

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

T.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Galvin, WA, Employer**

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**Docket No. 15-0061
Issued: October 27, 2015**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On October 14, 2014 appellant filed a timely request for review of May 6 and June 24, 2014 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 abused its discretion by denying appellant authorization for the rental of a motorized scooter.²

On appeal, appellant argues that she needs a scooter because she has a history of falling. She also contends that the medical evidence demonstrates her need for a scooter.

¹ 5 U.S.C. § 8101 *et seq.*

² Appellant submitted additional evidence after OWCP's June 24, 2014 merit decision, but the Board cannot consider such evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c).

FACTUAL HISTORY

This case has previously been before the Board on multiple occasions. The facts as set forth in the Board's prior decisions are incorporated herein by reference.³ The relevant facts are set forth below. On January 28, 1998 appellant, then a 47-year-old postmaster, filed a traumatic injury claim (Form CA-1) alleging that she injured her back and left leg while moving bulk mail and packages on December 2, 1997. OWCP accepted that her work activities of December 2, 1997 resulted in a sprain of her back, lumbar region; degeneration of lumbar or lumbosacral intervertebral disc; prolonged depressive reaction; and other acquired deformities of the ankle and foot.

Dr. Barbara E. Lazio, appellant's treating Board-certified neurosurgeon, noted in a report of February 20, 2014 that appellant has had three back surgeries. She noted that the first surgery was in 1988 at L4-5. Dr. Lazio stated that appellant returned to work but reinjured herself on December 2, 1997 and thereafter underwent surgery again at L4-5 in 1998. She noted that appellant again returned to work but injured herself again in January 1999, and that in February 1999 she underwent laminotomies. Dr. Lazio noted that appellant contended that, after that surgery, she had left ankle dorsiflexion weakness and has been wearing a foot drop splint. She further reported that appellant noted left ankle dorsiflexion weakness and noted that her legs are weak especially when she stands in line at the store. Dr. Lazio listed appellant's impressions as low back pain; status post lumbar discectomy and lumbar radiculopathy. She referred appellant for a magnetic resonance imaging (MRI) scan.

In a March 19, 2014 MRI scan report, Dr. Betsy Holland, a Board-certified radiologist, noted distal vertebral body at the lumbosacral junction designated L5 and L2 with previous report; interval midline laminotomy at L4-5; interval midline/left hemilaminotomy at L3-4; mild annular bulge of the L2-3 intervertebral disc; and internal development of a mild annular disc bulge of the L1-2 intervertebral disc.

In a progress report dated March 27, 2014, appellant's treating physician assistant, Gregory B. Reappana, noted that appellant stated that she does not get around much because she is afraid of falling. He noted that when she goes to Wal-Mart she tries to use a scooter and that if she cannot use a scooter she does not shop. Mr. Reappana noted that he prescribed physical therapy starting with pool therapy and a mobility scooter. In a prescription note dated March 27, 2014, he prescribed a mobility scooter and noted appellant's diagnosis as falls, impaired mobility, lumbar radiculopathy, and lumbar stenosis. Mr. Reappana circled the name of Dr. Lazio, but she did not sign the note.

³ Docket No. 99-1590 (issued July 27, 2000) (the Board remanded the case for clarification of appellant's pay rate); Docket No. 02-1258 (issued June 13, 2002) (the Board dismissed the appeal at appellant's request); Docket No. 03-1460 (issued October 14, 2004) (the Board issued an Order granting OWCP's request for a remand); Docket No. 05-1554 (issued January 3, 2006) (the Board remanded the case for proper assemblage of the record); Docket No. 06-1095 (issued April 5, 2007) (the Board found that appellant had not established that she sustained a new injury to her left leg on February 16, 1999 and failed to establish that she suffered sexual dysfunction causally related to her December 2, 1997 injury); Docket No. 07-1485 (issued May 29, 2008) (the Board dismissed the appeal as it determined that appellant had not meant to file an appeal); Docket No. 07-1498 (issued June 8, 2007) (the Board dismissed the appeal as it was duplicative).

In a form dated March 31, 2014, Kirk's Medical Services requested authorization for the purchase of a motorized scooter, noting "required for mobility."

In a statement dated April 3, 2014, appellant related that her doctor ordered her a scooter as she was unable to stand or move more than a few minutes. She noted that her most recent MRI scan showed that her back is worse and that she now has problems with both legs with falling and spasms and that a scooter was extremely necessary at this point. Appellant contended that she was not able to go shopping in the mall because most malls do not have scooters.

In an April 28, 2014 neurosurgical follow-up visit, Mr. Reappana reiterated that he gave appellant a prescription for a mobility scooter.

