

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

G.B., Appellant)	
)	
and)	Docket No. 18-1444
)	Issued: March 25, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Oklahoma City, OK, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 20, 2018 appellant filed a timely appeal from a June 7, 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.²

ISSUE

The issue is whether OWCP has abused its discretion by denying authorization for home modification equipment.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the June 7, 2018 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

This case has previously been before the Board. The facts and circumstances of the case as set forth in the prior decisions and orders of the Board are incorporated herein by reference. The relevant facts are as follows.³

On May 4, 2000 appellant, then a 50-year-old mail processing clerk, filed an occupational disease claim (Form CA-2) alleging that on July 31, 1996 he first became aware that his military service-connected disability of his lumbar spine was aggravated by his federal employment duties. OWCP accepted the claim for aggravation of spinal stenosis at L2-5 and degeneration of lumbar intervertebral disc. Appellant retired from the employing establishment and received Office of Personnel Management (OPM) benefits beginning August 25, 2006. OWCP authorized multiple surgical procedures of the lumbar spine. On October 26, 2016 appellant underwent an OWCP approved revision arthrodesis, anterior interbody technique of L3-4.

On March 20, 2017 Dr. Winston Fong, a Board-certified orthopedic surgeon, requested modification to appellant's new home, which was under construction. He noted that appellant recently underwent L3-4 fusion. Dr. Fong indicated that appellant would benefit from handicap ramps, handicap accessible door and frames, walk-in showers with pull-down benches, handheld sprayers in each bathroom, chair-height toilets, and toggle light switches throughout his new home. Copies of appellant's diagnostic studies and an October 26, 2017 operative report were provided.

On May 27, 2017 appellant submitted an itemized statement for the costs of the home modification equipment. The total cost was \$10,290.00.

In a June 6, 2017 report, Dr. Fong reported that overall appellant was doing well postsurgery and that the x-rays showed a solid fusion at L3-4 with bridging bone across the interspace. He opined that appellant was at maximum medical improvement. Because appellant had a significant history of back surgery and he was at high risk for breakdown at adjacent levels including L5-S1, Dr. Fong permanently restricted appellant from lifting more than 25 pounds. OWCP also received copies of medical, diagnostic, and work status reports along with surgical reports from previous surgeries.

In a September 13, 2017 report, a certified physician assistant reported that appellant had "lifted a 65-pound diffuser out of his grill on Monday" and felt a sharp tearing-type pain in the posterior aspect of his right thigh. He was able to put the diffuser down and go to the emergency room. The physician assistant diagnosed right hamstring tear and radiculitis of the left lower extremity from lumbar spine spondylosis.

In an October 24, 2017 report, Dr. Fong indicated that appellant had a new onset of left sciatica since May 2017.

In a November 24, 2017 report, Dr. Kenechukwu Ugokwe, a Board-certified neurologist, serving as a district medical adviser (DMA), reviewed the statement of accepted facts (SOAF) and

³ Docket No. 15-0445 (issued May 4, 2015); Docket No. 12-0551 (issued August 22, 2012); Docket No. 08-2253 (issued May 18, 2009).

the medical record. He opined that the need for the proposed durable medical equipment was not causally related to the accepted medical conditions of degeneration of lumbar intervertebral disc as appellant was neurologically intact and not considered handicapped. The DMA also opined that the medical equipment was not medically necessary as retrofitting the home was more of a convenience rather than a medical necessity.

By development letter dated December 12, 2017, OWCP informed appellant that the evidence of record was insufficient to establish that the requested home modifications were medically necessary or causally related to his accepted conditions. It requested that he obtain a rationalized medical report explaining how his requested home modifications were related to his accepted employment conditions. OWCP afforded appellant 30 days to provide the necessary evidence.

On December 16, 2017 appellant disagreed with the DMA's determination as it was based on retrofitting modifications of his previous home. He indicated that his current home was new construction.

In a January 18, 2018 report, Dr. Fong noted that appellant had spent a significant amount of money to make his new home handicap accessible to have an improved quality of life. He noted that appellant had undergone seven lumbar surgeries with respect to his employment injuries and that the last L3-4 revision had been performed in 2016. Appellant has also undergone multiple cervical surgeries and a thoracic spine surgery. Dr. Fong indicated that it was unquestionable that appellant would benefit from handicap equipment at his home and opined that it was "extremely justifiable" for him to have upgraded his new home with handicap accessible equipment. He noted that there was a "reasonable possibility" that appellant may have to undergo further procedures in the future. Dr. Fong opined that appellant's current disability stemmed from his 1996 employment injury, which had contributed to significant impairment and which required multiple surgeries. OWCP received copies of medical and diagnostic reports along with surgical reports.

In an April 2, 2018 report, Dr. Ugokwe, again serving as a DMA, again reviewed the SOAF and the medical record. He opined that the proposed home handicap accessible fitting equipment was not causally related to the accepted lumbar spinal stenosis and degeneration of lumbar intervertebral discs. The DMA indicated that the accepted work injury had not caused appellant to become handicapped. Rather, he suggested that, given appellant's nonwork-related history of degenerative changes in his hips, appellant's hip surgery could impair his mobility and, compounded with the aging process of his joints, may have caused him to make his new home handicap accessible. However, this was not caused by his employment injuries. The DMA further opined that the proposed home handicap accessible fitting equipment was not medically necessary as appellant did not need such equipment to function at his normal level. Rather, the modifications were made out of convenience rather than medical necessity.

