United States Department of Labor
Employees' Compensation Appeals Board

L.Y., Appellant	)	
and	)	**Docket No. 10-1647**
	)	**Issued: March 1, 2011**
U.S. POSTAL SERVICE, PROCESSING & DELIVERY CENTER, Kansas City, MO, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 8, 2010 appellant filed a timely appeal from the December 17, 2009 and May 11, 2010 merit decisions 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 these decisions.

ISSUE

The issue is whether the Office properly denied appellant's request for physical therapy services on the grounds that the current medical condition was not employment related.

On appeal, appellant, through counsel, contends that the Office's decision is contrary to fact and law.

FACTUAL HISTORY

This case has previously been before this Board. The facts as set forth in the prior decision are incorporated by reference.[1] The relevant facts are set forth below.

On July 7, 2005 appellant, then a 47-year-old clerk, filed a traumatic injury claim alleging that on July 6, 2005, while sitting and sorting mail, his back began to hurt. On November 18, 2005 the Office accepted his claim for sprain/strain lumbar region and the Office paid compensation benefits.

On October 16, 2009 the Office received a request for authorization for physical therapy from Professional Rehabilitative Services for the period October 21 through November 23, 2009. By letter dated October 19, 2009, it informed Professional Rehabilitative Services that the request could not be authorized at this time and requested further information.

In response, appellant submitted reports by Dr. Hamid Alhosseini, a Board-certified family practitioner, dated October 16 and November 11, 2009, wherein he stated that appellant has had onset of numbness and tingling that has developed gradually in his right hand and fingertips up to his arm and elbow over the past three years. He noted that there were no precipitating factors. Dr. Alhosseini also noted that appellant was suffering from lower back pain which has been occurring persistently for two weeks. He diagnosed him with low back pain, radiculopathy (lumbar or thoracic) and carpal tunnel syndrome.

Appellant also submitted an October 21, 2009 report by his physical therapist, Lesley Rhine, indicating that appellant stated that he injured his back in July 2005 while lifting 70-pound bags of mail. Dr. Rhine noted that he has been undergoing a series of treatments but still had signs and symptoms consistent with lower back pain and would benefit from physical therapy.

By decision dated December 17, 2009 the Office denied appellant's request for authorization for physical therapy as the evidence was not sufficient to establish that his current medical condition and need for physical therapy were related to the established work-related injury of July 6, 2005.

By letter dated December 23, 2009, appellant requested a telephonic hearing before an Office hearing representative. At the hearing, held on March 2, 2010, he noted that he no longer worked for the employing establishment but was working for area transit transportation in Kansas City, Missouri. Appellant noted that he left the employing establishment on September 4, 2006. He noted that he left the employing establishment as his leave under the Family and Medical Leave Act and regular leave was used and due to his absence, he was removed from service. Appellant stated that he has been temporarily employed on and off since leaving the employing establishment. He also testified that while working for J.C. Penney he was doing a lot of standing and his back started bothering him again. Appellant testified that his

[1] Docket No. 09-1376 (issued January 22, 2010) (the Board found that the Office properly refused to reopen appellant's case for further review of the merits of the claim on the grounds that his request was untimely filed and failed to demonstrate clear evidence of error).

physician told him that due to his previous injury he was still having problems and recommended that he go to physical therapy.

In a letter dated March 19, 2010, the employing establishment argued that the medical evidence in the record was not sufficient to meet appellant's burden of proof to connect the current treatment requested to his previous injury that occurred over four years ago. The employing establishment also noted that he appeared to describe a new intervening incident at J.C. Penney that would break the chain of causation.

By decision dated May 11, 2010, an Office hearing representative affirmed the Office's December 17, 2009 decision.

LEGAL PRECEDENT

Section 8103 of the Federal Employees' Compensation Act states in pertinent part: The Unites 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 disability or aid in lessening the amount of the monthly compensation.[2] The Office's obligation to pay for medical treatment under section 8103 of the Act extends only to treatment of employment-related conditions and appellant has the burden of establishing that the requested treatment is for the effects of an employment-related condition. Proof of causal relation must include rationalized medical evidence.[3] In interpreting this section 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 his injury to the fullest extent possible in the shortest amount of time. It therefore has broad administrative discretion in choosing means to achieve this goal. The only limitation on the Office's authority is that of reasonableness. 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.[4]

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.[5] While the Office is obligated to pay for treatment of employment-related conditions, the employee has the burden of establishing that the

[2] 5 U.S.C. §§ 8101-8193, § 8103(a).

[3] *Stella M. Bohlig*, 53 ECAB 341, 343 (2002).

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

[5] *See Debra S. King*, 48 ECAB 504 (1997).

expenditure is incurred for treatment of the effects of any employment-related injury or condition.[6]

ANALYSIS

In the instant case, the Office accepted that on July 6, 2005 appellant sustained a sprain/strain of the lumbar region in the performance of duty.

The Board finds that there is no rationalized medical evidence that the physical therapy services requested for the period October 21 through November 23, 2009 were related to the accepted employment injury of July 6, 2005. Dr. Alhosseini discussed onset of numbness and tingling in appellant's arm and elbow for the past three years and also discussed lower back pain which had been occurring for two weeks prior to his October 16, 2009 appointment. However, he never linked these symptoms to appellant's work-related injury, nor did he provide medical rationale explaining why physical therapy was needed to assist in the cure or relief of the effects of the employment-related conditions. As such, the Board finds that the reports of Dr. Alhosseini are insufficient to warrant authorization for payment or reimbursement of medical services.

Appellant also submitted a report from his physical therapist. This report has no probative value in establishing appellant's claim. Section 8101(2) of the Act provides that the term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. A physical or occupational therapist is not a physician as defined under the Act; their opinions are of no probative medical value.[7] Therefore, appellant has failed to submit evidence showing that the Office abused its discretion in denying his request for physical therapy services.

CONCLUSION

The Board finds that the Office properly denied appellant's request for physical therapy services on the grounds that the current condition was not employment related.

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

[7] *See* 5 U.S.C. § 8101(2); *A.C.*, 60 ECAB ___ (Docket No. 08-1453, issued November 18, 2008); *David P. Sawchuk*, 57 ECAB 316 (2005).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated May 11, 2010 and December 17, 2009 are affirmed.

Issued: March 1, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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