



## **FACTUAL HISTORY**

On July 23, 2003 OWCP accepted that appellant, then a 31-year-old border patrol agent, sustained an employment-related subluxation of the lumbar spine on March 20, 2003 when he strained his back while lifting a heater at work. He returned to modified duty on March 26, 2003 and had lumbar epidural injections in 2003, 2005 and 2006. In 2012, appellant relocated from California to New Mexico.

A November 13, 2012 magnetic resonance imaging (MRI) scan study of the lumbar spine demonstrated disc herniations at L4-5 and L5-S1. In a February 12, 2013 report, Dr. William Evans Rivers, a Board-certified physiatrist, noted the history of injury and appellant's medical treatment and reported that appellant's work duties were mostly of an administrative nature. He provided physical examination findings and diagnosed lumbar degenerative disc disease, lumbar facet arthropathy and history of lumbosacral radiculitis with intermittent symptoms. Dr. Rivers indicated that appellant was clearly in excellent health and maintained an excellent fitness regimen that included running up to six miles a day and weight lifting. He advised that it was time for appellant to replace his 10-year-old orthopedic bed, noting that appellant reported that the bed was becoming less effective at managing his pain and had brought excellent relief in combination with interventional therapy.

On February 25, 2013 Dr. Rivers advised that on February 26, 2013 appellant could return to full activity and normal duty. He submitted a request for an orthopedic mattress to relieve back and leg pain. In undated correspondence, Dr. Rivers indicated that appellant had previously used an orthopedic mattress with great success in the management of his low back pain and that the use of his orthopedic mattress allowed excellent control of his low back pain over the past years and allowed him to return to full work activity, as well as his self-directed exercise for fitness and well-being. He indicated that he saw appellant for a recurrence of radiculopathy and stated that appellant had a component of pain caused by lumbosacral spondylosis or lumbosacral degenerative disc disease, which was expected due to the natural history of the condition. Dr. Rivers indicated that appellant has benefitted from a repeat epidural steroid injection with regards to leg pain but that control of his back pain would likely improve with replacement of his mattress, which had apparently degenerated over a reasonable life-span of the mattress. He reported that appellant believed that a new mattress would allow a more full return to activity, as it did previously. Dr. Rivers indicated that use of the specialized mattress, which had already demonstrated remarkable effectiveness for appellant, would be good for restorative sleep and would improve day-time back pain. He recommended a Tempur-Pedic mattress for home use.

Appellant submitted three quotes from suppliers of a Tempur-Pedic mattress set. The pretax price for each was \$3,299.00.

In a June 13, 2013 report, Dr. Morley Slutsky, Board-certified in occupational medicine and an OWCP medical adviser, noted his review of the medical record, including a June 12, 2013 statement of accepted facts and appellant's request for a Tempur-Pedic mattress. He opined that Dr. Rivers did not provide sufficient medical evidence to show that the mattress was effective medical treatment. Dr. Slutsky indicated that evidence-based medicine does not support the use of any mattress in the treatment of the accepted condition and the choice of a

mattress was subjective and depended on personal preference and individual factors. He indicated that, while a particular mattress may or may not help with pain, studies did not support improved function and/or cure individuals with conditions similar to appellant. Dr. Slutsky advised that he could not advocate the buying of a mattress for the accepted condition from a medical point of view as it was not medical treatment, concluding that there was no way to know if pain relief would occur with the mattress chosen.

By decision dated June 18, 2013, OWCP found the weight of the medical evidence rested with the opinion of Dr. Slutsky, an OWCP medical adviser, and denied authorization for an orthopedic mattress.

### **LEGAL PRECEDENT**

Section 8103 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, which OWCP considers likely to cure, give relief, reduce the degree or the period of disability or aid in lessening the amount of the monthly compensation.<sup>2</sup> While OWCP 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.<sup>3</sup>

Section 10.310(a) of the implementing regulations provides that employee is entitled to receive all medical services, appliances or supplies which a qualified physician prescribes or recommends and which OWCP considers necessary to treat the work-related injury.<sup>4</sup> OWCP 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 OWCP 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.<sup>5</sup>

In interpreting section 8103(a) of FECA, 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 the shortest amount of time. 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>6</sup> 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

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<sup>2</sup> *Id.* at § 8103; *see Dona M. Mahurin*, 54 ECAB 309 (2003).

<sup>3</sup> *Kennett O. Collins, Jr.*, 55 ECAB 648 (2004).

<sup>4</sup> 20 C.F.R. § 10.310(a).

<sup>5</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Services and Supplies*, Chapter 3.400.3(d)(5) (October 1995); *see also* Federal (FECA) Procedure Manual at Part 2 -- Claims, *Special Equipment and Furniture*, Chapter 2.810.17 (September 2010).

<sup>6</sup> *R.L.*, Docket No. 08-855 (issued October 6, 2008).

supports such a connection and demonstrates that the treatment is necessary and reasonable.<sup>7</sup> Proof of causal relationship must include supporting rationalized medical evidence.<sup>8</sup>

### ANALYSIS

The Board finds that OWCP did not abuse its discretion in denying appellant's request to purchase a Tempur-Pedic mattress. The accepted condition in this case is subluxation of the lumbar spine. Appellant requested authorization to purchase a Tempur-Pedic mattress. OWCP denied the request, finding that the medical evidence did not justify the purchase.

In its June 18, 2013 decision denying appellant's request, OWCP found that the weight of the medical evidence rested with the opinion of OWCP's medical adviser, Dr. Slutsky. Dr. Rivers, the only attending physician, who addressed the need for the mattress, noted that appellant found an orthopedic mattress had brought excellent low back pain relief in the past which allowed him to sleep better, return to full work activity, perform an exercise regimen and contributed to his well-being. He diagnosed lumbar degenerative disc disease, lumbar facet arthropathy and history of lumbosacral radiculitis with intermittent symptoms, none of which are accepted conditions, did not adequately explain how the recommended Tempur-Pedic mattress was medically necessary and reusable to treat the accepted lumbar subluxation or otherwise explain the medical process through which it would provide additional relief or reduce the degree or period of disability. Dr. Slutsky advised that Dr. Rivers did not provide a sufficient explanation as to how the Tempur-Pedic mattress would improve the accepted condition. OWCP's obligation to pay for medical treatment under section 8103 of FECA extends only to treatment of employment-related conditions.<sup>9</sup>

As to appellant's assertion on appeal that OWCP had paid for a similar mattress in 2004, previously authorizing the expense for an orthopedic mattress did not preclude OWCP from exercising its discretion to deny authorization for a new mattress in 2012.<sup>10</sup>

For these reasons, OWCP did not abuse its discretion in denying appellant's request to authorize the purchase of a Tempur-Pedic mattress. It explained that the medical evidence submitted provided insufficient explanation for the necessity of the item and found that the weight of the evidence rested with Dr. Slutsky, who advised that there was no evidence that a mattress would aid the accepted condition. The Board finds that it was not unreasonable for OWCP to deny authorization for its purchase.<sup>11</sup>

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<sup>7</sup> See *Debra S. King*, 44 ECAB 203 (1992).

<sup>8</sup> *M.B.*, 58 ECAB 588 (2007).

<sup>9</sup> *Cathy B. Mullin*, 51 ECAB 331 (2000).

<sup>10</sup> See generally *D.C.*, 58 ECAB 620 (2007).

<sup>11</sup> *D.K.*, 59 ECAB 141 (2007).

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 appellant's request for a Tempur-Pedic mattress.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 18, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 16, 2013  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

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