On April 23, 2014 OWCP asked its medical adviser to give an opinion with regard to appellant's need for a motorized scooter. In an April 28, 2014 opinion, the medical adviser recommended that appellant's request for a motor scooter is denied. He noted that the use of a personal motorized scooter will not cure any condition that she had, either accepted under this claim or not. The medical adviser also concluded that the use of a motorized scooter will not improve any of her underlying conditions, and in fact, would decrease the amount of exercise she engages in. He noted appellant's obesity and noted that the use of a motorized scooter when she is capable of walking on her own, albeit with a cane and/or foot drop brace, would be counterproductive. The medical adviser also opined that it was inconsistent for her provider to recommend physical therapy to increase her activity and at the same time recommend a scooter to decrease her activity. He also noted that the scooter will not lessen the amount of monthly compensation. The medical adviser concluded that the motorized scooter was not medically necessary and noted that appellant was able to walk and does not have a problem with chronic falls. He noted that she needed to walk more, not less, to improve her lumbar spine condition, her obesity, and her poor physical conditioning.

By decision dated May 6, 2014, OWCP denied appellant's request for the rental of a motorized scooter.

By letter dated May 20, 2014, appellant requested a second opinion examination so that she could be approved for a scooter. She contended that she was unable to stand more than a few minutes at a time and the average amount of walking she did was limited to walking to the mail box approximately 35 feet, three times a week. Appellant stated that, when just walking on flat floors in her home, she trips and falls, and that the last time she fell in her driveway she broke her foot. She contended that she was now having trouble with her good leg.

In support of her request, appellant submitted a May 20, 2014 prescription note wherein Dr. Lazio prescribed a motorized scooter for status post lumbar discectomy.

In a May 23, 2014 progress report, Mr. Reappana again noted that he gave appellant a prescription for a motorized scooter.

On June 1, 2014 appellant requested reconsideration of the May 6, 2014 decision for a scooter. She argued that her physicians indicated that she needed a scooter. Appellant also contended that her file did show problems with chronic falling.

On June 10, 2014 appellant submitted an appeal request form requesting reconsideration.

By decision dated June 24, 2014, OWCP denied modification of its May 6, 2014 decision.

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 monthly compensation. 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 any employment-related injury or condition.⁴ Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.⁵

OWCP must exercise discretion in determining whether the particular service, appliance, or supply is likely to affect the purposes specified in FECA.⁶ The only limitation on OWCP's authority is that of reasonableness.⁷

ANALYSIS

The Board finds that OWCP acted within its discretion when it denied appellant's request for a motorized scooter.

Appellant has not submitted medical evidence sufficient to establish her need for a motorized scooter. The Board notes that she submitted reports from Dr. Lazio, her treating neurosurgeon, detailing appellant's medical history, her treatment of appellant, and diagnoses. Dr. Lazio noted that appellant complained of weak legs, especially when standing in line at the store. However, she did not give an opinion in her February 20, 2014 medical report with regard to appellant's need for a scooter. Dr. Lazio did write a prescription note for a scooter on May 20, 2014, but she did not provide a rationalized medical opinion explaining why appellant needed the scooter. Mr. Reappana, Dr. Lazio's physician assistant, opined that appellant needed a scooter due to falls, impaired mobility, lumbar radiculopathy, and lumbar stenosis. However, the Board notes that Dr. Lazio did not sign Mr. Reappana's report. Therefore, Mr. Reappana's report is insufficient to establish appellant's need for a motor scooter as physician assistants are

⁴ See *Kennett O. Collins, Jr.*, 55 ECAB 648 (2004); *Debra S. King*, 44 ECAB 203, 209 (1992).

⁵ *K.H.*, Docket No. 15-148 (issued February 24, 2015); see also *M.B.*, 58 ECAB 588 (2007); *Bertha L. Arnold*, 38 ECAB 282 (1986).

⁶ OWCP has broad discretionary authority in the administration of FECA and must exercise its discretion to achieve the objectives of section 8103. *Marjorie S. Greer*, 39 ECAB 1099 (1988); see also *L.M.*, Docket No 15-0818 (August 4, 2015).

⁷ *Daniel J. Perea*, 42 ECAB 214 (1990); see also *D.M.*, Docket No. 15-0814 (issued July 16, 2015).

not considered physicians under FECA.⁸ Dr. Holland merely reported her findings with regard to appellant's MRI scan. She never addressed appellant's need for a motorized scooter and its relationship to her accepted injury.

Based on the evidence of record, the Board finds that OWCP did not abuse its discretion by denying appellant's request for a scooter. As noted above, the only restriction on OWCP's authority to authorize medical treatment is one of reasonableness. The Board finds that OWCP acted reasonably in denying this request.⁹

Appellant may submit new evidence or argument as part of 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 did not abuse its discretion in denying appellant authorization for the rental of a motorized scooter.

⁸ The term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8102(2); *see Lyle E. Dayberry*, 49 ECAB 369 (1998) (the reports of a physician assistant are entitled to no weight as a physician assistant is not a physician as defined by section 8102(2) of FECA).

⁹ *W.T.*, Docket No. 14-1729 (issued June 9, 2015).

ORDER

IT IS HEREBY ORDERED THAT the June 24 and May 6, 2014 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 27, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

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