United States Department of Labor
Employees' Compensation Appeals Board

C.Y., Appellant	)	
	)	**Docket No. 21-0335**
and	)	**Issued: November 7, 2022**
U.S. POSTAL SERVICE, POST OFFICE, Kissimmee, FL, Employer	)	

Appearances:
Joanne Marie Wright, 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
JANICE B. ASKIN, Judge

JURISDICTION

On January 10, 2021 appellant, through his representative, filed a timely appeal from a December 28, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (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 December 28, 2020 decision, appellant submitted additional evidence to OWCP. 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 properly denied authorization for physical therapy during the period October 12, 2015 through January 12, 2016.

FACTUAL HISTORY

On March 26, 2014 appellant, then a 52-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on March 21, 2014 he sustained injury to his neck, shoulders, hands, low back, and feet when bending/twisting his body to handle mail while in the performance of duty. He stopped work on the date of the claimed injury. OWCP assigned the claim OWCP File No. xxxxxx919 and accepted it for permanent aggravation of the following conditions: left rotator cuff tear/sprain, left shoulder impingement, left shoulder tendinitis, internal derangement of both shoulders, cervical disc syndrome, lumbar disc syndrome, and intervertebral disc disorder with myelopathy of the cervical and lumbar regions.[4] It subsequently expanded the acceptance of appellant's claim to include anxiety disorder and recurrent major depressive disorder, severe without psychotic features.

On October 15, 2015 OWCP received appellant's request for authorization for physical therapy covering the period October 12, 2015 through January 12, 2016, to include therapeutic exercise, massage, aquatic, ultrasound, and electric stimulation therapy of the cervical spine, shoulders, and lumbar spine.

In an October 23, 2015 development letter, OWCP informed appellant of the deficiencies of his request for authorization of physical therapy. It advised him of the type of medical evidence needed and afforded him 30 days to submit the necessary evidence.[5]

By decision dated January 22, 2016, OWCP denied appellant's request for authorization of physical therapy for the period October 12, 2015 through January 12, 2016, finding that the medical evidence of record was insufficient to establish that the requested therapy was necessary to treat an accepted work-related condition.

[4] OWCP had previously accepted under OWCP File No. xxxxxx575 that appellant sustained a traumatic injury on June 21, 2007 in the form of left shoulder tendinitis. On September 15, 2011 appellant underwent OWCP-authorized left rotator cuff repair. OWCP also had previously accepted under OWCP File No. xxxxxx546 that appellant sustained a traumatic injury on November 26, 2012 in the form of permanent aggravation of left rotator cuff tear, left shoulder impingement, internal derangement of both shoulders, cervical disc syndrome, and lumbar disc syndrome. Appellant filed other claims, which are now closed due to inactivity, including: a claim accepted for a December 31, 1999 left shoulder strain (assigned OWCP File No. xxxxxx335); a claim accepted for occupational left shoulder tendinitis sustained by June 8, 2000 (assigned OWCP File No. xxxxxx872); and a claim accepted for September 20, 2005 thoracic and neck strains (assigned OWCP File No. xxxxxx800). OWCP administratively combined OWCP File Nos. xxxxxx919, xxxxxx575, xxxxxx546, xxxxxx335, xxxxxx872, and xxxxxx800, with OWCP File No. xxxxxx919 designated as the master file.

[5] OWCP indicated that physical therapy visits had already been authorized for previous extended periods under OWCP File No. xxxxxx546 for "the same accepted conditions" as under OWCP File No. xxxxxx919, but asserted that the therapy had not resulted in increased function or a decrease in the level of disability anticipated. It advised that, "[T]herefore, further [physical therapy] treatments are not authorized at this time."

On December 21, 2016 appellant, through her representative, requested reconsideration.

Appellant submitted a March 17, 2016 document in which Dr. Bishai, a Board-certified orthopedic surgeon detailed appellant's prescribed medications, as well as unsigned dispensary documents dated between early-2016 and early-2017.

By decision dated March 10, 2017, OWCP denied modification of its January 22, 2016 decision.

On February 22, 2018 appellant, through her representative, requested reconsideration of the March 10, 2017 decision.

