

ISSUE

The issue is whether OWCP has abused its discretion by denying appellant's request for authorization of an adjustable bed with a queen size therapeutic mattress.

FACTUAL HISTORY

On February 6, 1992 appellant, then a 32-year-old personnel clerk, filed a traumatic injury claim (Form CA-1) alleging that on February 4, 1992 she injured her left knee when she struck it on a file cabinet under her desk while in the performance of duty. She stopped work on February 5, 1992. OWCP assigned the claim OWCP File No. xxxxxx923 and accepted for the conditions of left knee medial contusion and internal derangement.³ It paid appellant wage-loss compensation on the supplemental rolls commencing March 7, 1993 and authorized two subsequent left knee arthroscopic surgeries.⁴

OWCP subsequently expanded the acceptance of the present claim, OWCP File No. xxxxxx923, to include herniated discs at L4-5 and L5-S1, derangement of the medial meniscus of the left knee, degeneration of thoracic or thoracolumbar intervertebral disc, thoracic or lumbar spondylolisthesis, traumatic amputation of right toes with complications, chronic pain, dermatophytosis of the right nail, and actinic keratosis.⁵ Appellant underwent authorized lumbar laminectomy at L4-5 and L5-S1 with anterior lumbar interbody fusion via posterior approach and posterolateral intertransverse paravertebral gutter effusion, L4 to S1 bilaterally on November 6, 2006. On August 3, 2007 she underwent authorized amputation of her right fourth and fifth toes due to gangrene. In addition, appellant underwent authorized right knee arthroscopy with synovectomy and chondroplasty on July 20, 2008.

On April 30, 2018 Dr. Richard R.M. Francis, an attending Board-certified orthopedic surgeon, performed authorized bilateral partial laminectomy at L3 and L4 and bilateral decompression and fusion at L3-4 and L4 nerve roots to treat appellant's preoperative diagnoses of severe spinal stenosis at L3-4, spondylolisthesis at L3 and L4, bilateral lumbar radiculopathy, and previous posterior fusion at L4-5 and L5-S1. On May 1, 2018 he submitted a durable medical equipment (DME) order for a firm therapeutic foam mattress.

³ Appellant subsequently filed two additional claims before OWCP. In OWCP File No. xxxxxx092 OWCP accepted an October 22, 1997 left ankle sprain and authorized arthroscopic left knee surgery performed on April 6, 1998. In OWCP File No. xxxxxx764 it accepted a February 20, 2001 left knee medial meniscus tear, bilateral derangement of the anterior horn and medial meniscus, chronic pain syndrome, and localized primary osteoarthritis of the lower leg. Appellant underwent authorized arthroscopic left knee surgery on January 16, 2002 and arthroscopic right knee surgery on July 20, 2006. On July 23, 2002 OWCP administratively combined OWCP File Nos. xxxxxx092, xxxxxx764, and xxxxxx923, with OWCP File No. xxxxxx923 serving as the master file.

⁴ Appellant underwent additional left knee arthroscopic surgeries on March 31, 1992 and August 24, 1995.

⁵ Appellant stopped work on September 11, 2001 and has not returned.

OWCP thereafter received a May 21, 2018 DME order from Dr. Francis who requested authorization for a therapeutic foam mattress with an adjustable bed frame to treat appellant's diagnosis of a prolapsed lumbar intervertebral disc.

In a June 9, 2018 letter, appellant inquired about the status of her request for an adjustable bed with a queen size therapeutic mattress. She claimed that the mattress set would make a difference and ease her pain during her recovery process following her second major lumbar surgery.

OWCP, in a development letter dated June 11, 2018, informed appellant of the deficiencies of her request for authorization of a prescribed bed and advised her of the type of evidence needed to support her request. This was to include a statement from her physician that described the basic equipment and the medical reasons for recommending the equipment, the specific goals of or benefits expected from this equipment, how often she would utilize the equipment, the expected duration of its use, a description of alternative treatment that might achieve the same results, and explain why the same effect could not be achieved in a conventional mattress set with a backboard and why a queen-sized bed, rather than a full size bed, was warranted. Appellant was also to provide at least two detailed quotes for the adjustable bed and mattress. She was afforded 30 days to submit the necessary evidence.

