

FACTUAL HISTORY

On August 9, 1995 appellant, then a 40-year-old agricultural economist, filed a traumatic injury claim (Form CA-1) alleging that, on July 19, 1995, he sustained an injury to the lower back as a result of slipping on a waxed floor. This claim was assigned OWCP File No. xxxxxx119. By decision dated November 8, 1995, OWCP accepted appellant's claim for acute back muscle contusion secondary to a fall.

Appellant filed an occupational disease claim (Form CA-2) on December 3, 1996 alleging an emotional condition as a result of employment discrimination. He related that he had been on administrative leave since July 16, 1996. This claim was assigned OWCP File No. xxxxxx504.² Appellant's application for disability retirement was approved on November 21, 1997.

On January 29, 1998 OWCP accepted appellant's 1996 occupational disease claim for the condition of recurrent major depressive disorder. On January 28, 2000 appellant elected to receive FECA benefits. Beginning June 16, 2002, he received compensation benefits from OWCP on the periodic rolls, with an effective date of December 1999. By decision dated May 10, 2011, OWCP reduced appellant's compensation, finding that medically and vocationally he had the wage-earning capacity of a bookkeeper. On February 21, 2014 it accepted additional conditions of diabetes, prolonged depressive reaction, and unspecified schizoaffective disorder.³ On January 8, 2016 OWCP modified its wage-earning capacity determination of May 10, 2011, finding that appellant's work-related condition had worsened and that he was no longer able to perform duties of the selected position. It subsequently paid appellant compensation benefits for temporary total disability.

By letter dated September 26, 2014, Dr. Warren D. Yu, a Board-certified orthopedic surgeon, noted that appellant had a discectomy at L5-S1 in 1995, with progressive degeneration of that segment, leading to chronic back pain as well as recurrent right radiculopathy. He recommended a zero gravity recliner for treatment of these conditions.

In a statement of accepted facts (SOAF) dated June 25, 2015, a claims examiner noted that appellant had a subsidiary claim under OWCP File No. xxxxxx119, which was accepted for back contusion, herniated lumbar disc without myelopathy, and psychogenic pain.

On August 24, 2015 Dr. Kevin Tan, a Board-certified ophthalmologist, noted that appellant had been under his care for three months for headaches, chronic eye pain, photophobia, and associated scotomas that he opined were related to his chronic migraine with aura. He further opined that appellant's symptoms were also related to long-term opioid use due to chronic pain.

² The record indicates that these cases have been administratively combined.

³ Appellant later challenged the acceptance of his claim for schizoaffective disorder by letter dated December 17, 2015. On January 14, 2016 OWCP replied that the diagnosis had been accepted due to an April 9, 2004 report from his treating physician, Dr. Julia Frank, a Board-certified psychiatrist, who diagnosed schizoaffective disorder, along with a second opinion physician's report from 2008. Based on a medical report from appellant's current treating clinical psychologist, Dr. Scott Lingen, OWCP removed schizoaffective disorder from appellant's list of accepted conditions.

In a report dated November 17, 2015, Dr. Tan diagnosed chronic migraine with aura, dry eye syndrome, and bilateral age-related nuclear cataracts.

By letter dated April 14, 2016, OWCP advised appellant that additional information was necessary to determine whether the zero gravity massage recliner was medically necessary. It advised him that he needed to provide a statement from his physician which addressed the basic equipment he would need and the medical reasons for recommending the equipment; the specific goals of or benefits expected from this equipment; a description of how often he would be using the equipment; the expected duration of its use; and a description of alternative treatment that might provide the same results. Appellant was afforded 30 days to submit the necessary evidence.

On May 9, 2016 appellant again requested authorization for a zero gravity recliner to treat his lumbar conditions under OWCP File No. xxxxxx119.

In a report dated May 18, 2016, Dr. Ezra Cohen, a Board-certified neurologist, diagnosed peripheral neuropathy. He noted that the cause of this peripheral neuropathy appeared to be type 2 diabetes. Dr. Cohen recommended treatment including therapeutic massage and physical therapy.

In a report dated November 7, 2016, Dr. David Sniezek, Board-certified in integrative medicine, noted that appellant visited his office on that date for treatment of lower back pain. He diagnosed intervertebral disc disorders with radiculopathy of the lumbosacral region; myalgia; fusion of the lumbar spine; and segmental/somatic dysfunction of the lumbar, sacral, and pelvic regions. Dr. Sniezek recommended continued treatment with acupuncture, manual therapy, and exercises.