Appellant submitted unsigned dispensary documents dated between mid-2016 and mid-2017 and the results of diagnostic testing of his cervical spine, shoulders, and lumbar spine from late-2017. An unsigned administrative document, dated August 18, 2017, indicated, "Patient has chronic spasm and stiffness on cervical spine and lumbar spine and will benefit [from] massage therapy." An unsigned "treatment plan" document, with a "date requested" of October 27, 2017 noted that physical therapy would help decrease appellant's nerve and muscle inflammation and his use of medication.

In a June 7, 2017 report, Dr. Hoi V. Do, a Board-certified family medicine physician, diagnosed several cervical spine, upper extremity, shoulder, lumbar spine, and lower extremity conditions, which he related to appellant's work duties. He recommended that appellant undergo physical therapy twice a week for nine weeks to decrease pain, increase range of motion, increase strength and endurance, and improve function and functional performance.

In August 18 and October 24, 2017 reports, Dr. Sydel Legrande, a Board-certified family practice physician, diagnosed cervical spine, shoulder, lumbar spine, and lower extremity conditions, as well as depression/anxiety, which she related to appellant's employment injuries. She argued that OWCP should expand acceptance of appellant's claim to include bilateral knee conditions as causally related to the March 21, 2014 employment injury.

In a September 29, 2017 report, Dr. Bharatkumar Patel, a Board-certified neurologist, diagnosed cervical spine, shoulder, lumbar spine, and lower extremity conditions, as well as depression/anxiety, which he related to appellant's employment injuries. He noted, "[t]he patient does need physical therapy in my opinion."

In an October 25, 2017 report, Dr. Conrad Tamea, a Board-certified orthopedic surgeon, diagnosed cervical spine, shoulder, lumbar spine, and lower extremity conditions, as well as depression, anxiety disorder, and insomnia. He noted, "[a]t this time I am recommending continued physical therapy. [Appellant] will require lifelong physical therapy, as his conditions are permanent and maintenance therapy is required." Dr. Tamea recommended home therapy with active monitoring in order for appellant to keep a baseline functional level. On November 29, 2017 he indicated that appellant was to continue his physical therapy in order to help him with his daily living activities and quality of life, and to benefit the muscle spasms/neuropathies caused by his cervical and lumbar nerve entrapment. In a January 23, 2018 report, Dr. Tamea noted that appellant was "to continue his physical therapy."

In a November 15, 2017 report, Dr. Legrande indicated that she would encourage OWCP to approve appellant's physical therapy request in order to minimize any further deterioration in his medical condition. She maintained that the effects of physical therapy in management of neuropathies, muscle spasms, and tenderness due to nerve entrapment/inflammation extend far beyond the physical aspect of symptom control, but also involved the behavioral domain of quality of life during therapeutic care. Dr. Legrande indicated that physical therapy comprised exercise therapy, electrotherapy, action therapy, and manual therapy, all of which had been shown to be effective in a wide range of disease conditions such as neurological, musculoskeletal, psychiatric, and end-of-life states in a palliative care setting. She advised that the stenosis that appellant was suffering in his lumber and cervical spine, as well as the chronic neuromuscular problems of his wrists, could cause chronic severe pain neuropathies and stiffness. Dr. Legrande asserted that these needed to be treated and no delay in treatment could occur as this would only cause appellant's work-related medical conditions to deteriorate. She indicated that physical modalities were crucial for the decrease of tenderness and inflammation related to nerve entrapment and neuropathies. The treatment with physical therapies would help decrease the consumption of non-steroidal anti-inflammatory drugs (NSAIDS) and other medications that could cause detrimental effect with long-term use. On January 12, 2018 Dr. Legrande provided a similar discussion of her belief that appellant needed to receive authorization for physical therapy.

By decision dated May 11, 2018, OWCP denied modification of its March 10, 2017 decision.

On April 27, 2019 appellant, through her representative, requested reconsideration of the May 11, 2018 decision. She submitted a September 24, 2018 report from Dr. Tamea who asserted that the justification for appellant having ongoing physical therapy was that he had chronic and recurrent internal derangement of his knees. Dr. Tamea indicated that physical therapy was aimed at restoring motion, and maintaining strength and flexibility, and he opined that, without supervision through physical therapy, appellant would develop limitation of motion, weakness, and stiffness within his knees. Appellant submitted reports, dated September 20, October 22, 30, November 26, 2019, and December 20, 2019, in which Dr. Ralph D'Auria, a Board-certified orthopedic surgeon, discussed his orthopedic conditions.

