

**United States Department of Labor
Employees' Compensation Appeals Board**

G.A., Appellant)	
)	
and)	Docket No. 18-0872
)	Issued: October 5, 2018
DEPARTMENT OF DEFENSE, SHARPE)	
ARMY DEPOT, Lathrop, CA, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 19, 2018 appellant filed a timely appeal from a February 22, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether OWCP abused its discretion in denying appellant's request for authorization to purchase an adjustable bed.

FACTUAL HISTORY

OWCP accepted that on April 23, 1985 appellant, then a 37-year-old warehouseman, sustained a lumbar strain and a herniated L4-5 disc while in the performance of duty. Appellant

¹ 5 U.S.C. § 8101 *et seq.*

stopped work on April 23, 1985 and did not return. OWCP paid him compensation for total disability and authorized multiple lumbar surgeries.²

Appellant on March 28, 2017 requested that OWCP authorize the purchase of an adjustable bed that supported his back. He also asked OWCP to pay for help with his yardwork. Appellant noted that OWCP had previously authorized his purchase of a bed “some years ago.”

In an April 24, 2017 response, OWCP informed appellant that there was no provision in FECA for the payment of yard work. Regarding his request for the purchase of an adjustable bed, it advised him to submit a statement from his attending physician describing the equipment needed, why it was required, the benefits expected, the duration of the need, and a suggested supplier. OWCP noted that it had previously authorized the purchase of a queen-sized mattress set on March 20, 2003.

On October 15, 2017 Susan M. Rundle, a family nurse practitioner, indicated that appellant had requested assistance purchasing a Tempur-Contour Supreme queen bed with an adjustable base and mattress protector. She noted that he experienced chronic pain as a result of osteoarthritis managed by opioids and had undergone three surgeries on his lumbar spine. Ms. Rundle also advised that appellant had chronic obstructive pulmonary disease (COPD), shoulder pain, and difficulty sitting, standing, and walking. She related, “The above equipment is recommended because it will improve [appellant’s] comfort supporting his back and joints and facilitate improved pain control. The ability to lift his head up and down will facilitate him getting in and out of bed as well as improve lung function and breathing.” Ms. Rundle noted that the purchase of the adjustable bed would improve appellant’s quality of life. She indicated that he would need the bed for the rest of his life and suggested a retailer for the bed.

In an October 24, 2017 report of telephone call, OWCP informed appellant that a nurse was not considered a qualified physician under FECA.

On November 27, 2017 appellant resubmitted the October 15, 2017 report clearly countersigned by Dr. Saeid Mohammadi, an orthopedic surgeon.

An OWCP medical adviser, on February 21, 2018, reviewed the evidence of record and answered a series of questions posed by OWCP. He advised that the request to purchase a Tempur Pedic mattress with adjustable base was causally related to the accepted condition.³ The medical adviser found, however, that the equipment was not medically necessary. He related, “Per national guidelines, there are no high quality studies to support the purchase or rental of any type of specialized mattress or bedding as a treatment of low back pain. The guideline does not support

² Appellant underwent a hemilaminectomy on June 3, 1985, a hemilaminotomy with medial facetectomy, foraminotomy, and discectomy on the left on October 3, 2006, a hemilaminotomy at L4-5 and L5-S1, a fusion at L4-5, and insertion of instrumentation at L4, L5, and S1 on July 26, 2007, a left hemilaminotomy at L3-4 for facet cyst removal and on the left at L5-S1 for a discectomy, a scar revision, and an exploration of hardware on November 6, 2009. On March 2, 2016 appellant underwent hardware removal at L4 to S1, a decompression at L3-4 on the left, and an interbody fusion on the left at L5-S1.

³ On January 4, 2018 an OWCP medical adviser found that the requested adjustable bed was not medically necessary, noting that the last medical report of record was dated September 16, 2009. On January 8, 2018 an OWCP claims examiner requested that he clarify his report. OWCP provided the medical adviser with the medical evidence from 2010 to 2013 and 2016.

the request. Therefore, the request for a medical bed is not medically necessary and appropriate.” The medical adviser noted that appellant had undergone three lumbar surgeries and opined that a review of the medical reports from 2010 to 2013 did not change his opinion.

