



Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3,<sup>3</sup> the Board has jurisdiction over the merits of the claim.<sup>4</sup>

### **ISSUE**

The issue is whether OWCP abused its discretion by denying appellant authorization for extended physical therapy (PT) treatments.

On appeal appellant asserts that the medical evidence of record supports the need for PT.

### **FACTUAL HISTORY**

On June 7, 2005 appellant, then a 44-year-old laundry machine operator supervisor, filed a traumatic injury claim (Form CA-1) alleging that she injured her upper shoulders, neck, and lower back on May 16, 2005 when her foot slipped into a drain. She stopped work on May 17, 2005 and returned the following day. Appellant continued to work.

OWCP accepted aggravation of lumbar radiculopathy on September 8, 2005. Appellant stopped work on November 14, 2005 to have authorized lumbar decompression surgery that day, performed by Dr. Christopher S. Rumana, a Board-certified neurosurgeon. She received wage-loss compensation benefits and returned to full-time modified duty on January 12, 2006. Appellant began receiving PT on January 17, 2006.

Appellant continued to see Dr. Rumana. On September 27, 2006 Dr. Joshua E. Fuhrmeister, who is Board-certified in anesthesiology and pain medicine, began pain management. A December 7, 2007 magnetic resonance imaging (MRI) scan of the lumbar spine demonstrated postoperative changes without findings to suggest recurrent or residual disc herniation. Appellant continued pain management with Dr. Fuhrmeister. On November 1, 2011 Dr. Hoang Vu, Board-certified in physical medicine and rehabilitation and pain management, began treating appellant. A December 5, 2011 MRI scan of the lumbar spine demonstrated postsurgical changes, a disc bulge at L4-5 with foraminal narrowing and no impingement, and stable findings when compared with the December 7, 2007 study. A June 26, 2013 lower extremity electromyogram and nerve conduction velocity study (EMG/NCV) demonstrated no evidence to suggest significant entrapment or peripheral neuropathies, and left lumbar radiculopathy likely involving the L5 nerve root level, chronic.

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<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that appellant submitted evidence with her appeal to the Board. The Board's jurisdiction is limited to the evidence of record that was before OWCP at the time it issued its final decision. Therefore, this additional evidence cannot be considered by the Board. 20 C.F.R. § 501.2(c)(1); *P.W.*, Docket No. 12-1262 (issued December 5, 2012).

<sup>4</sup> The instant claim was adjudicated by OWCP under File No. xxxxxx606. OWCP also accepted sprains of the thoracic region of the back and of the neck, caused by a January 5, 2010 fall. It adjudicated the January 5, 2010 employment injury under File No. xxxxxx486. Appellant has another appeal before the Board regarding File No. xxxxxx486, Docket No. 16-1615, that will be adjudicated separately.

Appellant continued monthly pain management with Dr. Vu. On February 26, 2016 Dr. Vu indicated that appellant had retired. On May 26, 2016 he noted physical examination findings of a mildly decreased lumbar spine range of motion and tenderness on palpation of the paraspinal muscles. Dr. Vu diagnosed stable low back pain, diffuse myalgia-myositis, possible depression, lumbar radiculopathy with herniation disc confirmed by EMG/NCV, lumbar postlaminectomy syndrome, and pain in both knees and the left ankle and foot.

Appellant continued to receive either PT or massage therapy on a continual basis until July 21, 2016.<sup>5</sup> She received intermittent wage-loss compensation for medical and therapy appointments.

On July 21, 2016 A Touch of Healing, massage therapists, who had treated appellant since August 1, 2008 requested authorization for 96 units of therapy to the low back, for the period July 28, 2016 to January 12, 2017. In an attached prescription dated July 21, 2016, Dr. Vu advised that appellant needed therapy two times a week for 12 weeks. He indicated that the goals were to improve strength and endurance, improve range of motion, and decrease pain.

By letter dated July 26, 2016, OWCP informed appellant that it had received her provider's request for PT for the period July 28, 2016 to January 12, 2017. It noted that its procedures indicated that PT was usually for a period of 60 days postsurgery, and if therapy beyond that period was requested, OWCP needed to review the file to determine if further therapy services should be authorized. It noted that, in her case, physical and massage therapy had been continuously administered since the employment injury in 2005 and it did not appear that the treatments had improved her condition. OWCP requested that she provide medical evidence describing the specific modalities, procedures, and/or tests and measures to be administered; specific functional deficits which were to be treated, including a description of how these deficits affected her physical activities; specific functional goals of the additional therapy; and appropriateness of a patient-directed home exercise program as an alternative to supervised PT, especially in light of the efficacy of past supervised therapy, and the magnitude of any expected functional improvement.

Dr. Vu reiterated his prescription for PT on July 27, 2016. In correspondence dated July 30, 2016, appellant disagreed with OWCP's lack of authorization of therapy. She submitted a June 30, 2016 Florida workers' compensation medical treatment form in which Dr. Vu indicated by a checkmark on the form report that her clinical assessment had not changed. The report also had some handwritten notes that were illegible.

OWCP resent the July 26, 2016 letter denying authorization for PT on August 2, 2016.

