



On appeal appellant asserts that her request for ergonomic equipment had been approved by the Washington, DC district office, prior to her file being transferred to the Philadelphia, PA district office, and that her request for review of the written record was timely.

### **FACTUAL HISTORY**

On May 15, 2014 appellant, then a 63-year-old program assistant, filed an occupational disease claim (Form CA-2) alleging that an excessive workload requiring excessive typing following left thumb tendon surgery caused right trigger finger.<sup>2</sup>

The employing establishment indicated that appellant was provided voice-activated software in February 2014. Dr. Sean T. Johnson, an orthopedic surgeon, performed right ring finger A1 pulley release on May 8, 2014. Appellant resigned from the employing establishment on November 29, 2014.

By decision August 25, 2014, OWCP denied appellant's claim as she had not established causal relationship between the diagnosed right finger condition and the accepted factors of her federal employment. On September 24, 2014 appellant timely requested a hearing before an OWCP hearing representative. By decision dated January 16, 2015, an OWCP hearing representative reversed the August 25, 2014 decision and found that appellant had established her claim for right ring trigger finger.

Dr. Johnson performed right cubital tunnel release on April 27, 2015. Following a December 17, 2015 second opinion evaluation by Dr. Angela Jones, a Board-certified orthopedic surgeon, on December 31, 2015 OWCP expanded acceptance of the claim to include lesion of ulnar nerve, right upper limb.

In a June 27, 2016 report, Dr. Johnson noted appellant's complaint of persistent problems with her right hand. He diagnosed status post right cubital tunnel release, status post right ring finger A1 pulley release, and quiescent right index finger flexor stenosing tenosynovitis. Dr. Johnson indicated that appellant was hesitant to use her right hand due to pain.

On September 6, 2016 appellant requested voice-activated software for home use. In a September 13, 2016 development letter, OWCP informed appellant of the information needed to support her request. This was to include a report from her treating physician explaining why it was needed, its specific goals or benefits, how often it would be used, and a description of alternative treatment. Appellant was also to provide quotes from potential vendors. OWCP concluded that, upon receipt of the requested information, further consideration would be given to the request.

By report dated September 12, 2016, Dr. Johnson noted that appellant had made moderate improvement with use of a transcutaneous electrical nerve stimulation (TENS) unit and occasional medication. He reiterated his diagnoses.

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<sup>2</sup> The left thumb injury occurred while appellant was at home. Appellant was off work from May to August 2013 due to that injury.

In correspondence dated October 3, 2016, OWCP notified appellant that all claims for residents of Maryland, including hers, had been transferred from the Washington, DC district office to the Philadelphia, PA district office, effective October 1, 2016.

On October 5, 2016 Dr. Johnson noted appellant's two surgeries, and advised that she continued to have persistent chronic pain and stiffness in the right hand that had adversely affected her activities of daily living. He opined that the condition was likely to continue, and asked that appellant be accommodated with voice recognition software and dictation equipment, and an ergonomic mouse and keyboard. Dr. Johnson indicated that these would allow appellant to perform activities of daily living (ADLs) effectively. He concluded that alternative options such as therapy had been exhausted, noting there were no good surgical options to address her problem.

On November 11, 2016 Dr. Melissa Sinkiewicz, an osteopath, noted examination findings of no evidence of atrophy, muscle strength 5/5 throughout the upper extremities, impaired sensation to light touch in the fourth and fifth digits bilaterally, bilateral negative Tinel's at the wrist, and a positive Tinel's at the right elbow. Upper extremity electrodiagnostic testing including an electromyogram and nerve conduction velocity (EMG/NCV) study performed that day was within normal limits. A repeat EMG/NCV conducted by Dr. Ella Akkerman, a Board-certified neurologist, on December 5, 2016, was also interpreted as within normal limits.

In a February 21, 2017 report, Dr. Adam M. Schwarz, Board-certified in anesthesiology and pain medicine, noted appellant's complaint of right upper extremity pain. He also noted examination findings of no obvious weakness and intact sensation. Dr. Schwarz diagnosed chronic right arm pain and recommended a cervical spine magnetic resonance imaging (MRI) scan. The MRI scan was performed on March 3, 2017, demonstrating multiple levels of spondylosis changes of the cervical spine, most severe at C5-6. On March 7, 2017 Dr. Schwarz diagnosed myofascial pain syndrome.