In a SOAF dated November 8, 2016, appellant's list of accepted conditions were noted as prolonged depressive reaction, erectile dysfunction, type 2 diabetes mellitus (DM) without complication, DM with renal manifestation, and DM with ophthalmic manifestation.

On November 9, 2016 OWCP referred appellant to Dr. Jeffrey Wexler, a Board-certified ophthalmologist, for a second opinion examination to determine whether his diagnoses of light sensitivity, migraine headaches with aura, and episodic blindness were causally related to his accepted orthopedic injury.

On December 6, 2016 OWCP referred appellant's medical history and a SOAF to an OWCP district medical adviser (DMA) to determine whether his medical history and accepted conditions warranted authorization for payment for a zero gravity recliner.

In a second opinion report dated December 21, 2016, Dr. Wexler reviewed the statement of accepted facts along with medical records, examined appellant, and diagnosed migraine without aura, and light sensitivity. He noted that appellant's episodic blindness was likely not related to his migraines, but instead to a conversion disorder. Dr. Wexler noted that, based on objective findings, there was no physical reason for light sensitivity and that his ophthalmic examination was within normal limits for a person of appellant's age. He further noted that appellant's description of episodic blindness was inconsistent with his migraine symptoms, as episodic blindness is typically unilateral. Dr. Wexler noted that appellant's complaints of

migraines on a daily basis, as well as his blindness being effectively treated with Botox, was inconsistent with established migraine findings. He opined that appellant's light sensitivity and migraines were due to his prolonged depressive reaction, rather than any orthopedic work injury. Dr. Wexler recommended a psychiatric evaluation.

In a report dated January 3, 2017, an OWCP DMA Dr. Taisha Williams, Board-certified in physical medicine and rehabilitation, reviewed the SOAF and appellant's medical records. She listed appellant's accepted conditions as contusion of the back, displacement of lumbar intervertebral disc with myelopathy, psychogenic pain, ED, prolonged depressive reaction, and type 2 diabetes mellitus with complications. Dr. Williams noted that on July 19, 1995 appellant slipped and fell on a hardwood floor while in the performance of duty. Ultimately, this incident resulted in a laminectomy and discectomy. Dr. Williams noted that the only accepted diagnosis that would warrant authorization for payment of a zero gravity recliner would be contusion of the back, as lumbar disc displacement was not treated with massage. She noted that contusions, by nature, resolve quickly and would not persist over a period of 22 years. Dr. Williams further noted that the zero gravity recliner was requested in May 2016 to replace an old chair. She observed that in all of appellant's office visit notes prior to May 2016, appellant's pain level never went below 8/10, and that he was very sedentary. Dr. Williams opined that if the chair made a difference in appellant's condition, it would have been indicated with decreased pain and ability to walk more than a few blocks without pain. She observed that it was not until October 2016, when appellant was enrolled in physical therapy, that appellant appeared to have any improvement in pain or activity level. Dr. Williams concluded that, while the zero gravity recliner might be comfortable, it was not useful in treating or facilitating treatment of appellant's back pain.

In substantially similar reports dated January 4, 9, and 23, 2017, Dr. Sniezek diagnosed intervertebral disorders of the lumbosacral region with radiculopathy; low back pain; myalgia; fusion of the spine at the lumbar region; and segmental and somatic dysfunctions of the lumbar, sacral, and pelvic regions. Appellant was treated through osteopathic manipulation and acupuncture.

By decision dated March 7, 2017, OWCP denied appellant's request for authorization for a zero gravity recliner. Relying on Dr. Williams' January 3, 2017 report, indicating that she did not believe the zero gravity recliner was medically useful in treating or facilitating treatment of appellant's diagnosed conditions, OWCP found that the evidence of record did not support authorization of payment for the recliner. The report noted that OWCP had not received any additional clarifying report from Dr. Sniezek in response to its letter of April 14, 2016.⁴

By decision dated March 7, 2017, OWCP denied appellant's claim for acceptance of light sensitivity, migraine headaches, and episodic blindness as conditions related to his accepted work-related injury. Relying on Dr. Wexler's December 21, 2016 report, it found that appellant had not submitted sufficient evidence to establish that his claimed light sensitivity, migraine

⁴ This March 7, 2017 decision incorrectly identified appellant's employer as the U.S. Postal Service.

headaches with aura, and episodic blindness were connected to his accepted employment injuries.⁵

LEGAL PRECEDENT -- ISSUE 1

When an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.⁶ To establish causal relationship between a claimed condition and the employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background supporting causal relationship.⁷ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁸

Rationalized medical evidence is evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁹ Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.¹⁰

ANALYSIS -- ISSUE 1

The Board finds that this case is not in posture for decision as to whether the conditions of light sensitivity and migraine headaches, with aura and episodic blindness, are causally related to appellant's accepted emotional condition claim.