In an August 24, 2016 report, Dr. Vu noted physical examination findings of decreased range of motion in all planes, tenderness on palpation of the paraspinal muscles, and a mild antalgic gait due to low back pain. He reiterated his diagnoses and advised that appellant continue massage therapy and add aqua therapy. On a Florida workers' compensation medical

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<sup>5</sup> By decision dated January 20, 2010, OWCP denied a schedule award claim finding that no schedule awards are granted under FECA for the spine and that the evidence did not demonstrate any permanent impairment to the extremities based on the accepted back injury.

treatment form dated August 24, Dr. Vu indicated by a checkmark on the form report that appellant's clinical assessment had not changed, and he recommended aqua therapy and massage therapy. He prescribed massage therapy two times a week for 12 weeks that day. On August 25, 2016 Dr. Vu's office requested authorization for 8 units of aqua therapy and 24 units of massage therapy.

By decision dated September 21, 2016, OWCP found that the medical evidence of record was insufficient to support authorization for further PT because it did not provide evidence that the treatments she had from 2011 to the present resulted in progress towards recovery and that Dr. Vu did not provide sufficient medical rationale to explain why massage and aqua therapy were necessary or useful to treat appellant's employment-related condition.

### **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>6</sup>

In interpreting this section of FECA, the Board has recognized that OWCP has broad discretion in approving services provided under FECA. OWCP has the general objective of ensuring that an employee recovers from his or her injury to the fullest extent possible in the shortest amount of time. It therefore has broad administrative discretion in choosing means to achieve this goal. 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.<sup>7</sup>

OWCP procedures provide that for most orthopedic injuries, PT services within the first 120 days after a traumatic injury are allowed without any prior authorization required, and it is also customary to automatically authorize PT postoperatively for orthopedic surgeries, usually for a period of 60 days postsurgery. If a request for therapy beyond these time frames is received, OWCP needs to review the file to determine whether further services should be authorized. This requires an evaluation of the need for therapy beyond the initial period of authorization, and if the additional therapy is expected to produce some functional improvement. Pain alone does not constitute a functional deficit. To authorize additional physical therapy for pain or to maintain function, OWCP should ensure that the pain is associated with measurable objective findings such as muscle spasm, atrophy and/or radiologic changes in joints, muscles or bones, or that pain has placed measurable limitations upon the claimant's physical activities.<sup>8</sup>

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<sup>6</sup> 5 U.S.C. § 8103; *see Dona M. Mahurin*, 54 ECAB 309 (2003).

<sup>7</sup> *Daniel J. Perea*, 42 ECAB 214 (1990).

<sup>8</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Physical Therapy*, Chapter 2.810.19 (September 2010).

While OWCP is obligated to pay for treatment of employment-related conditions, the employee has the burden of proof to establish that the expenditure is incurred for treatment of the effects of an employment-related injury or condition.<sup>9</sup>

### ANALYSIS

The accepted condition in this case is aggravation of lumbar radiculopathy. Appellant had lumbar decompression surgery on November 5, 2005. She returned to full-time modified duty in January 2006 and continued to work until she retired.<sup>10</sup> In a September 21, 2016 merit decision, OWCP denied appellant's request for authorization of continued PT.

Appellant began receiving PT in January 2006, shortly after the November 14, 2005 surgery. She received some type of therapy for a period of over 10 years, usually on a biweekly basis, until July 21, 2016, usually in the form of regular PT and massage therapy.

The only restriction on OWCP's authority to authorize medical treatment is one of reasonableness.<sup>11</sup> Abuse of discretion 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. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.<sup>12</sup> While Dr. Vu prescribed therapy two times weekly on July 21 and 27, 2016, he merely indicated that the goals were to improve strength and endurance, improve range of motion, and decrease pain. On August 24, 2016 Dr. Vu again advised that appellant continue massage therapy and added aqua therapy.

By letter dated July 26, 2016, OWCP informed appellant of the medical evidence needed to support her request for further authorization for PT. This was to include a description of the specific modalities, procedures, and/or tests and measures to be administered; specific functional deficits which were to be treated, including a description of how these deficits affected her physical activities; specific functional goals of the additional therapy; and appropriateness of a patient-directed home exercise program as an alternative to supervised PT, especially in light of the efficacy of past supervised therapy and the magnitude of any expected functional improvement. The Board finds Dr. Vu's brief explanation that the therapy was to improve strength and endurance, improve range of motion, and decrease pain is insufficient to warrant continued authorization for PT. Dr. Vu failed to adequately explain how the requested therapies would functionally improve the accepted condition or demonstrate its usefulness or necessity,

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<sup>9</sup> *Kennett O. Collins, Jr.*, 55 ECAB 648 (2004).

<sup>10</sup> The record does not indicate appellant's actual date of retirement. Based on Dr. Vu's reports, it appears that she retired sometime prior to February 26, 2016.

<sup>11</sup> *S.S.*, Docket No. 15-1880 (issued June 16, 2016).

<sup>12</sup> *Id.*; *supra* note 7.

especially since appellant had 10 years of some form of PT by that time. Thus, the Board finds that OWCP did not abuse its discretion when it denied appellant's request for continued PT.<sup>13</sup>

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 did not abuse its discretion when it denied appellant's request for continued PT.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 21, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 15, 2017  
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>13</sup> See *D.K.*, 59 ECAB 141 (2007).