine. On January 15, 2009 Dr. Smith noted that sitting in a hot bath improved appellant's left shoulder pain and advised that a Jacuzzi would help alleviate muscle spasms by soaking in warm water. He provided a prescription for a Jacuzzi.

In a March 4, 2009 letter, the Office advised appellant of the medical evidence needed to support her request for a hot tub. Appellant was asked to submit a description of specific goals expected, the specific equipment needed, and of alternative treatment that might achieve the same results. She was to provide quotes from two potential vendors. In response, appellant submitted the January 15, 2009 Jacuzzi prescription from Dr. Smith for therapy three times a week for left upper extremity reflex sympathetic dystrophy and a quote for two models of a home Jacuzzi spa.

In a decision dated May 6, 2009, the Office denied appellant's request on the grounds that the medical evidence failed to establish that a Jacuzzi was necessary or appropriate for effective treatment of her work-related RSD.

The Office referred appellant to Dr. David A. Olson, a Board-certified neurologist, for a second opinion evaluation. In a May 11, 2009 report, Dr. Olson reviewed the medical record and listed appellant's complaints. He provided physical examination findings and diagnosed weakness and pain. Dr. Olson advised that appellant had no residuals or neurological impairment due to the accepted employment injury and that all conditions accepted as due to the November 13, 2003 injury had resolved. He found no objective evidence of RSD and advised that appellant had no restrictions as a result of the employment injury.

On June 5, 2009 appellant requested a hearing. In a June 17, 2009 treatment note, Dr. Henry stated that appellant noticed that being in a Jacuzzi with warm water relieved her upper neck and left shoulder pain. In a June 27, 2009 report, he advised:

“[Appellant] needs an indoor Jacuzzi with heated massage jets and ergonomically correct seating. She needs this piece of equipment because she has chronic pain from reflex sympathetic dystrophy, and the hydrotherapy provided by the Jacuzzi relieves the pain. Specifically, the heated water dilates blood vessels which bring increased oxygenated blood flow to the painful and damaged muscles and tissue. I expect her to use the Jacuzzi daily until she recovers from the RSD. However, I must state here that since I am not a pain specialist, I do not know with certainty if or when [she] will recover. The goal of this treatment, other than pain relief, would be to hopefully help the patient to require less narcotic pain medication or

¹ The accepted conditions were contusion of left hand, crush injury of the left hand except fingers, reflex sympathetic dystrophy (RSD) of the left upper extremity, right carpal tunnel syndrome, bilateral tenosynovitis of hand and wrist, and major depression, single episode, moderate.

other invasive treatments. I do not know of any alternative treatments that would provide the same result.”

Appellant repeated the request on July 29, 2009 and added that she additionally needed a neck pillow with heat and a percussion massager with heat.²

At the September 28, 2009 hearing, the hearing representative advised appellant of the evidence needed to support her request. Appellant was given 30 days to respond.

In a November 5, 2009 decision, the Office hearing representative affirmed the denial of authorization for a Jacuzzi hot tub. He noted that Dr. Olson found that appellant no longer suffered from RSD, the condition the Jacuzzi was prescribed to treat, and affirmed the May 6, 2009 decision.

LEGAL PRECEDENT

Section 8103 of the Federal Employees’ Compensation Act³ 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 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.⁵

Section 10.310(a) of the implementing regulations provide that the employee is entitled to receive all medical services, appliances or supplies which a qualified physician prescribes or recommends and which the Office considers necessary to treat the work-related injury.⁶ Office procedures provide that nonmedical equipment such as waterbeds, saunas, weight-lifting sets, exercise bicycles, etc., may be authorized only if recommended by the attending physician and if the Office finds that the item is likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of monthly compensation.⁷

² Appellant also submitted additional reports from Dr. Smith, Dr. Henry and Dr. Erik T. Shaw, a Board-certified physiatrist. The record also contains second opinion evaluations by Dr. Amy E. Bullens-Borrow, a Board-certified orthopedic surgeon, and Dr. Peter Ash, a Board-certified psychiatrist, dated August 12 and October 23, 2009 respectively. These reports are not probative to this claim as they did not discuss the need for a hot tub.

³ 5 U.S.C. §§ 8101-8193.

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

⁵ *Kennett O. Collins, Jr.*, 55 ECAB 648 (2004).

⁶ 20 C.F.R. § 10.310(a).

⁷ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Services and Supplies*, Chapter 3.400.3(d)(5) (October 1995).

In interpreting section 8103(a) of the Act, the Board has recognized that the Office has broad discretion in approving services provided under the Act to ensure that an employee recovers from his or her injury to the fullest extent possible in the shortest amount of time. The Office has administrative discretion in choosing the means to achieve this goal and the only limitation on the Office's authority is that of reasonableness.⁸ 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.⁹ Proof of causal relationship must include supporting rationalized medical evidence.¹⁰

ANALYSIS

The Office accepted that appellant sustained multiple conditions including RSD.¹¹ Appellant requested authorization to purchase a Jacuzzi spa. The Office denied the request, finding that she did not submit sufficient medical evidence to authorize the purchase.

The Board finds that the Office did not abuse its discretion in denying appellant's request to purchase a Jacuzzi. Dr. Smith advised that appellant reported that sitting in a hot bath improved her pain and that soaking in a Jacuzzi would help alleviate muscle spasm. She provided a prescription for the Jacuzzi but did not address how use of a hot tub was likely to cure, give relief, reduce the degree of period of disability, or aid in lessening the amount of compensation.¹² Dr. Smith's reports are insufficient to establish that treatment with a Jacuzzi was necessary and reasonable.¹³ While Dr. Henry provided some explanation, stating that hydrotherapy would help relieve the pain from appellant's RSD condition by increasing blood flow, she did not provide an explanation as to how the Jacuzzi would cure, reduce the period of disability, or aid in lessening the amount of monthly compensation. She did not explain why appellant's RSD condition required medical treatment that could only be accommodated by the purchase of this specific piece of equipment. Dr. Henry did not address why relief could not be obtained adequately by soaking in a hot bath. The Board finds that Dr. Henry's opinion is insufficient to establish that the requested Jacuzzi was medically necessitated for treatment of the diagnosed RSD. Moreover, Dr. Olson who provided a second opinion evaluation for the Office advised that appellant did not have a RSD condition.

For these reasons, the Office did not abuse its discretion in denying appellant's request to authorize the purchase of a Jacuzzi spa. The Office explained that the medical evidence

⁸ *R.L.*, 60 ECAB ____ (Docket No. 08-855, issued October 6, 2008).

⁹ See *Debra S. King*, 44 ECAB 203 (1992).

¹⁰ *M.B.*, 58 ECAB 588 (2007).

¹¹ *Supra* note 1.

¹² *Supra* note 5.

¹³ *Debra S. King*, *supra* note 9.

submitted provided insufficient explanation for the necessity of the item. The Board finds that the Office properly denied authorization for its purchase.¹⁴

CONCLUSION

The Board finds that the Office properly denied appellant's request for authorization for purchase of a home Jacuzzi.

ORDER

IT IS HEREBY ORDERED THAT the November 5, 2009 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: November 2, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

¹⁴ *D.K.*, 59 ECAB 141 (2007).