In letters dated June 15 and July 2, 2018, appellant noted her February 4, 1992 work-related injuries and resultant authorized surgeries, including her April 30, 2018 lumbar surgery. She explained that she required a queen size mattress set with an adjustable base because she was a "full-figured" woman with many injuries and increased pain that caused her to roll from side to side while in bed. Appellant asserted that a full size mattress set would cause her to fall out of bed. She further asserted that her recovery process was very difficult without proper relaxation and sleep.

Dr. Francis, in an August 28, 2018 DME authorization request, again sought authorization for a therapeutic foam mattress to treat appellant's diagnosed prolapsed lumbar intervertebral disc. He indicated that the length of use for the requested mattress was one year. Dr. Francis noted that the equipment was necessary due to appellant's bilateral laminectomy and decompression at L3-4 with facetectomy and foraminal decompression.

On September 13, 2018 OWCP requested that its district medical adviser (DMA) review a statement of accepted facts (SOAF) and provide an opinion regarding the medical necessity of the requested adjustable bed with a queen size therapeutic mattress as prescribed by Dr. Francis.

In a September 24, 2018 report, Dr. Nathan Hammel, a Board-certified orthopedic surgeon, serving as the DMA, indicated that he had reviewed the SOAF and medical record. He answered "Yes" to the question of whether the need for the proposed adjustable bed with a queen size therapeutic mattress was causally related to the accepted medical conditions. However, the DMA responded "No" with regard to the question of whether the proposed mattress was medically necessary. He explained that there was no well-established functional benefit to any specific type of mattress with or without surgery. The DMA noted that the requested mattress was not likely to decrease appellant's leg pain or increase functionality and was therefore not medically necessary.

A September 26, 2018 DME authorization request from a mattress vendor indicated that the cost of a smart bed was \$7,492.58, including delivery and sales tax.

OWCP, in an October 1, 2018 letter, requested that appellant and her physician review the DMA's September 24, 2018 report regarding the request for an adjustable bed with a queen size therapeutic mattress.

On October 14, 2018 appellant requested that OWCP refer her to a second opinion examiner to determine the medical necessity of the requested mattress.

In a record of a telephone conversation (Form CA-110) dated December 12, 2018, appellant contended that the DMA's September 24, 2018 opinion did not properly consider her second back surgery, which was more extensive.

OWCP subsequently received a December 4, 2018 quote which indicated that the cost of an adjustable queen size mattress and bed frame was \$2,486.50, including sales tax and delivery.

OWCP also received additional medical evidence. In a November 5, 2018 report, Dr. Djamchid Lotfi, a neurologist, opined that appellant required a swim spa to exercise her lower extremities, physical therapy, an attendant service because she could not drive to her appointments, and an orthopedic mattress due to her symptomology.⁶ He noted a history that she had two toes amputated in November 2006 and underwent lumbar surgery on April 30, 2018. Dr. Lotfi indicated that appellant had numbness and tingling in her hands and that she had headaches.

OWCP, by decision dated December 27, 2018, denied appellant's request for authorization to purchase an adjustable bed with a queen size therapeutic mattress finding that the opinion of its DMA constituted the weight of the medical evidence and established that the mattress was not medically necessary to address the effects of her accepted employment-related conditions.

On January 16, 2019 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

In a February 23, 2019 letter, appellant contended that the denial of her request was due to a lack of current medical evidence. She requested approval for the prescribed mattress set in addition to further treatment and reimbursements for physical therapy, attendant units, as well as therapeutic items.

By decision dated April 25, 2019, an OWCP hearing representative affirmed the December 27, 2018 decision. The hearing representative found that the weight of the medical evidence continued to rest with the September 24, 2018 opinion of OWCP's DMA and established that the requested adjustable bed with a queen size therapeutic mattress was not medically necessary as a result of appellant's accepted employment injuries.

⁶ Although the record contains this request for additional DME authorizations, there is no decision of record as to whether these were ruled upon by OWCP and therefore these authorization requests are not presently before the Board.

