

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

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**J.M., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE  
Pearland, TX, Employer**

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**Docket No. 11-1829  
Issued: March 13, 2012**

*Appearances:*  
*Appellant, pro se*  
*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 August 2, 2011 appellant filed a timely appeal from a June 16, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 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 OWCP properly denied authorization of an orthopedic mattress pursuant to 5 U.S.C. § 8103.

**FACTUAL HISTORY**

The case was before the Board on a prior appeal. As the Board noted, OWCP accepted that appellant was in a motor vehicle accident on December 3, 2005 while in the performance of duty. The claim was accepted for neck, lumbar, left shoulder and upper arm sprains. On

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

December 16, 2009 OWCP also accepted left lateral epicondylitis and left wrist sprain. In its prior decision, the Board found that an August 22, 2008 wage-earning capacity was erroneous and should be modified.<sup>2</sup> The history of the case reported in the Board's prior decision is incorporated herein by reference.

In a report dated January 19, 2011, an attending orthopedic surgeon, Dr. Vivek Kushwaha, diagnosed lumbar discogenic pain. He indicated that he had not seen appellant since almost two years earlier, and stated that she had a recurrence of back pain. Dr. Kushwaha indicated that he was giving her a prescription for an orthopedic mattress to see if that helped with the back pain. In a report dated March 28, 2011, he stated that appellant was under his care for injuries sustained at work on December 3, 2005. Dr. Kushwaha stated that she had persistent pain and conservative measures had brought little relief, and he had prescribed an orthopedic mattress as well as a sacrum lumbar support. He stated that, due to appellant's medical condition and limitations, "she requires the use of an orthopedic mattress and lumbar support in her home." Dr. Kushwaha concluded that he was recommending the mattress and lumbar support in helping to improve her symptoms.

OWCP referred the medical evidence to an OWCP medical adviser for an opinion regarding the request for a mattress. In a report dated April 20, 2011, the medical adviser noted that Dr. Kushwaha had recommended a mattress and lumbar support in his March 28, 2011 report. He opined that a mattress was not needed as a result of the employment injury. The medical adviser indicated that appellant probably could benefit from a lumbar support, but a mattress would not cure, reduce disability or provide additional benefit.

By decision dated May 5, 2011, OWCP denied authorization for a mattress. Appellant requested reconsideration on May 25, 2011. She submitted a report dated May 26, 2011 from Dr. Wayne Alani, who provided a history and results on examination. Dr. Alani did not discuss an orthopedic mattress.

By decision dated June 16, 2011, OWCP reviewed the case on its merits and denied modification.

### **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.<sup>3</sup> In interpreting section 8103(a), the Board has recognized that OWCP has broad discretion in approving services provided under FECA to ensure that an employee recovers from his or her injury to the fullest extent possible in

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<sup>2</sup> Docket No. 09-2355 (issued July 7, 2010).

<sup>3</sup> 5 U.S.C. § 8103(a).

the shortest amount of time.<sup>4</sup> OWCP has administrative discretion in choosing the means to achieve this goal and the only limitation on OWCP's authority is that of reasonableness.<sup>5</sup>

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.<sup>6</sup> In order to be entitled to payment for a medical expense, a claimant must establish that the expenditure is for treatment of the effects of an employment-related injury, and submit rationalized medical evidence that supports such a connection and demonstrates that the treatment is necessary and reasonable.<sup>7</sup>

### ANALYSIS

In the present case, the accepted back condition was a lumbosacral sprain. Dr. Kushwaha noted that appellant had back pain and he recommended an orthopedic mattress to help her symptoms. He failed to provide a rationalized medical opinion on the issues presented. Dr. Kushwaha does not clearly explain whether he believed the back pain he was treating in 2011 was causally related to the 2005 motor vehicle accident, and if so, why he believed it was causally related.<sup>8</sup>

In addition, Dr. Kushwaha did not fully explain his recommendation for an orthopedic mattress. He did not describe the recommended mattress and explain why it was medically necessary and reasonable to treat the employment injury. An OWCP medical adviser reviewed the evidence and found that a mattress was not medically necessary and a lumbar support would provide equal benefit. The medical adviser did not support authorization of an orthopedic mattress for treatment of an employment-related condition.

As noted above, OWCP has discretion with respect to furnishing supplies under 5 U.S.C. § 8103. Given that the attending physician did not provide a rationalized medical opinion on the issue, and OWCP's medical adviser found that the mattress was not warranted for treatment of appellant's back condition, the Board finds OWCP did not abuse its discretion in denying authorization for the orthopedic mattress.

On appeal, appellant states that no one is following her physician's orders and she needs the requested supplies. As noted above, OWCP has discretion with respect to expenses for medical supplies and the evidence does not establish that OWCP abused its discretion.

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<sup>4</sup> *Dale E. Jones*, 48 ECAB 648, 649 (1997).

<sup>5</sup> *Daniel J. Perea*, 42 ECAB 214, 221 (1990) (holding that abuse of discretion by OWCP is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or administrative actions which are contrary to both logic and probable deductions from established facts).

<sup>6</sup> *See Debra S. King*, 44 ECAB 203, 209 (1992).

<sup>7</sup> *See id.*; *E.K.*, Docket No. 07-1113 (issued May 16, 2008).

<sup>8</sup> Rationalized medical opinion evidence is medical evidence that is based on a complete factual and medical background, of reasonable medical certainty and supported by medical rationale explaining the opinion. *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

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 of an orthopedic mattress.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated June 16 and May 5, 2011 are affirmed.

Issued: March 13, 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