

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

_____)	
J.C., Appellant)	
)	
and)	Docket No. 19-0182
)	Issued: May 13, 2019
DEPARTMENT OF HOMELAND SECURITY,)	
FEDERAL EMERGENCY MANAGEMENT)	
AGENCY, Bothell, WA, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 5, 2018 appellant filed a timely appeal from a May 18, 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 has abused its discretion by denying appellant's request for authorization of chiropractic treatment.

FACTUAL HISTORY

On June 16, 2016 appellant, then a 52-year-old emergency manager, filed an occupational disease claim (Form CA-2) alleging that she sustained stress-related conditions, including post-traumatic stress disorder and major depressive disorder, due to incidents and conditions at work.

¹ 5 U.S.C. § 8101 *et seq.*

She asserted that she had been deployed to a federally-declared disaster area and was responsible for all the response and recovery actions, including managing landslide areas and identifying human remains. Appellant indicated that she first became aware of her claimed conditions on March 11, 2014 and first related them to her federal employment on April 22, 2016. She stopped work on October 27, 2016. OWCP initially accepted that appellant sustained post-traumatic stress disorder and major depressive disorder (recurrent, moderate),² and paid appellant disability compensation on the daily rolls commencing October 27, 2016 and on the periodic rolls commencing November 13, 2016.

In mid-2017 appellant requested that OWCP authorize chiropractic treatment.³

In support of her request, appellant submitted a June 7, 2017 letter from Dr. Jeffrey P. Metcalf, an attending chiropractor, who indicated that appellant was being treated for spinal injuries and associated acute low back pain. Dr. Metcalf opined that, based on appellant's case history and examination findings, her spinal condition had significantly affected her employment-related major depressive disorder. He opined that the stress associated with "her diagnosed condition" had exacerbated her low back condition. Dr. Metcalf attached a May 31, 2017 report detailing findings of the chiropractic evaluation he performed on that date.⁴

In an undated report received on June 14, 2017, Dr. Steven K. Greenhouse, an attending licensed clinical psychologist, indicated that he had reviewed the findings of Dr. Metcalf. He noted that appellant had experienced severe chronic back pain since at least October 2016 which significantly affected her major depressive disorder. Dr. Greenhouse indicated that he agreed with Dr. Metcalf's treatment plan given its improving effect on appellant's mood, affect, hopefulness, sleep, overall energy, and pain diminution. He opined that appellant's chiropractic treatment was an essential component in treating her major depressive disorder. Dr. Greenhouse concluded that, but for appellant's post-traumatic stress disorder and major depressive disorder, the chiropractic procedures described by Dr. Metcalf in his May 31, 2017 report would not have been necessary.

In August 2017 OWCP referred appellant for a second opinion examination to Dr. Michael K. Friedman, an osteopath and Board-certified psychiatrist. In its referral letter it requested that Dr. Friedman provide an opinion regarding whether appellant's chiropractic treatment was necessary to treat her accepted stress-related conditions.

In a September 5, 2017 report, Dr. Friedman provided a description of appellant's factual and medical history and reported the findings of the psychiatric evaluation he conducted on that date. He diagnosed recurrent major depressive disorder with anxious distress and post-traumatic stress disorder (chronic). In response to Dr. Greenhouse's opinion that chiropractic treatment was an essential component for treating appellant's depressive disorder, Dr. Friedman opined that there was no evidence that chiropractic treatment would be an efficacious or indicated therapy for depressive disorders. In response to Dr. Greenhouse's opinion that appellant would not have

² OWCP later expanded the accepted conditions to include other somatoform disorders (bruxism) and cracked tooth.

³ Appellant also requested that OWCP authorize a gastric duodenal switch surgery which she had undergone on November 30, 2016.

⁴ The case record contains evidence which shows that Dr. Metcalf diagnosed cervical, thoracic, and lumbar spine subluxations as demonstrated by May 31, 2017 x-rays to exist.

needed chiropractic care in the absence of her accepted stress-related conditions, Dr. Friedman indicated that “there would be no correlation between the claimant’s psychiatric condition and the need for chiropractic treatment.”

By decision dated September 20, 2017, OWCP denied appellant’s request for chiropractic treatment, noting that the weight of the medical evidence rested with the September 5, 2017 report of Dr. Friedman, OWCP’s referral physician.⁵

On October 12, 2017 appellant requested a telephonic hearing with a representative of OWCP’s Branch and Hearings and Review. During the hearing held on March 7, 2018, appellant argued that her chiropractic treatment was necessary to treat the effects of her post-traumatic stress disorder and major depressive disorder.