By decision dated February 22, 2018, OWCP denied appellant’s request for authorization to purchase an adjustable bed. It found that the opinion of OWCP’s medical adviser constituted the weight of the evidence and established that the requested durable medical equipment was not medically necessary.

On appeal appellant maintains that he has experienced eight, not three, lumbar surgeries, noting that some were paid for by his private insurance as his state did not bill workers’ 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.⁴ 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.⁵

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.⁶ 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.⁷ 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.⁸

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.⁹

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

⁵ *Kennett O. Collins, Jr.*, 55 ECAB 648 (2004).

⁶ *See D.K.*, 59 ECAB 141 (2007).

⁷ *See A.W.*, Docket No. 16-1812 (issued March 15, 2017).

⁸ *See Debra S. King*, 44 ECAB 203 (1992).

⁹ *See Minnie B. Lewis*, 53 ECAB 606 (2002).

ANALYSIS

The Board finds that OWCP did not abuse its discretion in denying appellant's request to purchase durable medical equipment in the form of a Tempur-Contour Supreme queen bed with an adjustable base and mattress protector. OWCP accepted that he sustained lumbar strain and a herniated disc at L4-5 due to an April 23, 1985 employment injury. Appellant underwent multiple lumbar surgeries following his injury.

On March 28, 2017 appellant requested that OWCP authorize his purchase of an adjustable bed that supported his back. In response to OWCP's request for supporting medical evidence, he submitted an October 15, 2017 report from Ms. Rundle, a family nurse practitioner. Ms. Rundle advised that appellant had chronic pain due to opioids, COPD, shoulder pain, and difficulty sitting, standing, and walking. She related that the purchase of a Tempur-Contour Supreme queen bed with an adjustable base and mattress protector would improve his quality of life by assisting with pain control, his breathing, and with getting in and out of bed. Dr. Mohammadi cosigned her October 15, 2017 report.

An OWCP medical adviser reviewed the evidence on February 21, 2018 and determined that the recommendation for the purchase of the adjustable bed was causally related to the accepted injury. He further found, however, that the purchase of the mattress with an adjustable base was not medically necessary according to national guidelines. The medical adviser discussed appellant's history of injury and noted that he had undergone three lumbar surgeries. He asserted that there were no reliable studies showing that a specialized mattress treated low back pain and thus concluded that the request for the adjustable bed was not necessary.

The Board finds that OWCP did not abuse its discretion in denying appellant's request to authorize the purchase of the adjustable bed. OWCP's medical adviser opined that the requested medical equipment was not medically necessary and supported his conclusion with rationale.¹⁰ OWCP has administrative discretion in choosing the means to achieve the goal of recovery from a work-related injury and the only limitation on its authority is that of reasonableness.¹¹

Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logical 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.¹² The Board finds that OWCP did not abuse its discretion in denying appellant's request to authorize the purchase of an adjustable bed.¹³

¹⁰ See *M.B.*, Docket No. 17-1679 (issued February 8, 2018).

¹¹ See *supra* note 7.

¹² See *supra* note 9.

¹³ See *M.B.*, *supra* note 10.

On appeal appellant asserts that he underwent eight lumbar surgeries rather than three, some of which were paid for by his private insurance. The issue, however, is whether OWCP abused its discretion in finding that the requested adjustable bed was not medically necessary.

Regarding appellant's assertion that OWCP had paid for a bed in 2003, the fact that OWCP previously authorized an adjustable bed purchase does not preclude it from exercising its discretion to deny authorization for a new adjustable bed.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 appellant's request to purchase an adjustable bed.

ORDER

IT IS HEREBY ORDERED THAT the February 22, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 5, 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

¹⁴ *Id.*