

flat mail tub. He did not stop work. Appellant was offered, and he accepted, on October 20, 2011, a light-duty mail handler position with four hours sitting and four hours standing.

In a January 4, 2012 progress note, Dr. William H. Carter, appellant's treating Board-certified family practitioner, noted that appellant was receiving physical therapy and was gradually improving. Appellant presented receipts from appointments for physical therapy for the period December 20, 2011 through January 30, 2012.

On March 26, 2012 OWCP accepted appellant's claim for lumbar back sprain.

The record includes duty status forms (Form CA-17) from Dr. Carter, noting that appellant could work full time with work restrictions. The Forms CA-17 were dated December 6, 2011, May 18, September 25, and November 23, 2012, November 1, 2013, and February 26, 2014. These forms noted the accepted injury of lumbar back sprain.

Appellant also submitted copies of employing establishment forms completed by Dr. Carter regarding appellant's ability to return to work. These forms were dated May 18, October 4, and November 23, 2012, and February 26, 2014 and reflected both that appellant continued to have some residuals of the work injury and that he had not reached maximum medical improvement. The October 4, 2012 form related that appellant would be expected to recover fully by December 1, 2012. The November 30, 2012 form related that he would be expected to fully recover by April 1, 2013. The February 26, 2014 form related that appellant was being referred to physical therapy and no date of full recovery was noted.

In a form letter dated January 30, 2014, Dr. Carter ordered physical therapy for the diagnoses of sprain/strain, lumbar region and spasm, lumbar region. OWCP received a physical therapy authorization request from Inova Physical Therapy on February 7, 2014 for dates of service from February 6 to April 6, 2014, for treatment of lower back pain from a December 5, 2011 injury.

OWCP denied the request for physical therapy pending further medical development of the case. By letter dated February 24, 2014, it advised appellant of the additional information needed to support his claim for a recurrence of his medical condition, noting that his last medical treatment of record was on January 30, 2012 from Dr. Carter.

By letter to appellant dated April 2, 2014, a nurse at Dr. Carter's office indicated that appellant had seen Dr. Carter multiple times since January 30, 2012, and that Dr. Carter thought that OWCP must not be receiving all the reports. The nurse suggested that appellant follow up the medical documentation.

Appellant submitted additional reports from Dr. Carter. In a March 29, 2012 note, Dr. Carter noted reevaluating appellant's occupational injury and he described it as back strain with sciatic radiation. As the physical therapy was unable to effectuate continued progress, he ordered a magnetic resonance imaging (MRI) scan to look for nerve impingement, and that appellant would return for evaluation of the next steps. Dr. Carter noted that appellant should continue to work limited duty with work restrictions.

In a note dated January 14, 2013, Dr. Carter reported that appellant had been seen for follow-up and monitoring of his occupational back spasms/lumbar strain. He discussed appellant's restrictions, and noted that he had instructed appellant to continue with daily home back stretches. Dr. Carter reduced appellant's work restrictions and indicated that he would be reassessed in four to six weeks.

Appellant responded to questions from OWCP on April 11, 2014, stating that no recurrence had occurred. Rather, physical therapy was requested for the same injury. Appellant noted: "I think physical therapy may help my original injury. Doctor also believes so."

On April 11, 2014 OWCP referred appellant for a second opinion evaluation. In an April 29, 2014 report, Dr. Willie E. Thompson, a Board-certified orthopedic surgeon, noted that at the time of his evaluation there was no objective evidence of any ongoing pathology to appellant's back. He saw no evidence of any disability and no objective evidence to document the need to prescribe any restrictions. Dr. Thompson opined that appellant could return to full-duty work without restrictions, effective that date. He stated that there was no indication for any additional formal medical care or any additional diagnostic testing.

In a May 29, 2014 decision, OWCP denied appellant's claim for a recurrence of medical condition as the evidence of record was insufficient to establish a worsening of his accepted employment-related conditions. This decision found that appellant had failed to establish the need for further treatment due to a worsening of the accepted condition. OWCP found that Dr. Thompson's report constituted the weight of the medical evidence.

