



## **FACTUAL HISTORY**

In a prior appeal,<sup>2</sup> the Board noted that OWCP denied authorization for a periodic chest x-ray on the grounds that there was no ongoing need. OWCP explained that the risk for developing active disease was highest in the first 2 years after exposure and development of a positive skin test and appellant had gone 10 years without a diagnosis of tuberculosis (TB). As the issue was a medical one, and as OWCP cited no source for its determination on risk, the Board found that it was unreasonable for OWCP to deny authorization in the absence of medical opinion to the contrary. The Board remanded the case for further development of the medical evidence and a proper exercise of discretion.<sup>3</sup>

On July 15, 2011 OWCP contacted Dr. Palmer to ask why he was recommending another chest x-ray. It explained: “Generally speaking, from exposure to development of a positive TB skin test reaction (the incubation period) is approximately 2 to 12 weeks.... The risk for developing active disease is the highest in the first two years after exposure and development of a positive TB skin test reaction,” but regular diagnostic tests over the years continued to be negative for any pulmonary diagnosis. Dr. Palmer was requested to respond within 30 days.

On August 12, 2011 OWCP called Dr. Palmer’s office for a status update. Dr. Palmer’s office advised that the July 15, 2011 correspondence was not in appellant’s file. His office also advised that he would have to see appellant before he could respond. OWCP stated that it was just trying to ascertain why Dr. Palmer was still recommending yearly chest x-rays. Dr. Palmer’s office repeated that he would have to see appellant to respond. OWCP advised that it would proceed to a decision and, if appellant wished to pursue the matter, he could contact Dr. Palmer for an appointment to obtain the information requested.

In an August 22, 2011 decision, OWCP denied authorization for a chest x-ray on the grounds that the medical evidence did not demonstrate an ongoing need. Noting it attempts to obtain an explanation from Dr. Palmer, it found that he submitted no evidence to substantiate the need for another chest x-ray.

On appeal, appellant argued that OWCP did not further develop the medical evidence as directed by the Board.

## **LEGAL PRECEDENT**

Section 8103(a) of FECA 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 that the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of any disability or aid in lessening the amount of any

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<sup>2</sup> Docket No. 10-2047 (issued May 19, 2011).

<sup>3</sup> In 2000, appellant was exposed to TB in the course of his employment as a mail handler. OWCP accepted his claim for exposure to TB and, following a positive skin test, authorized periodic chest x-rays, as recommended by Dr. Samuel E. Palmer, a Board-certified family physician. It denied authorization in 2010.

monthly compensation.<sup>4</sup> OWCP must therefore exercise discretion in determining whether the particular service, appliance or supply is likely to effect the purposes specified in FECA.<sup>5</sup> The only limitation on OWCP's authority is that of reasonableness.<sup>6</sup>

### ANALYSIS

When it previously denied authorization for another chest x-ray, OWCP advanced an argument of medical risk that had no basis in the medical evidence. The Board found this unreasonable and an abuse of discretion, and directed OWCP to develop the medical evidence. OWCP asked Dr. Palmer, the attending family physician, why another chest x-ray was necessary under the circumstances. It had been many years since he explained the initial need for chest x-rays. As he was the one seeking authorization, Dr. Palmer was presumably in the best position to address why appellant needed further exposure to radiation. The Board finds, therefore, that OWCP reasonably undertook development of the medical evidence.

When Dr. Palmer did not respond, OWCP was left with no current medical basis to approve another chest x-ray. The Board finds, therefore, that OWCP acted reasonably in denying the request. Having undertaken development of the medical evidence, and having received no response from the attending physician, OWCP properly exercised its discretion under section 8103. The Board will affirm OWCP's August 22, 2011 decision.

Appellant contends that OWCP did not further develop the medical evidence as instructed by the Board. OWCP undertook development of the medical evidence when it asked Dr. Palmer to explain the need for a further chest x-ray. This was consistent with the Board's prior decision. OWCP cannot control whether Dr. Palmer will respond to its request, but it discharged its obligation to take the next step and inquire. Dr. Palmer may respond with reasons at anytime if he believes another chest x-ray is medically necessary.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### CONCLUSION

The Board finds that OWCP properly denied authorization for a periodic chest x-ray.

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<sup>4</sup> 5 U.S.C. § 8103(a).

<sup>5</sup> See *Marjorie S. Geer*, 39 ECAB 1099 (1988) (OWCP has broad discretionary authority in the administration of FECA and must exercise that discretion to achieve the objectives of section 8103).

<sup>6</sup> *Daniel J. Perea*, 42 ECAB 214 (1990). See generally Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.10 (April 1993) (obtaining second opinions for surgery).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 22, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 19, 2012  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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