By decision dated February 12, 2020, OWCP denied modification of the May 11, 2018 decision.

On April 2, 2020 appellant, through her representative, requested reconsideration of the February 12, 2020 decision. Appellant resubmitted the reports of Dr. D'Auria previously of record.

By decision dated June 26, 2020, OWCP denied modification of the February 12, 2020 decision.

On November 13, 2020 appellant, through her representative, requested reconsideration of the June 26, 2020 decision. She submitted a September 24, 2020 report in which Dr. D'Auria further discussed his orthopedic conditions. In an October 27, 2020 report, Dr. D'Auria indicated that appellant was in need of active physical therapy for strengthening and improved range of motion of the affected body areas, predominantly his lumbar region and both knees due to his

diagnoses of lumbar disc disorder with myelopathy and medial meniscal tears in both knees. He noted that these were the diagnoses that were causing the most severe functional limitations, due to persistent pain, weakness, and limited range of motion.

By decision dated December 28, 2020, OWCP denied modification of the June 26, 2020 decision.

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."[6]

The Board has found that OWCP has great discretion in determining whether a particular type of treatment is likely to cure or give relief.[7] The only limitation on OWCP's authority is that of reasonableness.[8] 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.[9] 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.[10] Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.[11]

ANALYSIS

The Board finds that OWCP properly denied authorization for physical therapy during the period October 12, 2015 through January 12, 2016.

Appellant submitted an October 25, 2017 report from Dr. Tamea who diagnosed cervical spine, shoulder, lumbar spine, and lower extremity conditions, as well as depression, anxiety disorder, and insomnia. Dr. Tamea noted, "[a]t this time I am recommending continued physical therapy. [Appellant] will require lifelong physical therapy, as his conditions are permanent and maintenance therapy is required." Dr. Tamea recommended home therapy with active monitoring

[6] 5 U.S.C. § 8103.

[7] *R.C.*, Docket No. 18-0612 (issued October 19, 2018); *Vicky C. Randall*, 51 ECAB 357 (2000).

[8] *B.L.*, Docket No. 17-1813 (issued May 23, 2018); *Lecil E. Stevens*, 49 ECAB 673, 675 (1998).

[9] *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *Rosa Lee Jones*, 36 ECAB 679 (1985).

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

[11] *Zane H. Cassell*, 32 ECAB 1537, 1540-41 (1981); *John E. Benton*, 15 ECAB 48, 49 (1963).

in order for appellant to keep a baseline functional level. On November 29, 2017 he indicated that appellant was to continue his physical therapy in order to help him with his daily living activities and quality of life, and to benefit the muscle spasms/neuropathies caused by his cervical and lumbar nerve entrapment. In a January 23, 2018 report, Dr. Tamea noted that appellant was "to continue his physical therapy." In a September 24, 2018 report, he asserted that the justification for appellant having ongoing physical therapy was that he had chronic and recurrent internal derangement of his knees. Dr. Tamea indicated that physical therapy was aimed at restoring motion and maintaining strength and flexibility, and he opined that, without supervision through physical therapy, appellant would develop limitation of motion, weakness, and stiffness within his knees. The reports of Dr. Tamea, however, are of limited probative value as they do not provide an opinion regarding appellant's need for physical therapy during the period October 12, 2015 through January 12, 2016. The Board has held that a medical report that does not offer an opinion on causal relationship is of no probative value.[12]

In a November 15, 2017 report, Dr. Legrande indicated that she would encourage OWCP to approve appellant's physical therapy request in order to minimize any further deterioration in his medical condition. She maintained that the effects of physical therapy in management of neuropathies, muscle spasms, and tenderness due to nerve entrapment/inflammation extend far beyond the physical aspect of symptom control, but also involved the behavioral domain of quality of life during therapeutic care. Dr. Legrande indicated that physical therapy comprised of exercise therapy, electrotherapy, action therapy, and manual therapy, all of which had been shown to be effective in a wide range of disease conditions such as neurological, musculoskeletal, psychiatric, and end-of-life states in a palliative care setting. She advised that the stenosis that appellant was suffering in his lumbar and cervical spine, as well as the chronic neuromuscular problems of his wrists, could cause chronic severe pain neuropathies and stiffness. Dr. Legrande indicated that physical modalities were crucial for the decrease of tenderness and inflammation related to nerve entrapment and neuropathies. The treatment with physical therapies would help decrease the consumption of NSAIDS and other medications that could cause detrimental effect with long-term use. On January 12, 2018 Dr. Legrande provided a similar discussion of her belief that appellant needed to receive authorization for physical therapy. Dr. Legrande, however, did not provide an opinion regarding appellant's need for physical therapy during the requested period. The Board has held that a medical report that does not offer an opinion on causal relationship is of no probative value.[13]