On June 27, 2014 appellant requested an oral hearing. At the hearing held on December 30, 2014, he testified that he was never out of work, but that accommodations had been provided so that he worked five hours standing and three hours sitting and did not lift heavy items from floor. Appellant testified that his treating doctor advised him to attend physical therapy for the second time. He claimed that there was no gap in his treatment and no recurrence. Appellant claimed rather that this was just a continuation of the original treatment of his accepted lumbar condition.

Prior to the hearing, appellant submitted a February 6, 2015 letter from Dr. Christopher P. Ryan, a Board-certified family practitioner, indicating that he was appellant's new primary care physician. Dr. Ryan noted that on December 5, 2011 appellant sustained back pain while lifting a heavy package during the course of his federal employment. He noted that appellant's April 15, 2012 MRI scan clearly documented an L4-5 disc herniation and L5-S1 disc bulge pressing against the sac around his spinal cord. Dr. Ryan contended that heavy lifting and bending of the spine would cause additional pressure against the sac which contains spinal fluid, causing pain. He opined that appellant should have lifting restrictions due to the chance of exacerbating his pain, but could continue to work in a light-duty capacity.

By decision dated March 16, 2015, the OWCP hearing representative affirmed OWCP's May 29, 2014 decision. He found that appellant had not submitted rationalized medical evidence to establish the need for further medical treatment for the accepted condition.

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 in the amount of monthly compensation.² In interpreting the 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 the shortest amount of time.³

OWCP regulations define a recurrence of medical condition as the documented need for further medical treatment after release from treatment of the accepted condition when there is no work stoppage. Continued treatment for the original condition is not considered a renewed need for medical care, nor is examination without treatment.⁴

OWCP's procedure manual provides that, after 90 days of release from medical care (based on the physician's statement or instruction to return as needed (PRN), or computed by the claims examiner from the date of last examination), a claimant is responsible for submitting an attending physician's report which contains a description of the objective findings and supports causal relationship between the claimant's current condition and the previously accepted work injury.⁵

ANALYSIS

The Board finds that OWCP did not abuse its discretion in denying appellant's request for physical therapy.

OWCP accepted appellant's claim for sprain of the lumbar region of the back. OWCP developed the claim as one for a recurrence.

The Board finds that OWCP properly found that Dr. Thompson's report constituted the weight of the medical evidence and that appellant had failed to establish his claim for a recurrence of medical condition and a need for further physical therapy. Dr. Thompson indicated in an April 29, 2014 report that there was no objective evidence of any ongoing pathology to appellant's back, and that there was no indication for any additional formal medical care or any medical diagnostic testing.

OWCP also received several reports from appellant's treating physician, Dr. Carter. In his January 30, 2014 report, Dr. Carter ordered physical therapy for appellant. He, however

² 5 U.S.C. § 8103; *see Thomas W. Stevens*, 50 ECAB 288 (1999).

³ *W.T.*, Docket No. 08-812 (issued April 3, 2009); *A.O.*, Docket No. 08-580 (issued January 28, 2009).

⁴ 20 C.F.R. § 10.5(y).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.5(b) (September 2003).

never provided any medical explanation as to how physical therapy would cure, provide relief, or reduce the degree of appellant's disability.

The record also contains Dr. Ryan's February 6, 2015 report which diagnosed L4-5 disc bulge and herniation, based upon an April 15, 2012 MRI scan. OWCP has not accepted the disc bulge or herniation or any other sciatica-type condition. Dr. Ryan's February 6, 2015 report does not address appellant's request for physical therapy as of January 2014 for the accepted back sprain condition and is, therefore, insufficient to establish appellant's claim.

The only limitation on OWCP's authority is that of reasonableness. Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.⁶

The Board finds that OWCP properly relied upon the opinion of Dr. Thompson, who provided a well-rationalized opinion that appellant did not require additional medical care, as there was no longer objective evidence of ongoing pathology of the lumbar spine.

CONCLUSION

The Board finds that OWCP did not abuse its discretion in denying appellant's request for physical therapy as of January 2014.

⁶ *J.G.*, Docket No. 15-1784 (October 2, 2015); *see also Daniel J. Perea*, 42 ECAB 214 (1990).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 16, 2015 is affirmed.

Issued: June 16, 2016
Washington, DC

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

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board