In a report dated December 21, 2016, OWCP's second opinion physician, Dr. Wexler, reviewed the SOAF along with medical records, examined appellant, and diagnosed migraine without aura and light sensitivity. He noted that appellant's episodic blindness was likely not related to his migraines, but instead to a conversion disorder. Dr. Wexler noted that, based on objective findings, there was no physical reason for light sensitivity and that his ophthalmic examination was within normal limits for a person of appellant's age. He further noted that appellant's description of episodic blindness was inconsistent with his migraine symptoms, as episodic blindness is typically unilateral. Dr. Wexler concluded that appellant's complaints of migraines on a daily basis, as well as his blindness being effectively treated with Botox, was inconsistent with established migraine findings. He opined that appellant's light sensitivity and

⁵ This March 7, 2017 decision also incorrectly identified appellant's employer as the U.S. Postal Service.

⁶ *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁷ *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

⁸ *D.E.*, 58 ECAB 448 (2007); *Mary J. Summers*, 55 ECAB 730 (2004).

⁹ *Phillip L. Barnes*, 55 ECAB 426 (2004); *Leslie C. Moore*, 52 ECAB 132 (2000).

¹⁰ *V.W.*, 58 ECAB 428 (2007); *Ernest St. Pierre*, 51 ECAB 623 (2000).

migraines were due to his prolonged depressive reaction, rather than any orthopedic work injury. Dr. Wexler recommended a psychiatric evaluation.

Dr. Wexler's medical report is the only report of record addressing this issue, and his report indicates that appellant's claimed light sensitivity and migraine headaches with aura and episodic blindness are unrelated to his accepted workers' compensation claim for his orthopedic injury, however he does opine that these conditions are causally related to appellant's accepted condition of prolonged depressive reaction. The Board notes that when OWCP referred appellant to Dr. Wexler for a second opinion evaluation, the SOAF properly noted appellant's accepted conditions in his emotional condition claim, including prolonged depressive reaction. However, Dr. Wexler was only asked to address whether these conditions were related to appellant's orthopedic work-related injury. While he indicated that appellant's claimed light sensitivity and migraine headaches with aura and episodic blindness were related to his prolonged depressive reaction, Dr. Wexler also recommended that appellant undergo a psychiatric evaluation to further evaluate this matter.

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. The claimant has the burden to establish entitlement to compensation. However, OWCP shares responsibility in the development of the evidence to see that justice is done.¹¹ Once it undertakes development of the record, OWCP must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.¹² Based upon the medical evidence of record, it failed to meet its obligation and further development is necessary in view of Dr. Wexler's opinion.

On remand OWCP shall refer appellant and an updated SOAF for a second opinion evaluation to determine whether the conditions of light sensitivity and migraine headaches with aura and episodic blindness were related to his prolonged depressive reaction and disorder. After such further development as deemed necessary, OWCP shall issue a *de novo* decision.

LEGAL PRECEDENT -- ISSUE 2

Section 8103(a) of FECA provides for the furnishing of services, appliances, and supplies prescribed or recommended by a qualified physician who 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 the amount of monthly compensation.¹³ In interpreting 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.¹⁴

¹¹ *William J. Cantrell*, 34 ECAB 1223 (1983).

¹² *See R.C.*, Docket No. 15-0581 (issued June 8, 2016).

¹³ 5 U.S.C. § 8103(a).

¹⁴ *See Dale E. Jones*, 48 ECAB 648, 649 (1997).

In interpreting section 8103, and OWCP's 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.¹⁵ In order to be entitled to reimbursement for medical expenses, a claimant must establish that the expenditures were incurred for treatment of the effects of an employment-related injury by submitting rationalized medical evidence that supports such a connection and demonstrates that the treatment is necessary and reasonable.¹⁶ 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.¹⁷

ANALYSIS -- ISSUE 2

The Board finds that OWCP did not abuse its discretion in denying appellant's request for authorization of payment for a zero gravity massage recliner due to his accepted injuries.

By letter dated September 26, 2014, Dr. Yu noted that appellant had a discectomy at L5-S1 in 1995, with progressive degeneration of that segment, leading to chronic back pain as well as recurrent right radiculopathy. He recommended a zero gravity recliner for treatment of these conditions.