In a June 7, 2017 report, Dr. Do diagnosed several cervical spine, upper extremity, shoulder, lumbar spine, and lower extremity conditions, which he related to appellant's work duties. He recommended that appellant undergo physical therapy twice a week for nine weeks to decrease pain, increase range of motion, increase strength and endurance, and improve function and functional performance. In a September 29, 2017 report, Dr. Patel diagnosed cervical spine, shoulder, lumbar spine, and lower extremity conditions, as well as depression/anxiety, which he related to appellant's employment injuries. He noted, "[t]he patient does need physical therapy in my opinion." In an October 27, 2020 report, Dr. D'Auria indicated that appellant was in need of

[12] *T.M.*, Docket No. 21-1310 (issued March 7, 2022); *K.F.*, Docket No. 19-1846 (issued November 3, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[13] *Id*.

active physical therapy for strengthening and improved range of motion of the affected body areas, predominantly his lumbar region and both knees due to his diagnoses of lumbar disc disorder with myelopathy and medial meniscal tears in both knees. However, these reports also are of limited probative value in that they lack medical rationale explaining why the therapy was necessary to treat appellant's specific work-related conditions.[14]

Appellant also submitted a March 17, 2016 report from Dr. Bishai in which he diagnosed several cervical spine, upper extremity, shoulder, lumbar spine, and lower extremity conditions. In several reports from 2017, Dr. Legrande diagnosed cervical spine, shoulder, lumbar spine, and lower extremity conditions, as well as depression/anxiety, which she related to appellant's employment injuries. In additional reports from 2019 and 2020, Dr. D'Auria further discussed appellant's orthopedic conditions without providing an opinion on the need for physical therapy. Appellant also submitted the findings of diagnostic testing.

The Board finds, however, that these reports are of no probative value regarding appellant's request for authorization for physical therapy for the period October 12, 2015 through January 12, 2016 because they do not contain any opinion on appellant's need for physical therapy. The Board has held that a medical report is of no probative value if it does not contain an opinion on the issue of causal relationship.[15]

Appellant submitted an unsigned administrative document, dated August 18, 2017, which indicated, "[p]atient has chronic spasm and stiffness on cervical spine and lumbar spine and will benefit [from] massage therapy." An unsigned "treatment plan" document, with a "date requested" of October 27, 2017 noted that physical therapy would help decrease appellant's nerve and muscle inflammation and his use of medication. Appellant also submitted unsigned dispensary documents from M & R Therapy Center dated between early-2016 and early-2017. However, as there is no indication that the authors were physicians, these documents do not constitute medical evidence under FECA and are of no probative value on the medical issue of this case.[16]

As noted above, the Board has found that OWCP has great discretion in determining whether a particular type of treatment is likely to cure or give relief and the only limitation on OWCP's authority is that of reasonableness.[17] 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.[18] The Board finds that OWCP's denial of appellant's request for authorization of physical therapy for the period

[14] *See Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

[15] *T.H.*, Docket No. 18-0704 (issued September 6, 2018).

[16] *See S.D.*, Docket No. 21-0292 (issued June 29, 2021); *C.B.*, Docket No. 09-2027 (issued May 12, 2010) (a medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a physician as defined in 5 U.S.C. § 8101(2) and reports lacking proper identification do not constitute probative medical evidence); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

[17] *See supra* notes 8 and 9.

[18] *See supra* note 10.

October 12, 2015 through January 12, 2016 was reasonable and did not constitute an abuse of discretion.

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 properly denied authorization for physical therapy during the period October 12, 2015 through January 12, 2016.

ORDER

IT IS HEREBY ORDERED THAT the December 28, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 7, 2022
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board