In a treatment note dated March 9, 2017, Dr. Johnson reiterated appellant's complaint of recalcitrant right hand pain. Physical examination that day demonstrated some mild numbness behind her medial elbow incision, but it was not superficially sensitive. Tinel's was not negative along the course of her ulnar nerve. Appellant had tenderness in the palm of her hand diffusely at the A1 pulleys of the index, middle, and ring fingers, with full range of motion and sensation. Strength was 5/5. Gross sensation was intact in all digits. Dr. Johnson reiterated his diagnoses and indicated that he had referred appellant to a chronic pain program.<sup>3</sup>

OWCP referred appellant's record to its OWCP medical adviser for an opinion regarding her request for voice recognition software and dictation equipment and an ergonomic mouse, and an ergonomic keyboard. In an April 18, 2017 report, Dr. William Tontz, Jr., a Board-certified orthopedic surgeon and OWCP medical adviser, noted his review of the medical record including a statement of accepted facts. He described Dr. Johnson's March 9, 2017 physical examination findings. The medical adviser indicated that, while the proposed voice recognition software and

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<sup>3</sup> Dr. Johnson also described physical findings regarding appellant's right shoulder and diagnosed right shoulder pain. Appellant also submitted a March 9, 2017 x-ray of the right shoulder that demonstrated degenerative changes of the acromioclavicular joint and probable underlying rotator cuff pathology, and a March 16, 2017 psychotherapy progress note completed by a licensed social worker.

dictation equipment, and an ergonomic mouse and keyboard were causally related to the accepted conditions, they were not medically necessary for appellant's everyday life. He advised that there was no evidence from Dr. Johnson's March 9, 2017 treatment note that any work up was attempted for the right hand, that conservative treatments tried and failed, or of any diagnostic testing of the right hand and, therefore, the proposed equipment was not medically necessary.

By decision dated April 19, 2017, OWCP credited the opinion of its medical adviser and denied appellant's request for authorization of voice recognition software and dictation equipment, and an ergonomic mouse and keyboard.

On an appeal request form dated May 17, 2017, and postmarked May 25, 2017, appellant requested a review of the written record. The attached Priority Mail address label indicated that it was from appellant and addressed to the Branch of Hearings and Review in Washington, DC. Appellant additionally forwarded correspondence to OWCP noting her appeal of the April 19, 2017 decision. She included a May 8, 2017 letter in which Dr. Johnson reiterated that it was a reasonable accommodation to provide appellant with the requested voice recognition software and ergonomic equipment.

By decision dated June 6, 2016, a representative of OWCP's Branch of Hearings and Review denied appellant's request for a review of the written record as untimely filed. She noted that, as OWCP had issued its decision on April 19, 2017 and appellant's request for a review of the written record was postmarked May 25, 2017, appellant was not entitled to a review of the written record as a matter of right because the request was postmarked more than 30 days after issuance of OWCP's decision. The representative also noted that consideration was given as to whether to grant appellant a discretionary hearing, but determined that the merit issue in appellant's case could equally well be addressed by requesting reconsideration before OWCP.

### **LEGAL PRECEDENT -- ISSUE 1**

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 monthly compensation.<sup>4</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>5</sup>

Section 10.310(a) of OWCP's implementing regulations provides that an 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>6</sup> OWCP procedures provide that nonmedical equipment such as waterbeds, saunas, weight-lifting

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<sup>4</sup> 5 U.S.C. § 8103; *see Thomas W. Stevens*, 50 ECAB 288 (1999).

<sup>5</sup> *Kennett O. Collins, Jr.*, 55 ECAB 648 (2004).

<sup>6</sup> 20 C.F.R. § 10.310(a).

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>7</sup>

In interpreting section 8103 of FECA, the Board has recognized that OWCP has broad discretion in approving services provided, with the only limitation on OWCP's authority being that of reasonableness.<sup>8</sup> 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.

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>9</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that OWCP did not abuse its discretion in denying appellant's request for authorization of voice recognition computer software, dictation equipment, an ergonomic mouse, and an ergonomic keyboard.

The accepted conditions are right ring finger trigger finger and lesion of ulnar nerve, right upper limb. Appellant resigned from the employing establishment on November 29, 2014.<sup>10</sup> On September 6, 2016 she requested voice-activated software for home use.

Dr. Sinkiewicz and Dr. Schwarz did not comment on the need for the requested ergonomic computer equipment. On October 5, 2016 Dr. Johnson, appellant's attending orthopedic surgeon, indicated that voice recognition software and dictation equipment, and an ergonomic mouse and keyboard would allow appellant to perform ADLs effectively. He noted that alternative options such as therapy had been exhausted, noting there were no good surgical options to address her problem. In his report dated March 9, 2017, however, Dr. Johnson reported that, while appellant had diffuse tenderness in the palm of her hand, Tinel's was negative along her ulnar nerve, she had full range of motion and sensation, and 5/5 strength.

In his April 2017 report, Dr. Tontz, OWCP medical adviser, noted that he had reviewed the medical record and described Dr. Johnson's physical examination findings. He advised that, while the proposed voice recognition software and dictation equipment, and an ergonomic mouse and keyboard were causally related to the accepted conditions, they were not medically necessary

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<sup>7</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Services and Supplies*, Chapter 3.400.3.d(5) (October 1995); *see also* Part 2 -- Claims, *Durable Medical Equipment*, Chapter 2.810.17.h (June 2014); *D.J.*, Docket No. 13-1637 (December 2013).

