

FACTUAL HISTORY

OWCP accepted that on March 4, 2010 appellant, then a 39-year-old police officer instructor, sustained an acromioclavicular (ACL) sprain of the left shoulder while training at the employing establishment's law enforcement training center. It authorized left shoulder arthroscopic release surgery which was performed on August 4 and December 22, 2010 by Dr. John M. Kioschos, an attending Board-certified orthopedic surgeon.

On January 5, 2011 Dr. Kioschos released appellant to return to work on January 7, 2011 with temporary physical restrictions.² On January 12, 2011 he prescribed a continuous passive motion (CPM) chair for three weeks to treat appellant's left capsular release.

On January 19, 2011 appellant filed a claim for wage-loss compensation (Form CA-7) for the period January 7 through 14, 2011. An accompanying time analysis form (CA-7a) showed that on January 7, 10 and 12, 2011 he used four hours of leave without pay (LWOP) each day for physical therapy using the CPM chair at home. He used four hours of annual leave on January 7 and 10, 2011 unrelated to the accepted employment injury. Appellant worked four hours on January 12, 2011. On January 11, 13 and 14, 2011 he worked five hours and used three hours of LWOP each day to undergo outside physical therapy.

In a January 19, 2011 letter, the employing establishment controverted appellant's claim for compensation for LWOP on the dates that he underwent physical therapy at home.

By letter dated January 25, 2011, OWCP advised appellant that it authorized wage-loss compensation for January 11 through 14, 2011. It requested that he submit medical evidence supportive of his attendance at physical therapy on January 7 and 10, 2011.

On February 1, 2011 OWCP advised appellant that it did not provide compensation for home physical therapy.

On February 4, 2011 appellant filed a Form CA-7 for the period January 18 through 28, 2011. An accompanying Form CA-7a showed that on January 18, 20, 27 and 28, 2011 he worked five hours and used three hours of LWOP each day to attend outside physical therapy. On January 21, 2011 appellant used four hours of LWOP to use the CPM chair at home and four hours of sick leave not related to the accepted injury. On January 25, 2011 he worked four hours and used four hours of LWOP to attend outside physical therapy.

In a February 11, 2011 letter, appellant requested wage-loss compensation for 57 hours spent in the CPM chair at home on December 25 and 26, 2010 and January 1, 2 and 7 through 21, 2011. He received compensation for the period December 22, 2010 through January 6, 2011. Appellant contended that he was entitled to the requested compensation since his attending physician instructed him to spend three hours a day, seven days a week in the CPM chair as part of his medical treatment.

² Appellant used leave and was expected to return to full-time limited-duty work on January 10, 2011. He did not report to work on that date due to snowfall.

By letter dated February 18, 2011, OWCP authorized payment for 10 hours of compensation for January 18, 20 and 25, 2011. It requested that appellant submit medical evidence to support his physical therapy treatment on January 27 and 28, 2011.

In a March 9, 2011 decision, OWCP denied appellant's request for wage-loss compensation for physical therapy on January 7, 10, 12 and 21, 2011.³ It did not pay compensation for home physical therapy performed independent of a physical therapist or other professional.

LEGAL PRECEDENT

Section 8103(a) of FECA provides for the furnishing of services, appliances and supplies prescribed or recommended by a qualified physician which OWCP, 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.⁴

In interpreting section 8103, the Board has recognized that OWCP has broad discretion in approving services provided under FECA. OWCP 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. OWCP has broad administrative discretion in choosing means to achieve this goal. The only limitation on OWCP's authority is that of reasonableness.⁵ 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.⁶

While OWCP is obligated to pay for treatment of employment-related conditions, appellant has the burden of establishing that the expenditure is incurred for treatment of the effects of an employment-related injury or condition.⁷ Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.⁸ Therefore, in order to prove that the medical services were warranted, appellant must submit evidence to show that those services were for a condition causally related to the employment injury and that the services were

³ The Board notes that OWCP did not issue a final decision regarding appellant's claim for six hours of wage loss on January 27 and 28, 2011 due to physical therapy prior to rendering its March 9, 2011 decision. As such, this aspect of the case is not properly before the Board. *See* 20 C.F.R. § 501.2(c).

⁴ 5 U.S.C. § 8103(a).

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

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

⁷ *Kennett O. Collins, Jr.*, 55 ECAB 648 (2004).

⁸ *Id.*

medically warranted. Both of these criteria must be met in order for OWCP to authorize payment.⁹

With respect to claimed disability for medical treatment, section 8103 of FECA provides for medical expenses, along with transportation and other expenses incidental to securing medical care, for injuries.¹⁰ Appellant would be entitled to compensation for any time missed from work due to medical treatment for an employment-related condition.¹¹ However, OWCP's obligation to pay for medical expenses and expenses incidental to obtaining medical care, such as loss of wages, extends only to expenses incurred for treatment of the effects of any employment-related condition. Appellant has the burden of proof, which includes the necessity to submit supporting rationalized medical evidence.¹²

ANALYSIS

Appellant submitted CA-7 and CA-7a forms for 41 hours of wage loss from January 7 through 28, 2011 to undergo physical therapy. OWCP paid him wage-loss compensation for 19 hours claimed on January 11, 13, 14, 18, 20 and 25, 2011 for outside physical therapy treatment. However, it denied 16 hours of wage loss on January 7, 10, 12 and 21, 2011 for home physical therapy.

In a January 12, 2011 prescription note, Dr. Kioschos ordered a CPM chair for appellant's use at home for three weeks of physical therapy to treat his capsular release. His note did not discuss why the prescribed equipment was medically necessary to treat or alleviate the accepted left shoulder ACL sprain. Without medical reasoning explaining why the prescribed treatment was medically necessary due to the residuals of the accepted condition, the Board finds that Dr. Kioschos' prescription is of diminished probative value.

The Board finds that the medical evidence is insufficient to establish the necessity of home physical therapy using the CPM chair. The record does not contain a rationalized medical opinion which explains the necessity for use of this equipment in treating appellant's accepted left shoulder ACL sprain.

For the stated reasons, the Board finds that OWCP did not abuse its broad discretion under section 8103 of FECA when it denied appellant's claim for wage-loss compensation to undergo home physical therapy.

⁹ *R.L.*, Docket No. 08-855 (issued October 6, 2008).

¹⁰ 5 U.S.C. § 8103(a).

¹¹ *Vincent E. Washington*, 40 ECAB 1242 (1989).

¹² *See* 5 U.S.C. § 8101(2); *David P. Sawchuk*, 57 ECAB 316 (2005); *A.C.*, Docket No. 08-1453 (issued November 18, 2008).

CONCLUSION

The Board finds that appellant has failed to establish that he was entitled to 16 hours of compensation for wage loss on January 7, 10, 12 and 21, 2011 due to home physical therapy causally related to his accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the March 9, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 12, 2012
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