

FACTUAL HISTORY

On October 11, 2000 appellant, then a 44-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that he injured his lower back on that date while lifting mail trays. OWCP initially denied the claim on November 30, 2000. Appellant requested reconsideration and, in a February 16, 2001 decision, OWCP reversed its prior decision and accepted aggravation of facet syndrome. He stopped work on the date of injury and returned to modified duty on August 11, 2001. OWCP adjudicated the claim under File No. xxxxxx082.

On April 2, 2002 OWCP expanded acceptance of the claim to include aggravation of lumbar degenerative disc disease. Appellant stopped work on May 3, 2002 and filed Form CA-7 claims for compensation. In an August 28, 2002 decision, OWCP accepted his claims for compensation beginning May 3, 2002,³ and he was placed on the periodic compensation rolls.

On August 30, 2002 appellant underwent lumbar spine fusion surgery. On December 6, 2002 OWCP expanded his claim to include prolonged post-traumatic stress disorder (PTSD) and major depressive disorder, recurrent episode.

On November 18, 2003 appellant filed a traumatic injury claim for a November 5, 2002 injury that occurred while descending stairs to attend a second opinion evaluation. The claim was adjudicated by OWCP under File No. xxxxxx385. On April 1, 2003 OWCP accepted left shoulder sprain/strain. Appellant underwent arthroscopic shoulder repair on February 10, 2003. On October 3, 2003 appellant had a second lumbar surgical procedure.

By decision dated December 13, 2005, OWCP denied appellant's request for an adjustable orthopedic mattress.⁴ Following appellant's requests for reconsideration, in merit decisions dated May 18, 2006 and January 11, 2007, it denied modification of the December 13, 2005 decision.

Appellant returned to modified duty for four hours daily on June 11, 2007. He increased his work hours to six hours daily on August 7, 2007. Appellant's compensation was appropriately adjusted. He began working eight hours of modified duty daily on September 15, 2007.

In February 2008 OWCP authorized the purchase of durable medical equipment. On February 28, 2008 it accepted dental caries extending to pulp and dental caries root as a consequence of medications prescribed for appellant's employment injuries.

Appellant retired on disability effective September 2, 2008. On that day he filed an occupational disease claim (Form CA-2) for right cubital syndrome and bilateral carpal tunnel

³ OWCP previously denied appellant's claims for compensation in decisions dated June 20 and July 9, 2002. Appellant requested reconsideration and in the August 28, 2002 decision reversed the June 20 and July 9, 2002 decisions.

⁴ The bed had been recommended by Dr. Dmitriy Buyanov, appellant's attending Board-certified pain management specialist. An OWCP medical adviser reviewed the record and request and advised that it would not affect appellant's outcome in any significant way.

syndrome. OWCP adjudicated the occupational disease claim under File No. xxxxxx230 and accepted bilateral carpal tunnel syndrome and lesion of ulnar nerve on November 12, 2008. On September 11, 2008 it expanded the claim under OWCP File No. xxxxxx385 to include complete rotator cuff rupture, left. OWCP administratively combined File Nos. xxxxxx082, xxxxxx385, and xxxxxx230 on November 12, 2008, with File No. xxxxxx082 serving as the master file.

In separate letters dated December 3, 2014, Dr. Buyanov described the medical necessity for the acquisition of a hospital bed, recumbent cycle, and elliptical machine. Regarding the hospital bed, he maintained that it was appropriately indicated due to appellant's ongoing recurrent, persistent pain, muscle spasm, and muscle cramping that was a result of his underlying pain syndrome. Dr. Buyanov noted that appellant's current medical regimen included a hospital bed which had provided a substantial improvement in overall baseline pain control by increasing bed rest time, thereby allowing appellant to adequately rest and then be able to adequately perform the activities of daily living as well as maintain an acceptable quality of life. He continued that a hospital bed facilitated treatment because it could be adjusted to provide appellant less painful access to both entry and exit from the bed with the least amount of stress, tension, and aggravation of his underlying painful condition which, in turn, enhanced the healing process significantly and would reduce swelling of the upper and lower extremities because he would be more comfortable and could access bed rest when needed. Dr. Buyanov indicated that, if the hospital bed were not approved, pain control and the ability to perform activities of daily living and an acceptable quality of life would be significantly impaired and this would lead to the increased use of opioid narcotic analgesics.

