United States Department of Labor
Employees' Compensation Appeals Board

S.K., Appellant	)	
and	)	**Docket No. 20-1348**
	)	**Issued: May 3, 2022**
U.S. POSTAL SERVICE, RIVERDALE BRANCH, Riverdale, IL, Employer	)	

Appearances:
Dr. Rita N. Oganwu, for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 17, 2020 appellant, through her representative, filed a timely appeal from a February 3, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP).[2]

[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] The Board notes that, following the September 3, 2020 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*.

Pursuant to the Federal Employees' Compensation Act[3] (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 properly denied appellant's request for authorization for diagnostic studies.

FACTUAL HISTORY

On April 18, 2015 appellant, then a 48-year-old carrier technician, filed a traumatic injury claim (Form CA-1) alleging that on April 17, 2015 she sustained a right shoulder strain when a mailbox fell out of the wall and injured her while in the performance of duty. She stopped work on April 17, 2015 and returned to light-duty work on April 27, 2015. On August 20, 2015 OWCP accepted the claim for right shoulder strain and lumbar strain.

OWCP subsequently received additional medical evidence. A July 10, 2015 report indicated that on that date appellant underwent a right shoulder x-ray, which demonstrated mild degenerative changes involving the acromioclavicular (AC) joint without evidence of a fracture or subluxation. Lumbar spine x-rays of even date demonstrated degenerative changes of the mid-to-lower facet joints. On September 8, 2015 appellant underwent electromyogram and nerve conduction velocity (EMG/NCV) testing of the lower extremities, which demonstrated no electrodiagnostic evidence of sensory motor polyneuropathy nor lumbosacral radiculopathy. On May 6, 2016 she underwent a lumbar spine magnetic resonance imaging (MRI) scan, which demonstrated mild degenerative disc disease at L5-S1.

In a series of reports dated July 10, 2015 through June 9, 2016, appellant's attending physician, Dr. Rita N. Oganwu, Board-certified in internal and geriatric medicine, noted her history of right shoulder and lower back pain. She provided a variety of diagnoses including degenerative joint disease of the right shoulder, tendinitis right shoulder, trigger point left lumbar region, right bicipital tendonitis, hip joint pain, right hip trochanteric bursitis, left ischial tuberosity bursitis, sacroiliitis cervical and lumbosacral radiculopathies. Dr. Oganwu found that appellant was partially disabled from work as she could not lift or carry more than 10 pounds. In an August 4, 2015 duty status report (Form CA-17), she provided restrictions of lifting and carrying up to 10 pounds, and limited climbing, kneeling. and stooping up to two hours a day.

On February 1 and June 17 2016 Dr. Srinivasu Kusuma, a Board-certified orthopedic surgeon, described appellant's April 17, 2015 employment injury and performed a physical examination. He diagnosed right AC joint osteoarthrosis, right rotator cuff strain, right shoulder rotator cuff tendinosis and L5-S1 degenerative disc disease with left lower extremity radiculopathy. Dr. Kusuma opined that appellant's conditions were work related. He found that appellant could perform light-duty work.

On June 23, 2016 Dr. Christopher Morgan, a Board-certified internist, described appellant's employment injury and reviewed her diagnostic testing. He noted that she had

[3] 5 U.S.C. § 8101 *et seq*.

experienced right shoulder pain since her injury on April 17, 2015 and diagnosed mild degenerative disc disease at L5-S1 and possible lumbosacral radiculitis of the left lower extremity. Dr. Morgan recommended left L4-5 and L5-S1 facet joint injections. Dr. Neeraj Jain, a Board-certified anesthesiologist, performed these procedures on August 18, September 15, and October 6, 2016.

In notes dated July 30, 2016 through December 31, 2018, Dr. Oganwu diagnosed lumbar strain, shoulder strain, bicipital tendinitis right shoulder, bursitis of the right shoulder, left shoulder lesions, lumbar trigger point syndrome, gluteal tendinitis, left hip bursitis, hip joint pain, cervical and lumbar radiculopathies. She completed CA-17 forms dated from January 23 through December 31, 2018 repeating her prior work restrictions, and also restricting appellant's pushing and pulling to 10 pounds.

