

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

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**J.M., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Palatine, IL, Employer**

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**Docket No. 20-0457  
Issued: July 16, 2020**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
JANICE B. ASKIN, Judge  
PATRICIA H. FITZGERALD, Alternate Judge

**JURISDICTION**

On December 29, 2019 appellant filed a timely appeal from a December 19, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

**ISSUE**

The issue is whether OWCP abused its discretion in denying authorization for a pulsed electromagnetic field (PEMF) therapy device.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On December 1, 2018 appellant, then a 58-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on November 28, 2018 he injured his right hand when he broke a seal of ice on a mailbox while in the performance of duty. He stopped work on the date of injury.

On December 20, 2018 OWCP accepted appellant's claim for the contusion of the right hand and aggravation of right carpal tunnel syndrome. On January 25, 2019 appellant underwent an authorized right carpal tunnel release, which was performed by Dr. Eugene P. Lopez, an attending Board-certified orthopedic surgeon. OWCP paid wage-loss compensation on the supplemental rolls, as of January 14, 2019, and on the periodic rolls as of March 31, 2019.

Appellant returned to full-time, full-duty work without restrictions on May 14, 2019.

In an October 14, 2019 medical report, Dr. Lopez noted that there had been no significant changes in his right wrist symptoms; however, appellant indicated that he still had pain at times, mostly after work. On examination of the right wrist, he found a well-healed surgical scar, no swelling, deformity, or tenderness, improving range of motion, 5/5 strength, and an intact neurovascular examination. Dr. Lopez provided an impression of eight and one-half months status post right carpal tunnel release. He recommended a home exercise program and prescribed a PEMF therapy device. Dr. Lopez certified that the device was medically indicated and opined that it was reasonable and necessary for the treatment of appellant's condition. He related that the device was also for the management of pain, inflammation, and swelling. Dr. Lopez expected that its use would accelerate appellant's recovery and decrease the use of pain medication. He concluded that appellant may return to regular-duty work without restrictions. In a prescription dated October 14, 2019, Dr. Lopez requested authorization for the PEMF therapy device for appellant's hand/wrist.

On November 19, 2019 OWCP requested that its district medical adviser (DMA) review a statement of accepted facts (SOAF) and the medical record, and provide an opinion regarding the medical necessity of the PEMF therapy device requested by Dr. Lopez.

In a December 9, 2019 letter, Dr. Nathan Hammel, a Board-certified orthopedic surgeon, serving as the DMA, indicated that he had reviewed the SOAF and the medical record, including Dr. Lopez's October 14, 2019 report. He acknowledged that the requested treatment was intended to treat the accepted condition of carpal tunnel syndrome. However, the DMA advised that the requested device was not supported by evidenced-based guidelines. He noted that there was no indication that it would decrease pain or increase function. The DMA opined that the requested device was not medically necessary. He reasoned that Dr. Lopez documented no objective deficit which warranted additional treatment. The DMA indicated that he found no swelling, tenderness, or weakness. He concluded that no additional treatment was needed.

By decision dated December 19, 2019, OWCP denied authorization for the PEMF therapy device. It found that the opinion of its DMA constituted the weight of the medical evidence and established that the requested medical device was not medically necessary to address the effects of appellant's accepted employment-related conditions.

## LEGAL PRECEDENT

Section 8103(a) 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.<sup>2</sup> 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.<sup>3</sup>

Section 10.310(a) of OWCP's implementing regulations provide that an employee is entitled to receive all medical services, appliances, or supplies which a qualified physician prescribes or recommends and which OWCP considers necessary to treat the work-related injury.<sup>4</sup>

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.<sup>5</sup> 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.<sup>6</sup>

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.<sup>7</sup>

## ANALYSIS

The Board finds that OWCP did not abuse its discretion in denying authorization for a PEMF therapy device.