With regard to the recumbent cycle and elliptical machine, Dr. Buyanov also maintained that these were appropriately indicated due to appellant's ongoing recurrent, persistent pain, muscle spasm, and muscle cramping that was a result of his underlying pain syndrome. He noted that both machines would provide appellant with a low impact cardiovascular workout that would burn calories and help build lean muscle mass, and that, while each machine used similar muscle groups, there were unique advantages to each and appellant should choose the one that best fit his personal fitness needs.

By development letter dated February 4, 2015, that was resent on March 13, 2015, OWCP informed appellant of the type of evidence needed to support his request for a mattress and exercise equipment. This was to include a statement from his physician that described the basic equipment and the medical reasons for recommending the equipment, the specific goals of or benefits expected from this equipment, how often appellant would utilize the equipment, the expected duration of its use, and a description of alternative treatment that might achieve the same results. He was also to provide at least two detailed quotes for the equipment.

On March 26, 2015 Dr. Buyanov advised that appellant would use a hospital bed, elliptical machine, and recumbent cycle on a daily basis. He maintained that there was no alternative treatment. Dr. Buyanov forwarded his December 3, 2014 letters of medical necessity.

In correspondence dated May 1, 2015, appellant indicated that an orthopedic bed, which had been authorized in 2008, was worn out and broken, and that his exercise equipment was also worn out, which caused him to gain weight and increased his pain. He forwarded two quotes for a recumbent cycle and elliptical machine, and two quotes for adjustable beds.

On September 2, 2015 OWCP asked its medical adviser for an opinion on the recommended mattress/hospital bed, elliptical machine, and recumbent cycle. He was informed of the accepted conditions. In a September 3, 2015 report, Dr. Ronald Blum, an OWCP medical adviser and a Board-certified orthopedic surgeon, noted the accepted conditions and history of injury. Regarding Dr. Buyanov's recommendations, Dr. Blum opined that the requested bed was not medically necessary, indicating that the effect of an adjustable bed could be achieved by a bed board under the mattress and a simple pad on top of the mattress to simulate the feeling and support provided by an adjustable hospital bed, with the judicious use of pillows to achieve the correct position in the bed. As to the recommended purchase of a recumbent cycle and elliptical machine, Dr. Blum advised that he was not aware of any scientific proof that the use of these devices was of medical benefit in treating chronic pain syndrome. He concluded that he could not support the purchase of either machine.

In a September 23, 2015 decision, OWCP denied the claim for purchase of an adjustable bed, elliptical machine, and recumbent cycle. It found the weight of the medical evidence rested with the OWCP medical adviser, noting that the record contained no objective medical evidence to establish that the requested durable medical equipment was medically necessary.

On September 12, 2016 appellant requested reconsideration. He noted that after receipt of the September 23, 2015 denial, he had been attending a fitness center at a nearby military base but that it became very busy with wait times of more than an hour. Appellant's physician then requested physical therapy, which was denied. Appellant maintained that the documentation provided by Dr. Buyanov was sufficient to approve the requested exercise equipment and adjustable bed. He submitted Dr. Buyanov's December 3, 2014 letters of medical necessity and his March 26, 2015 correspondence. Appellant also submitted an April 28, 2015 letter that was an exact copy of May 1, 2015 his letter, also previously of record.

In a merit decision dated February 8, 2017, OWCP denied modification of its September 23, 2015 decision. It found that the medical evidence of record did not reflect that the purchase of the requested durable medical equipment would cure, give relief, reduce the degree or period of disability, or aid in lessening the amount of monthly compensation.

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 monthly compensation.⁵ 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.⁶

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

⁶ *Kennett O. Collins, Jr.*, 55 ECAB 648 (2004).

