

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

_____)	
T.A., Appellant)	
)	
and)	Docket No. 19-1030
)	Issued: November 22, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Crete, IL, Employer)	
_____)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 10, 2019 appellant, through counsel, filed a timely appeal from a March 14, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that following the March 14, 2019 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.*

ISSUE

The issue is whether OWCP abused its discretion by denying authorization for appellant's requested cervical/thoracic spine facet radiofrequency ablation (RFA).

FACTUAL HISTORY

On January 17, 2009 appellant, then a 34-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that, on that date, she sustained injuries to the back of her head and shoulders when she was involved in a vehicle accident while in the performance of duty. On March 18, 2009 OWCP accepted her claim for neck sprain and paid intermittent wage-loss compensation benefits on the supplemental roll as of August 24, 2009. It expanded acceptance of the claim to include cervical strain and right rotator cuff tear on January 9, 2012.

In a report dated May 11, 2018, Dr. Neeraj Jain, Board-certified in pain medicine, reviewed appellant's history of injury, and noted that she continued to have neck pain as well as numbness and tingling in her upper extremities. He diagnosed cervical facet syndrome, cervicgia, myofascial pain syndrome, headaches, occipital neuritis, and bilateral carpal tunnel. Dr. Jain requested authorization for appellant to undergo bilateral C3, C4, C5, C6, and C7 RFA "left to be followed by the right."

In a development letter dated May 24, 2018, OWCP informed both appellant and Dr. Jain that it was unable to authorize the requested procedure because the request was outdated as it was not based on recent clinical findings. It noted that the evidence did not explain why this medical procedure was necessary for treatment of the accepted conditions. OWCP advised appellant and Dr. Jain of the evidence required for authorization of the requested treatment and afforded 30 days for submission of the necessary evidence.

In a report dated June 19, 2018, Sana Atcha, a nurse practitioner indicated that appellant reported waiting to receive bilateral C3, C4, C5, C6, and C7 RFA, and complained of persistent pain. She reiterated the recommendation for appellant to receive the bilateral C3, C4, C5, C6, and C7 RFA, and opined that appellant's symptoms were directly related to "the injury."

On June 20, 2018 Dr. Jain again requested authorization for cervical/thoracic facet RFA.

In separate development letter dated June 27, 2018, OWCP informed appellant and Dr. Jain that it was unable to authorize the requested procedure because the request was outdated based on the lack of recent clinical findings, and it did not explain how the need for the requested treatment resulted from the accepted employment injury. It informed them of the evidence needed for authorization, and afforded another 30 days for submission of the necessary evidence.

In reports dated May 19, July 5, August 2 and 7, 2018, Dr. Joseph Thometz, a Board-certified orthopedic surgeon, related that he had examined appellant and noted her complaints of right shoulder pain. He noted that Dr. Jain treated appellant for her neck condition.

In a report dated August 14, 2018, Dr. Christopher Morgan, a physical medicine and rehabilitation specialist, diagnosed cervical facet syndrome, cervicgia, myofascial pain syndrome, headaches, occipital neuritis, and bilateral carpal tunnel. He noted that appellant had twice received a cervical facet ablation, and that the procedure had twice been approved.

Dr. Morgan opined that this procedure was related to appellant's January 17, 2009 employment-related motor vehicle accident.

On August 16, 2018 Dr. Jain again requested authorization for cervical/thoracic facet RFA.

By decision dated August 28, 2018, OWCP denied authorization of the requested procedure finding that the evidence of record did not support that it was medically necessary to address the effects of appellant's accepted employment-related conditions.

On September 6, 2018 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative. She resubmitted reports from Dr. Jain, Dr. Thometz, and Dr. Morgan. In addition, appellant submitted continuous reports dated November 26, 2018 and January 9, February 7, and March 6, 2019 from Dr. Thometz.

On February 8, 2019 a telephonic hearing before an OWCP hearing representative was held. Appellant explained that she had received the requested procedure on two prior occasions. She explained that each procedure had reduced her pain for approximately two years and had allowed her to be more productive at work.

By decision dated March 14, 2019, OWCP's hearing representative affirmed OWCP's August 28, 2018 decision finding that it did not abuse its discretion in denying authorization for the requested cervical/thoracic facet RFA as there was no medical explanation as to why the requested procedure was medically necessary for treatment of conditions causally related to the accepted January 17, 2009 employment injury.