OWCP accepted that appellant sustained a contusion of the right hand and aggravation of right carpal tunnel syndrome due to a November 28, 2018 employment injury. Appellant underwent authorized right carpal tunnel release on January 25, 2019.

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<sup>2</sup> *Id.* at § 8103; *see D.S.*, Docket No. 18-0353 (issued May 18, 2020); *L.D.*, 59 ECAB 648 (2008).

<sup>3</sup> *M.P.*, Docket No. 19-1557 (issued February 24, 2020); *M.B.*, 58 ECAB 588 (2007).

<sup>4</sup> 20 C.F.R. § 10.310(a); *see D.W.*, Docket No. 19-0402 (issued November 13, 2019).

<sup>5</sup> *B.I.*, Docket No. 18-0988 (issued March 13, 2020); *see also Daniel J. Perea*, 42 ECAB 214, 221 (1990) (holding that abuse of discretion by OWCP is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or administrative actions which are contrary to both logic, and probable deductions from established facts).

<sup>6</sup> *D.S.*, *supra* note 2.

<sup>7</sup> *Id.*; *L.W.*, 59 ECAB 471 (2008).

Appellant's treating physician, Dr. Lopez, thereafter sought authorization for a PEMF therapy device. He maintained that the device was necessary for the management of pain, inflammation, and swelling in appellant's right wrist status post right carpal tunnel release. Dr. Lopez expected that the requested device would accelerate his recovery and decrease his use of pain medication. On physical examination he found a well-healed surgical scar, no swelling, deformity, or tenderness, improving range of motion, 5/5 strength, and an intact neurovascular examination, but noted appellant's complaint of continued right wrist pain, mostly after work. Dr. Lopez did not provide medical rationale explaining how or why the requested device was in fact necessary to treat appellant's accepted right carpal tunnel syndrome particularly in light of a lack of objective findings. Medical evidence that states a conclusion, but does not offer a rationalized medical explanation regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>8</sup> The Board finds that Dr. Lopez failed to provide a rationalized opinion and, thus, OWCP did not abuse its discretion in denying his request for authorization.<sup>9</sup>

In a December 9, 2019 report, the DMA reviewed the SOAF and Dr. Lopez's report. While he noted that the medical device requested by Dr. Lopez was intended to treat the accepted carpal tunnel syndrome condition, he opined that it was not medically warranted. The DMA explained that the medical device was not supported by evidenced-based guidelines and there was no indication that it would improve appellant's condition. Furthermore, he explained that Dr. Lopez's examination revealed no objective physical findings that required additional treatment, noting his findings of no swelling, tenderness, or weakness. The DMA's opinion was also based on a complete factual background, SOAF, and a review of the medical record. As such, his opinion represents the weight of the medical evidence with respect to the requested medical device.<sup>10</sup>

As noted, the only restriction on OWCP's authority to authorize medical treatment is one of reasonableness.<sup>11</sup> OWCP obtained a well-rationalized report from its DMA in which he opined that the requested PEMF therapy device was not medically warranted to treat appellant's accepted right carpal tunnel syndrome condition. It, therefore, did not abuse its discretion in denying authorization for the PEMF therapy device.

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.

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<sup>8</sup> *M.M.*, Docket No. 19-0491 (issued August 14, 2019); *G.V.*, Docket No. 18-0482 (issued May 21, 2019).

<sup>9</sup> *See P.L.*, Docket No. 18-0260 (issued April 14, 2020); *L.S.* Docket No. 18-1746 (issued April 9, 2019).

<sup>10</sup> *See J.O.*, Docket No. 19-0326 (issued July 16, 2019); *J.R.*, Docket No. 17-1523 (April 3, 2018); *M.B.*, Docket No. 17-1679 (issued February 8, 2018).

<sup>11</sup> *See supra* note 5.

**CONCLUSION**

The Board finds that OWCP properly exercised its discretion in denying authorization for a PEMF therapy device.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 19, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 16, 2020  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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