By decision dated May 18, 2018, OWCP’s hearing representative affirmed OWCP’s September 20, 2017 decision with respect to the denial of appellant’s request for authorization of chiropractic treatment.⁶

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 the monthly compensation.”⁷

The Board has found that OWCP has great discretion in determining whether a particular type of treatment is likely to cure or give relief.⁸ The only limitation on OWCP’s authority is that of reasonableness.⁹ 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 In order to be entitled to reimbursement of medical expenses, it must be shown that the expenditures were incurred for treatment of the

⁵ OWCP also denied appellant’s request for authorization of gastric duodenal switch surgery.

⁶ OWCP’s hearing representative set aside OWCP’s September 20, 2017 decision with respect to appellant’s request for authorization of gastric duodenal switch surgery and remanded the case to OWCP for further development due to an unresolved conflict in the medical opinion evidence as to the need for said surgery and its relationship to the accepted employment injuries. The matter of appellant’s request for authorization of gastric duodenal switch surgery is therefore not currently before the Board as the case record does not contain a final adverse decision regarding that issue within its jurisdiction. *See* 20 C.F.R. §§ 501.2(c) and 501.3.

⁷ 5 U.S.C. § 8103.

⁸ *R.C.*, Docket No. 18-0612 (issued October 19, 2018).

⁹ *Id.*

¹⁰ *G.B.*, Docket No. 18-1478 (issued October 18, 2018).

effects of an employment-related injury or condition.¹¹ Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.¹²

Under section 8101(2) of FECA, chiropractors are only considered physicians, and their reports considered medical evidence, to the extent that they treat spinal subluxations as demonstrated by x-ray to exist.¹³ OWCP's regulations at 20 C.F.R. § 10.5(bb) have defined subluxation as an incomplete dislocation, off-centering, misalignment, fixation, or abnormal spacing of the vertebrae which must be demonstrable on any x-ray film to an individual trained in the reading of x-rays.¹⁴

ANALYSIS

The Board finds that OWCP has not abused its discretion by denying appellant's request for authorization of chiropractic treatment.

In the development of the claim OWCP referred appellant to a second opinion examination. In a September 5, 2017 report, Dr. Friedman opined that chiropractic treatment was an essential component for treating appellant's depressive disorder and that there was no evidence that chiropractic treatment would be an efficacious or indicated therapy for depressive disorders. Dr. Friedman further opined that there was no correlation between the claimant's psychiatric condition and the need for chiropractic treatment, x-rays to exist. The Board finds that OWCP, in denying appellant's request for authorization of chiropractic treatment, properly found that the weight of the medical evidence with respect to this matter rests with the well-rationalized September 5, 2017 report of Dr. Friedman, OWCP's referral physician.

The reports of Dr. Metcalf¹⁵ and Dr. Greenhouse are of limited probative value in supporting appellant's request for authorization of chiropractic treatment as they failed to provide adequate medical rationale in support of their opinions that chiropractic care was necessary to treat appellant's accepted stress-related conditions.¹⁶ The Board has held that proof of causal relationship in cases involving a request for medical reimbursement of medical expenses must include supporting rationalized medical evidence, but appellant has not submitted such evidence in the present case.¹⁷

¹¹ *J.R.*, Docket No. 17-1523 (issued April 3, 2018); *Bertha L. Arnold*, 38 ECAB 282, 284 (1986).

¹² *S.W.*, Docket No. 17-1319 (issued December 7, 2017); *John E. Benton*, 15 ECAB 49 (1963).

¹³ 5 U.S.C. § 8101(2). *See A.D.*, Docket No. 18-1478 (issued February 4, 2019).

¹⁴ 20 C.F.R. § 10.5(bb).

¹⁵ The Board notes that Dr. Metcalf qualifies as a physician within the meaning of FECA and his June 7, 2017 report constitutes medical evidence because the evidence of record reveals he diagnosed cervical, thoracic, and lumbar spine subluxations as demonstrated by May 31, 2017

¹⁶ The Board notes that neither physician related appellant's need for medical care to the accepted conditions of other somatoform disorders (bruxism) and cracked tooth.

¹⁷ *See supra* note 13.

As noted above, in order to be entitled to reimbursement of medical expenses, it must be shown that the expenditures were incurred for treatment of the effects of an employment-related injury or condition.¹⁸ The Board finds that OWCP reasonably determined that the chiropractic treatment requested by appellant was unnecessary to treat an accepted employment-related condition as the evidence of record does not indicate that OWCP committed any act in connection with its denial of appellant's request for authorization of chiropractic treatment which could be found to be an abuse of discretion.¹⁹

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 by denying appellant's request for authorization of chiropractic treatment.

ORDER

IT IS HEREBY ORDERED THAT the May 18, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 13, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

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

¹⁸ See *supra* note 12.

¹⁹ See *supra* notes 9 through 11.