



## **FACTUAL HISTORY**

On February 2, 2010 appellant, then a 50-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on January 20, 2010 he slipped on ice and injured his left knee, while performing his federal employment duties. On February 25, 2010 OWCP accepted appellant's claim for a left knee sprain and contusion. It subsequently expanded acceptance of the claim on May 31, 2011 to include effusion of the left lower leg joint; aggravation of left knee osteoarthritis; and unspecified mechanical complication of internal orthopedic device, implant, and graft. OWCP paid appellant intermittent wage-loss compensation on the supplemental rolls as of March 9, 2010 and on the periodic rolls as of December 18, 2011. On April 2, 2013 appellant underwent a left knee revision arthroplasty.

On June 1, 2017 OWCP received an Authorization Request form and Certification/Letter of Medical Necessity for Compounded Drugs (OMB No. 1240-0055) for appellant. In this form, Dr. Mark Stacherski, a Board-certified family practitioner, indicated that he last examined appellant on May 30, 2017. He requested authorization for a compound medication identified as "5F-DICL03-GABA6-LIDO2-Prilo2%." Dr. Stacherski noted that this medication was necessary to treat appellant's left knee. He indicated that appellant had tried and failed to obtain relief through other products, and that there were no commercially available Federal Drug Administration (FDA) drugs appropriate for the diagnosis. Dr. Stacherski indicated that appellant had knee surgery in the past and still had chronic pain. He noted that appellant could not be prescribed oral nonsteroidal anti-inflammatory drugs (NSAIDS) due to his gastroesophageal reflux disease (GERD) for which he takes omeprazole. Dr. Stacherski noted that appellant was prescribed oral hydrocodone for his chronic back pain.

On June 9, 2017 OWCP referred the matter to an OWCP medical adviser, Dr. William Tontz, Jr., a Board-certified orthopedic surgeon. It noted that OWCP's procedures require that consideration be given to whether there is justification for a prescription for a compounded medication and that its use is consistent with the medical evidence of record. OWCP's medical adviser determined that the proposed compounded medication was not medically necessary. He indicated that there were no recent medical reports documenting objective or diagnostic findings. Dr. Tontz concluded that there was no need for compounded medication as there were no recent medical reports documenting objective or diagnostic findings. Further, guidelines did not support compound medications and there was no indication that appellant could not be prescribed oral medication, therefore, the compound medication was unnecessary.

By letter dated June 20, 2017, OWCP informed appellant that the evidence of record was insufficient to establish that the compounded medication was necessary to treat the effects of his accepted employment conditions. It requested appellant to provide a narrative explanation from his physician explaining why the compounded medication was medically necessary, including an explanation as to why a commercially available drug was insufficient. OWCP afforded him 30 days to submit the requested information. Appellant did not respond.

By decision dated August 1, 2017, OWCP denied authorization for a compounded medication as it determined that the evidence of record did not support that this medication was medically necessary to treat the effects of appellant's work-related injury.

## LEGAL PRECEDENT

Section 8103(a) of FECA states in pertinent part: 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 the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of monthly compensation.<sup>3</sup> In general, drugs and medications which are necessary to treat an injury or occupational disease may be purchased at OWCP's expense on the recommendation of the attending physician. These include prescription as well as nonprescription medications.<sup>4</sup>

The Board has found that OWCP has great discretion in determining whether a particular type of treatment is likely to cure or give relief.<sup>5</sup> The only limitation on OWCP's authority is that of reasonableness.<sup>6</sup> 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>

## ANALYSIS

The Board finds that OWCP did not abuse its discretion in denying appellant's request for a compound medication.

OWCP accepted appellant's claim for left knee sprain and contusion, effusion of the left lower leg, aggravation of left knee osteoarthritis, and unspecified mechanical complication of internal orthopedic device, implant, and graft.

On June 1, 2017 Dr. Stacherski requested approval for a compounded drug, specifically "5F-D1CLO3-GABA6-LIDO2-Prilo2%." He noted that this was a topical drug for treatment of appellant's left knee arthropathy. Dr. Stacherski noted that the drug was necessary because appellant had chronic pain, cannot take oral NSAIDS due to his GERD, and that he was still in pain despite the fact that he was taking oral hydrocodone for his chronic back pain. However, OWCP's medical adviser, Dr. Tontz, opined that this compound drug was unnecessary. After review of criteria for determining whether a compound drug was necessary, he concluded that there was no need for compounded medication as there were no recent medical reports documenting objective or diagnostic findings. The medical adviser also noted that guidelines did not support compound medications, and there was no indication that the individual could not take oral medications. OWCP advised appellant that a narrative report from his physician was

---

<sup>3</sup> 5 U.S.C. § 8103(a).

<sup>4</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Services and Supplies, Prescription and Non-Prescription Drugs*, Chapter 3.400.3(a) (October 1995).

<sup>5</sup> See *M.B.*, Docket No. 17-1389 (issued April 6, 2018); see also *Vicky C. Randall*, 51 ECAB 357 (2000).

<sup>6</sup> See *Lecil E. Stevens*, 49 ECAB 673, 675 (1998).

<sup>7</sup> *Rosa Lee Jones*, 36 ECAB 679 (1985).

necessary to justify the use of a compound drug, but no narrative explaining the rationale for this drug was provided.

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.<sup>9</sup>

The Board finds that OWCP properly relied upon the well-rationalized opinion of OWCP's medical adviser, Dr. Tontz. Dr. Stacherski did not provide a well-rationalized opinion explaining the necessity of the compounded drug. OWCP asked appellant to submit a well-rationalized medical report from Dr. Stacherski to support his request, but he failed to do so. Accordingly, OWCP acted within its discretion in denying appellant's request for compounded medication.

### **CONCLUSION**

The Board finds that OWCP did not abuse its discretion in denying authorization for a compounded medication.

---

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

<sup>9</sup> See *M.G.*, Docket No. 18-0099 (issued April 26, 2018).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated August 1, 2017 is affirmed.

Issued: October 19, 2018  
Washington, DC

Christopher J. Godfrey, 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