By letter dated April 14, 2016, OWCP advised appellant that additional information was needed to determine whether the recliner that he requested was medically necessary. It advised him that he needed to provide a statement from his physician which addressed the basic equipment he would need and the medical reasons for recommending the equipment; the specific goals of or benefits expected from this equipment, a description of how often he would be using the equipment; the expected duration of its use; and a description of alternative treatment that might provide the same results. Appellant did not submit additional evidence to support authorization for payment of a zero gravity massage recliner. Accordingly, there is no medical evidence of record that the requested chair was necessitated due to his accepted emotional condition claim.

OWCP has accepted appellant's claim for the orthopedic conditions of acute back muscle contusion and displacement of the lumbar intervertebral disc without myopathy, and a separate decision has been issued under OWCP File No. xxxxxx119 addressing whether the recliner should be authorized under this claim.

The Board finds that OWCP did not abuse its discretion in this case, as no clarifying statement from a treating physician was received subsequent to its request for clarification dated April 14, 2016, and the weight of medical evidence rests with Dr. Williams.

¹⁵ *Dr. Mira R. Adams*, 48 ECAB 504 (1997).

¹⁶ *See Debra S. King*, 44 ECAB 203 (1992).

¹⁷ *Kennett O. Collins, Jr.*, 55 ECAB 648, 654 (2004).

On December 6, 2016 OWCP referred appellant's medical history and a SOAF to a DMA to determine whether his medical history and accepted conditions warranted authorization for payment for a zero gravity recliner.¹⁸ In a report dated January 3, 2017, Dr. Williams, Board-certified in physical medicine and rehabilitation, noted that the only accepted diagnosis that would warrant authorization for payment of a zero gravity recliner would be contusion of the back, as lumbar disc displacement was not treated with massage. She noted that contusions, by nature, resolve quickly and would not persist over a period of 22 years. Dr. Williams further noted that recliner was requested in May 2016 to replace an old chair. She observed that, in all of appellant's office visit notes prior to May 2016, appellant's pain level never went below 8/10, and that he was very sedentary. Dr. Williams opined that, if the chair made a difference in appellant's condition, it would have been indicated with decreased pain and ability to walk more than a few blocks without pain. She observed that it was not until October 2016, when appellant was enrolled in physical therapy, that appellant appeared to have any improvement in pain or activity level. Dr. Williams concluded that while the zero gravity recliner might be comfortable, it was not useful in treating or facilitating treatment of appellant's back pain.

Dr. Williams expressed an opinion that the zero gravity recliner would not be useful in treatment of appellant's orthopedic conditions, which was supported by medical rationale explaining why none of appellant's accepted orthopedic conditions would likely improve by usage of a recliner. There are no medical reports of equal rationale expressing an opinion that OWCP ought to authorize payment for the recliner, containing a medical explanation of how appellant's accepted orthopedic conditions would cure, reduce disability, or aid in lessening monthly compensation.¹⁹

OWCP has administrative discretion in choosing the means to achieve the goal of recovery from a work-related injury and the only limitation on OWCP's authority is that of reasonableness.²⁰

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.²¹

The Board finds that OWCP did not abuse its discretion by denying authorization of a zero gravity recliner, as the weight of medical evidence rests with Dr. Williams.

¹⁸ The Board notes that the incorrect statement in the March 7, 2017 decision that appellant had a "DMA examination" with Dr. Williams was harmless error. Appellant was not engaged for an in-person appointment, only to render an opinion based on appellant's medical records and a statement of accepted facts. OWCP's decision was based on Dr. William's opinion, after reviewing medical records and accepted facts, and was not based on the presumption that appellant had attended an in-person appointment.

¹⁹ See *E.J.*, Docket No. 10-0743 (issued November 2, 2010).

²⁰ See *Daniel J. Perea*, 42 ECAB 214, 221 (1990) (holding that abuse of discretion by OWCP 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).

²¹ See *Minnie B. Lewis*, 53 ECAB 606 (2002).

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 and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that the case is not in posture for decision as to whether the conditions of light sensitivity and migraine headaches with aura and episodic blindness are causally related to appellant's accepted emotional condition. The Board further finds that OWCP did not abuse its discretion in denying appellant's request for authorization of payment for a zero gravity recliner.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 7, 2017 pertaining to the acceptance of the additional claimed conditions is set aside and the case is remanded for further development of the evidence consistent with this opinion. The second OWCP decision dated March 7, 2017 is affirmed.

Issued: January 26, 2018
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