

strain, neck muscle spasms, post-traumatic muscle tension headaches, lower back strain, aggravation of endolymphatic hydrops (preexisting ear-related balance disturbance), ringing in ears (bilateral tinnitus), numbness (paresthesias) in right arm and hand, and postconcussive syndrome.

After an audiological evaluation in 2008, appellant was found to be an excellent candidate for neuromonics tinnitus treatment, which was shown to reduce awareness of tinnitus and dramatically reduce disturbance levels. OWCP authorized the purchase of a durable neuromonics device.

On October 14, 2009 appellant advised that he wanted OWCP to pay the insurance premium on his neuromonics device, which was \$170.00. As OWCP had paid the premium the previous year he felt it should pay the insurance again. It responded on March 9, 2011 advising appellant that such insurance was a not reimbursable expense under FECA.

In a decision dated December 4, 2014, OWCP denied authorization for the payment of insurance for appellant's authorized neuromonics device. It explained that, as opposed to the underlying property itself, insurance was a financial product providing coverage by contract. The United States was by and large a self-insurer and able to incur the cost of repair or replacement of such medical equipment as a neuromonics device. Although appellant argued that private insurance would reduce the wait time for replacement should the device fail, OWCP found his argument speculative.

Appellant requested reconsideration and submitted information regarding OWCP's payment in August 2008 of \$170.00 for the insurance on his neuromonics device, for dates of service listed as August 28 to 29, 2008. He argued that this initial coverage established a reasonable expectation that this was a reimbursable expense, and as such, he continued his insurance policy for the next three years, *i.e.*, 2009, 2010, and 2011, until OWCP made him aware that it was not going to reimburse the expense.

In a decision dated February 12, 2015, OWCP reviewed the merits of appellant's claim and denied modification of its prior decision. It found that its initial reimbursement in 2008 was erroneously paid. OWCP added that appellant's argument could not overcome its policy not to reimburse for insurance or warranties, including those on devices authorized by OWCP. It explained that only services and supplies that meet the statutory criteria of being likely to cure, give relief, reduce the degree or period of disability, or aid in lessening the amount of monthly compensation may be approved. While appellant may have expected future reimbursement, this was not sufficient to warrant continuing authorization in conflict with its policy on insurance and warranties. OWCP found the evidence insufficient to establish that insurance on the neuromonics device would be expected to cure, give relief, or reduce the degree or period of disability.

LEGAL PRECEDENT

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 monthly compensation.² OWCP has broad discretionary authority in the administration of FECA and must exercise that discretion to determine whether the particular service, appliance, or supply is likely to effect the purposes specified in FECA.³ The only limitation on OWCP's authority is that of reasonableness.⁴

ANALYSIS

Insurance coverage cannot reasonably be described as a medical service, appliance, or supply within the scope of section 8103 of FECA. OWCP does not consider the insurance necessary, as it would repair or replace the device if the need ever arose. Insurance on the device would not likely cure, give relief, reduce the degree or period of any disability, or lessen the amount of monthly compensation under section 8103.

In reviewing OWCP's February 12, 2015 decision, the Board must determine whether OWCP abused its discretion or acted unreasonably in denying continued reimbursement for insurance on an authorized device. Although appellant argues that he reasonably expected OWCP to continue paying for the insurance after initially reimbursing him in 2008, this expectation arose from an erroneous payment, a benefit to which he was not entitled. Having made the initial payment in error, OWCP is not bound to continue making erroneous payments. The situation is akin to cases in which OWCP gratuitously authorizes and pays for treatment of a medical condition that has not been accepted as related to the employment. As the Board explained in *Sophia Maxim (Edward Gerard Maxim)*, 10 ECAB 61 (1958):

“It is axiomatic that [OWCP] has no obligation to provide surgery, medical appliances and services for a condition not related to the employment.... Gratuitous authorizations of period examinations ... emergency surgery and follow-up care do not constitute an acceptance that the condition for which such services were extended was causally related to the employment.... Nor does authorization of such medical services for a condition found to be unrelated to the employment create a liability on [OWCP] to furnish further benefits either by way of medical care or by way of payment of compensation to the employee or his beneficiaries in the event of his death due to the condition for which he received gratuitous treatment. Causal relation must be established in each case for the employee or his beneficiary to be eligible to receive compensation benefits, medical or monetary.”

Similarly, the gratuitous payment OWCP made in August 2008 for insurance on appellant's neuromonics device did not create a liability to make further payments for an expense to which appellant was not entitled under section 8103.

² 5 U.S.C. § 8103(a).

³ See *Marjorie S. Geer*, 39 ECAB 1099 (1988).

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

The Board finds that OWCP did not abuse its discretion in determining that insurance payments would not effect the purposes specified in section 8103. There is no basis under FECA for authorizing the insurance coverage he received for the period in question. The statute does not afford the relief he seeks. As appellant is not entitled to reimbursement for the insurance he purchased for his neuromonics device, the Board will affirm OWCP's February 12, 2015 decision denying reimbursement.

CONCLUSION

The Board finds that appellant is not entitled to reimbursement for the insurance he purchased for his authorized neuromonics device.

ORDER

IT IS HEREBY ORDERED THAT the February 12, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 16, 2015
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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