<sup>8</sup> *See D.K.*, 59 ECAB 141 (2007).

<sup>9</sup> *Minnie B. Lewis*, 53 ECAB 606 (2002).

<sup>10</sup> The record contains no CA-7, claims for compensation.

for appellant's everyday life. Dr. Tontz advised that there was no evidence from Dr. Johnson's March 9, 2017 treatment note that any work up was attempted for the right hand, that conservative treatments tried and failed, or of any diagnostic testing of the right hand and, therefore, the proposed equipment was not medically necessary.

The Board finds that Dr. Johnson did not provide a sufficient explanation as to how the requested voice recognition computer software, dictation equipment, an ergonomic mouse, and an ergonomic keyboard would cure, give relief, reduce the degree or period of disability, or aid in lessening the amount of monthly compensation.<sup>11</sup> OWCP's obligation to pay for medical treatment under section 8103 of FECA extends only to treatment of employment-related conditions.<sup>12</sup>

For these reasons, OWCP did not abuse its discretion in denying appellant's request to authorize the requested equipment. It explained that the medical evidence submitted provided insufficient explanation for the necessity for this equipment and found that the weight of the evidence rested with Dr. Tontz, who advised that it was not medically necessary. The Board finds that it was not unreasonable for OWCP to deny authorization for voice recognition computer software, dictation equipment, an ergonomic mouse, and an ergonomic keyboard.<sup>13</sup>

As to appellant's assertion on appeal that the Washington, DC district office had authorized purchase of this equipment, there is no evidence of record to support this assertion. The last correspondence from the Washington, DC district office on this matter is a September 13, 2016 letter in which OWCP informed appellant of the information needed to support her request and notified her that, upon receipt of this information, further consideration would be given to her request.

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.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8124(b)(1) of FECA, concerning a claimant's entitlement to a hearing before an OWCP hearing representative, provides: Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this section is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his or her claim before a representative of the Secretary.<sup>14</sup> A hearing is a review of an adverse decision by OWCP's hearing representative. Initially, the claimant can choose between two formats: an oral hearing or a review of the written record. In addition to the evidence

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<sup>11</sup> *Supra* note 7.

<sup>12</sup> *D.J.*, Docket No. 13-1637 (issued December 16, 2013).

<sup>13</sup> *D.K.*, *supra* note 8.

<sup>14</sup> 5 U.S.C. § 8124(b)(1).

of record, the claimant may submit new evidence to the hearing representative.<sup>15</sup> A request for either an oral hearing or a review of the written record must be sent, in writing, within 30 days of the date of the decision for which the hearing is sought.<sup>16</sup> A claimant is not entitled to a hearing or a review of the written record as a matter of right if the request is not made within 30 days of the date of the decision.<sup>17</sup>

OWCP has discretion to grant or deny a request that is made after the 30-day period for requesting a hearing. In such a case, it will determine whether to grant a discretionary hearing and, if not, will so advise the claimant with reasons.<sup>18</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that OWCP's hearing representative properly denied appellant's request for review of the written record.

Appellant's request for a review of the written record was mailed, according to the Priority Mail label attached to her request, on May 25, 2017. OWCP issued its merit decision on April 19, 2017. Its regulations provide that the hearing request must be sent within 30 days (as determined by postmark or other carrier's date marking) of the date of the decision for which a hearing is sought.<sup>19</sup> Appellant's request sent on May 25, 2017 was, therefore, untimely and she was not entitled to a review of the written record as a matter of right. OWCP's hearing representative also denied appellant's request because she found that the issue of authorization of requested computer and ergonomic equipment could be equally well addressed by requesting reconsideration before OWCP. The Board finds that the hearing representative properly exercised her discretionary authority in denying appellant's request for a hearing.<sup>20</sup>

### **CONCLUSION**

The Board finds that OWCP did not abuse its discretion in denying authorization for voice recognition computer software, dictation equipment, an ergonomic mouse, and an ergonomic keyboard. The Board also finds that OWCP properly denied appellant's request for a review of the written record as untimely filed pursuant to 5 U.S.C. § 8124.

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<sup>15</sup> 20 C.F.R. § 10.615.

<sup>16</sup> *James Smith*, 53 ECAB 188 (2001); *id.* at § 10.616(a).

<sup>17</sup> *See R.T.*, Docket No. 08-0408 (issued December 16, 2008).

<sup>18</sup> *W.L.*, Docket No. 17-1538 (issued November 15, 2017); *G.W.*, Docket No. 10-0782 (issued April 23, 2010).

<sup>19</sup> *Id.*; *see S.J.*, Docket No. 17-0828 (issued December 20, 2017).

<sup>20</sup> *S.J.*, *id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 6 and April 19, 2017 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 26, 2018  
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