On May 17, 2019 appellant requested reconsideration and submitted additional evidence. In a March 9, 2019 report, Dr. Francis provided examination findings and assessments of low back pain and lumbar radiculopathy. He noted that appellant had trouble obtaining the hospital bed that he had ordered and that additional information was required. Dr. Francis indicated that he would do his best to provide that information. No further information was received.

OWCP, by decision dated August 14, 2019, denied modification of the April 25, 2019 decision.

LEGAL PRECEDENT

Section 8103(a) of FECA⁷ 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.⁸ 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.⁹

In interpreting section 8103(a), the Board has recognized that OWCP has broad discretion in approving services provided under section 8103, with the only limitation on OWCP's authority is that of reasonableness.¹⁰ 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.¹¹ 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.¹²

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.¹³

⁷ *Supra* note 1.

⁸ 5 U.S.C. § 8103; *see N.G.*, Docket No. 18-1340 (issued March 6, 2019); *G.A.*, Docket No. 18-0872 (issued October 5, 2018); *see Thomas W. Stevens*, 50 ECAB 288 (1999).

⁹ *See R.M.*, Docket No. 19-1319 (issued December 10, 2019); *Debra S. King*, 44 ECAB 203, 209 (1992).

¹⁰ *M.B.*, Docket No. 17-1679 (issued February 8, 2018); *see D.K.*, 59 ECAB 141 (2007).

¹¹ *See A.W.*, Docket No. 16-1812 (issued March 15, 2017).

¹² *M.G.*, Docket No. 18-0099 (issued April 26, 2018); *see Debra S. King*, *supra* note 9.

¹³ *M.G.*, *id.*; *see Minnie B. Lewis*, 53 ECAB 606 (2002).

ANALYSIS

The Board finds that OWCP has not abused its discretion by denying appellant's request for authorization for an adjustable bed with a queen-size therapeutic mattress.

Dr. Hammel, serving as a DMA, reviewed the medical record and a SOAF on September 24, 2018 and determined that the purchase of the recommended queen size therapeutic mattress was causally related to the accepted injuries. He further found, however, that the purchase of the recommended mattress was not medically necessary. The DMA explained that there was no well-established functional benefit to any specific type of mattress with or without surgery. He further explained that the recommended mattress was not likely to decrease pain or increase functionality and thus concluded that the queen size therapeutic mattress was not medically necessary.

On May 1, 2018 Dr. Francis, appellant's treating physician, made his initial request that OWCP authorize a queen size therapeutic mattress set to treat appellant's accepted condition of prolapsed lumbar intervertebral disc. He subsequently explained that a therapeutic, queen size mattress set with an adjustable frame was necessary due to her authorized April 30, 2018 lumbar surgery and that the length of use for the requested mattress was one year. Dr. Francis reported on March 7, 2019 that appellant had low back pain and lumbar radiculopathy. Although he opined that the adjustable bed was necessary to treat her accepted lumbar condition, his reports failed to provide a rationalized medical opinion explaining why the requested equipment was medically warranted.¹⁴ While Dr. Francis indicated that he would submit additional information to support his request for the hospital bed, no further evidence was received.

Dr. Lotfi's November 5, 2018 report mentions the need for an orthopedic mattress, however, he does not provide a rationalized opinion explaining how or why the mattress would cure, give relief, reduce the degree or period of disability, or aid in lessening the amount of monthly compensation. The Board has held that a report is of limited probative value if it does not contain medical rationale which explains a physician's opinion.¹⁵ This note is therefore insufficient to establish an abuse of discretion.

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.¹⁶ As OWCP's DMA opined that the requested medical equipment was not medically necessary and provided an explanation of his opinion, and the evidence submitted by appellant insufficient to overcome the weight accorded to the DMA, the Board finds that OWCP has not abused its discretion in denying appellant's request for authorization for a queen-size therapeutic mattress.

¹⁴ See *M.B.*, *supra* note 10; *Kennett O. Collins, Jr.*, 55 ECAB 648 (2004).

¹⁵ *D.L.*, Docket No. 19-0900 (issued October 28, 2019); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017); *C.M.*, Docket No. 14-0088 (issued April 18, 2014).

¹⁶ See *supra* note 11.

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 for an adjustable bed with a queen size therapeutic mattress.

ORDER

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

Issued: August 25, 2020
Washington, DC

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

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

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board