By decision dated June 7, 2018, OWCP denied authorization for home modification equipment. It found that the opinion of its DMA constituted the weight of the evidence and established that the requested handicap equipment for appellant's new home was not medically necessary or causally related to the accepted medical conditions.

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, the Board has recognized that OWCP has broad discretion in approving services, with the only limitation on OWCP's authority being that of reasonableness.⁶

The Board has previously noted that OWCP's procedures provide for housing modifications under limited circumstances.⁷ To be eligible for housing modifications, the claimant must be severely restricted in terms of mobility, functionality, and independence in normal living functions, on a permanent basis, due to the work-related injury. Examples are impairments that require the use of a prosthesis, wheelchair, motorized scooter, leg braces, crutches, cane, or other self-help devices. Such medical conditions include quadriplegia, paraplegia, amputation, total loss of use of limbs, blindness, and profound deafness bilaterally.⁸

Before considering the technicalities of housing modification proposals, a determination must be made on the medical necessity of the requested modification. There are several aspects to consider when reviewing the evidence of record:

“(1) Does the level of impairment rise to the level delineated in the eligibility section above?”

“(2) Does the medical evidence support that the claimant has restrictions or physical limitations which necessitate the modification?”

“(3) Are these restrictions caused by the accepted work-related condition?”

“(4) Does the physician provide detailed findings and rationale for the opinion that the claimant's work injury has caused restrictions which necessitate the requested

⁴ 5 U.S.C. § 8103; *see R.P.*, Docket No. 17-0428 (issued April 19, 2018); *Thomas W. Stevens*, 50 ECAB 288 (1999).

⁵ *See R.P., id.*; *Kennett O. Collins, Jr.*, 55 ECAB 648 (2004).

⁶ *See D.C.*, Docket No. 18-0080 (issued May 22, 2018); *D.K.*, 59 ECAB 141 (2007); *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

⁷ *R.K.*, Docket No. 14-1238 (issued September 23, 2014).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Housing and Vehicle Modifications*, Chapter 2.1800.3 (October 2009).

modification? This should come from a physician who is a recognized authority in the appropriate medical specialty.”⁹

ANALYSIS

The Board finds that OWCP has not abused its discretion in denying authorization for home modification equipment.

OWCP accepted that appellant sustained a work-related aggravation of his service-related lumbar spinal stenosis and degeneration of lumbar intervertebral disc. Appellant retired from the employing establishment on August 25, 2006 and received OPM benefits. In 2017, he moved into a newly built home which he equipped/modified with handicap accessible equipment. OWCP denied authorization for appellant’s home modification equipment.

On March 20, 2017 Dr. Fong requested that OWCP authorize modification to appellant’s new home, noting that he would benefit from handicap accessible equipment. In response to OWCP’s request for supporting medical evidence, he indicated in his January 18, 2018 report that it was extremely justifiable for appellant to have updated his new home with accessible equipment. Dr. Fong opined that appellant’s current disability stemmed from his 1996 work injury, which had contributed to significant impairment and which required multiple surgeries. He also noted that there was a reasonable possibility that appellant may have to undergo further procedures in the future.

To establish the medical necessity of the requested modification, Dr. Fong was required to explain why appellant was presently medically unable to negotiate steps, requiring a ramp. He was also required to explain why appellant required handicap accessible doors and showers, as there was no medical evidence of record that appellant’s accepted employment injury had caused him to be wheelchair bound. The Board finds that Dr. Fong did not discuss why appellant’s accepted injuries caused specific medical limitations, which then required handicap modifications of his newly built home. Medical conclusions unsupported by rationale are of diminished probative value.¹⁰

A DMA reviewed the evidence on April 2, 2018 and determined that the installed handicap accessible equipment was not causally related to the accepted employment conditions or medically necessary. He reviewed the medical record and SOAFs and noted that appellant had undergone nonwork-related surgery to his hips which could cause some mobility problems. The DMA opined that the home handicap accessible fitting equipment was not causally related to the accepted lumbar spinal stenosis and degeneration of lumbar intervertebral discs as the employment injury did not and has not caused appellant to become handicapped. He further opined that the proposed home handicap accessible fitting equipment was not medically necessary as appellant did not need such equipment to function at his normal level.

⁹ *Id.* at Chapter 2.1800.4.

¹⁰ *Id.*

The Board finds that OWCP has not abused its discretion in denying appellant's request to authorize home handicap accessible equipment. 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.¹¹ As the evidence of record does not substantiate medical necessity for the home modifications, the Board finds that OWCP did not abuse its discretion in denying appellant's request.¹²

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 has not abused its discretion in denying authorization for home modification equipment.

ORDER

IT IS HEREBY ORDERED THAT the June 7, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 25, 2019
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

¹¹ See *D.C.*, Docket No. 18-0080 (issued May 22, 2018); see also *Minnie B. Lewis*, 53 ECAB 606 (2002).

¹² See *G.A.*, Docket No. 18-0872 (issued October 5, 2018); *M.B.*, Docket No. 17-1679 (issued February 8, 2018).