Dr. Blair Rhode, a Board-certified orthopedic surgeon, examined appellant on March 14 through April 16, 2018 due to left shoulder and low back pain. He noted that her symptoms were secondary to her April 17, 2015 injury at work when she turned and twisted injuring her lumbar spine and sustaining a right shoulder rotator cuff strain. Dr. Rhode diagnosed sprain of the right rotator cuff capsule, superior glenoid labrum lesion of the right shoulder, lumbar radiculopathy, and rotator cuff strain. He found that appellant could perform light-duty work. Dr. Rhode requested a repeat MRI scan of the lumbar spine due to the persistent symptomatology.

Dr. Oganwu continued to provide treatment notes from January 30 through July 11, 2019 and reported that appellant was experiencing pain in the shoulder, neck and lower back radiating down her left lower leg. She diagnosed shoulder strain, lumbar strain, bicipital tendinitis right shoulder, cervical radiculopathy, and lumbar radiculopathy. Dr. Oganwu noted that appellant had a workers' compensation claim, but did not address the specific cause of her diagnosed conditions. She reviewed a March 28, 2018 lumbar MRI scan and found multilevel degenerative joint disease. Dr. Oganwu completed CA-17 forms dated from January 29 through April 30, 2019 and reiterated appellant's prior work restrictions.

In notes beginning October 14, 2019, Dr. Oganwu noted that appellant's left shoulder pain, back pain, and numbness and tingling in the left leg had been increasing since August 2019. She diagnosed shoulder strain, lumbar strain, lumbar radiculopathy, and left shoulder pain. On January 2 and 28, 2020 Dr. Oganwu requested authorization for an additional EMG/NCV study of the lumbar spine and an x-ray of the left shoulder.

By decision dated February 3, 2020, OWCP denied appellant's request for authorization of an x-ray and EMG/NCV testing. It found that these procedures were not medically necessary to address the effects of her accepted work-related conditions of right shoulder strain and lumbar strain.

LEGAL PRECEDENT

Section 8103(a) of FECA[4] 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 by or

[4] *Supra* note 3.

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.[5] 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.[6]

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.[7]

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.[8] 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.[9]

Abuse of discretion is 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]

ANALYSIS

The Board finds that OWCP properly denied appellant's request for authorization for diagnostic studies.

On January 2 and 28, 2020 Dr. Oganwu requested authorization for an additional EMG/NCV study of appellant's lumbar spine and an x-ray of her left shoulder.

In notes beginning October 14, 2019, Dr. Oganwu reported that appellant's left shoulder pain, back pain, and numbness and tingling in the left leg had been increasing since August 2019. She diagnosed shoulder strain, lumbar strain, lumbar radiculopathy, and left shoulder pain.

[5] *Id.*; *see D.S.*, Docket No. 18-0353 (issued May 18, 2020); *L.D.*, 59 ECAB 648 (2008); *Thomas W. Stevens*, 50 ECAB 288 (1999).

[6] *M.P.*, Docket No. 19-1557 (issued February 24, 2020); *M.B.*, 58 ECAB 588 (2007).

[7] 20 C.F.R. § 10.310(a); *see D.W.*, Docket No. 19-0402 (issued November 13, 2019).

[8] *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).

[9] *D.S.*, *supra* note 5.

[10] *Id.*; *P.L.*, Docket No. 18-0260 (issued April 14, 2020); *L.W.*, 59 ECAB 471 (2008).

However, Dr. Oganwu did not attribute the change in appellant's symptoms to her accepted April 17, 2015 employment injury.

As noted, the only restrictions on OWCP's authority to authorize medical treatment is one of reasonableness.[11] In the instant case, appellant has not submitted evidence to support that the requested repeat diagnostic studies were medically necessary to assess her accepted conditions of right shoulder and lumbar sprains. The Board, thus, finds that OWCP has not abused its discretion by denying her request for authorization for x-rays and EMG/NCV studies.[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 did not abuse its discretion by denying appellant's request for authorization for diagnostic studies.

[11] *Supra* note 9; *see also E.F.*, Docket No. 20-1680 (issued November 10, 2021) (the Board found that OWCP did not abuse its discretion when the claimant failed to submit evidence to support that the requested medical service was medically necessary to treat her accepted conditions); *A.W.*, Docket No. 14-0708 (issued January 2, 2015) (the Board found that OWCP did not abuse its discretion by relying on the opinion of its second opinion examiner as the weight of evidence to deny approval for elective spinal surgery).

[12] *D.C.*, Docket No. 18-0080 (issued May 22, 2018); *B.J.*, Docket No. 17-1825 (issued February 23, 2018).

ORDER

IT IS HEREBY ORDERED THAT the February 3, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 3, 2022
Washington, DC

Alec J. Koromilas, 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