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 the 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 this section of FECA, the Board has recognized that OWCP has broad discretion in approving services provided under section 8103, with the only limitation on OWCP's authority being that of reasonableness.⁶

To be entitled to reimbursement of medical expenses, a claimant has the burden of proof to establish that the expenditures were incurred for treatment of the effects of an employment-related injury or condition. Proof of causal relationship in a case such as this must include

⁴ 5 U.S.C. § 8103; *see A.G.*, Docket No. 19-0113 (issued July 12, 2019); *L.D.*, 59 ECAB 648 (2008).

⁵ *B.J.*, Docket No. 18-1186 (issued July 9, 2019); *Kennett O. Collins, Jr.*, 55 ECAB 648 (2004).

⁶ *L.S.*, Docket No. 19-0388 (issued July 8, 2019); *see D.K.*, 59 ECAB 141 (2007).

supporting rationalized medical evidence.⁷ In order for a medical procedure to be authorized, a claimant must submit evidence to show that the requested procedure is for a condition causally related to an employment injury and that it is medically warranted. Both of these criteria must be met in order for OWCP to authorize payment.⁸

ANALYSIS

The Board finds that OWCP did not abuse its discretion by denying authorization for appellant's cervical/thoracic spine facet RFA.

Appellant's attending physicians, Drs. Jain and Morgan, indicated that the requested procedure was needed based on the symptoms she was experiencing. In their reports they both noted that she continued to experience neck pain as well as numbness and tingling in her upper extremities, and that the cervical/thoracic spine facet RFA procedure would help remedy her symptoms. However, the doctors did not provide a rationalized explanation, based upon medical findings, that the proposed procedure was in fact medically necessary for her accepted conditions.⁹ Both physicians diagnosed cervical facet syndrome, cervicalgia, myofascial pain syndrome, headaches, occipital neuritis, and bilateral carpal tunnel. However they did not explain why the requested procedure was medically necessary to treat the accepted employment conditions of neck sprain, cervical strain, and right rotator cuff tear. As noted above, to be entitled to reimbursement of medical expenses, a claimant has the burden of establishing that the expenditures were incurred for treatment of the effects of an employment-related injury or condition.¹⁰ The Board finds that Drs. Jain's and Morgan's reports do not include a rationalized medical opinion which explains the medical necessity for the cervical/thoracic spine facet RFA procedure in order to treat appellant's accepted conditions.¹¹

OWCP also received a series of reports from Dr. Thometz, who noted appellant's continuing right shoulder complaints, but offered no opinion regarding the necessity of the requested procedure. These reports therefore lack probative value regarding the issue of whether the requested procedures were medically necessary due to the accepted employment injury.¹²

Appellant also submitted records from a nurse practitioner. However; the Board has held that treatment notes signed by a nurse practitioner are not considered medical evidence as a nurse

⁷ *A.G.*, *supra* note 4; *M.B.*, 58 ECAB 588 (2007).

⁸ *B.J.*, *supra* note 5; *R.C.*, 58 ECAB 238 (2006).

⁹ *A.G.*, *supra* note 4; *R.C.*, Docket No. 12-0437 (issued October 23, 2012).

¹⁰ *See L.S.*, Docket No. 19-0388 (issued July 8, 2019).

¹¹ *N.G.*, Docket No. 18-1340 (issued March 6, 2019); *V.S.*, Docket No. 17-0874 (issued December 6, 2017).

¹² *See G.V.*, Docket No. 18-0482 (issued May 21, 2019).

practitioner is not a physician under FECA.¹³ The nurse practitioner's opinion therefore is of no probative value in establishing medical necessity of a requested procedure.¹⁴

As appellant has not submitted any rationalized medical opinion evidence explaining the necessity of the cervical/thoracic facet RFA and its relationship to the accepted employment conditions OWCP did not abuse its discretion in denying authorization.

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 by denying authorization for appellant's cervical/thoracic spine facet RFA.

ORDER

IT IS HEREBY ORDERED THAT the March 14, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 22, 2019
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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

¹³ See *David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician's assistants, nurses and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law).

¹⁴ See *G.S.*, Docket No. 18-0911 (issued October 28, 2019).