Section 10.310(a) of OWCP's implementing regulations provides that employee is entitled to receive all medical services, appliances or supplies which a qualified physician prescribes or recommends and which it considers necessary to treat the work-related injury.⁷ Its procedures provide that nonmedical equipment such as waterbeds, saunas, weight-lifting 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.⁸

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.⁹ 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.¹⁰

ANALYSIS

The Board finds that OWCP did not abuse its discretion in denying appellant's request to purchase durable medical equipment. Under File No. xxxxxx082, OWCP accepted lumbar and lumbosacral strain, aggravation of lateral facet syndrome, aggravation of lumbar degenerative disc disease, prolonged PTSD and major depressive disorder, left shoulder strain, dental caries, impotence of organic origin, thoracic and lumbosacral neuritis or radiculitis, lumbar degeneration, and spinal stenosis. Under File No. xxxxxx230, bilateral carpal tunnel syndrome and lesion of the ulnar nerve, right were accepted. A complete rotator cuff rupture was accepted under File No. xxxxxx385.

Appellant requested authorization to purchase an adjustable hospital-type bed, elliptical machine, and recumbent cycle. In decisions dated September 23, 2015 and February 8, 2017, OWCP denied appellant's request. It found the weight of the medical evidence rested with the opinion of Dr. Blum, its medical adviser.

On December 3, 2014 Dr. Buyanov advised that the acquisition of a hospital bed, recumbent cycle, and elliptical machine would relieve appellant's ongoing recurrent, persistent pain, muscle spasm, and muscle cramping which resulted from his underlying pain syndrome.

⁷ 20 C.F.R. § 10.310(a).

⁸ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Services and Supplies*, Chapter 3.400.3.d(5) (October 1995); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Durable Medical Equipment*, Chapter 2.810.17.h (June 2014); *D.J.*, Docket No. 13-1637 (December 2013).

⁹ *See D.K.*, 59 ECAB 141 (2007).

¹⁰ *Minnie B. Lewis*, 53 ECAB 606 (2002).

He noted that appellant's current regimen included a hospital bed which provided a substantial improvement in overall baseline pain control by increasing bed rest time, which allowed appellant to adequately perform the activities of daily living and maintain an acceptable quality of life. Dr. Buyanov continued that a hospital bed facilitated treatment because it could be adjusted to provide appellant less painful access to both entry and exit from the bed with the least amount of stress, tension, and aggravation of his underlying painful condition which, in turn, enhanced the healing process significantly and would reduce swelling of the upper and lower extremities because he would be more comfortable and could access bed rest when needed. With regard to the recumbent cycle and elliptical machine, he indicated that both would provide appellant with a low-impact cardiovascular workout that would burn calories and help build lean muscle mass.

The Board finds that Dr. Buyanov did not provide a sufficient explanation as to how the adjustable bed, elliptical machine, or recumbent cycle would cure, give relief, reduce the degree or period of disability, or aid in lessening the amount of monthly compensation.¹¹ OWCP's obligation to pay for medical treatment under section 8103 of FECA extends only to treatment of employment-related conditions.¹² As noted, OWCP's medical adviser concluded that the requested equipment was not medically necessary.

As to appellant's assertion on appeal that OWCP had paid for a similar bed and equipment in 2008, previously authorizing the expense for an orthopedic mattress did not preclude OWCP from exercising its discretion to deny authorization for a new mattress in 2015 or 2017.¹³

The Board finds that the medical evidence submitted provided insufficient explanation for the necessity of the items requested and the weight of the evidence rested with Dr. Blum, who advised that there was no evidence that the requested durable medical equipment would aid the accepted conditions. For these reasons, the Board finds that OWCP did not abuse its discretion in denying appellant's request to authorize the purchase of an adjustable bed, recumbent cycle, and elliptical machine.¹⁴

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 in denying authorization to purchase durable medical equipment consisting of an adjustable bed, elliptical machine, and recumbent cycle.

¹¹ *Supra* note 6.

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

¹³ *Id.*

¹⁴ *Supra* note 9.

ORDER

IT IS HEREBY ORDERED THAT the February 8, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 8, 2018
Washington, DC

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

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

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