

<sup>3</sup> The Board notes that, following the April 15, 2021 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 abused its discretion in denying authorization for continued physical therapy.

## **FACTUAL HISTORY**

On August 19, 2016 appellant, then a 58-year-old mail processing clerk, filed an occupational disease claim (Form CA-2) alleging that she sustained bilateral upper extremity conditions due to factors of her federal employment, including the lifting and handling mail trays and pushing and pulling uprights. She noted that she first became aware of her condition and its relation to her federal employment on June 23, 2016. OWCP assigned the claim OWCP File No. xxxxxx522 and accepted it for bilateral carpal tunnel syndrome and bilateral tenosynovitis (de Quervain's).<sup>4</sup> It paid appellant wage-loss compensation for disability from work on the supplemental rolls effective January 30, 2017 and on the periodic rolls effective April 1, 2018.

Appellant received OWCP-authorized physical therapy treatments for her accepted employment conditions from late 2015 through early 2019. On February 12, 2019 OWCP received a request from Dr. Mark A. Seldes, Board-certified in family medicine, that she continue with various forms of physical therapy, including paraffin bath therapy, infrared therapy, electrical stimulation, electric current therapy, neuromuscular reeducation, manual therapy, massage therapy, ultrasound therapy, therapeutic exercises, electric stimulation other than wound, self-care management training, therapeutic activities, and mechanical traction therapy.

On February 14, 2019 OWCP requested that Dr. Seldes provide additional medical evidence in support of appellant's request for authorization of continued physical therapeutic modalities.

In a February 18, 2019 report, Dr. Seldes discussed appellant's symptoms and her ability to conduct her activities of daily living. He recommended that she be provided with continued physical/massage therapy because such treatment could result in sustained improvements in pain and function. In reports dated March 27 and April 16, 2019, Dr. Seldes further discussed appellant's reported upper extremity symptoms and provided findings on physical examination.

OWCP determined that there was a conflict in the medical opinion evidence regarding appellant's work capacity between the opinion of Dr. Seldes and that of Dr. William Dinenberg, a Board-certified orthopedic surgeon who served as an OWCP second opinion physician with regard to that issue. It referred her to Dr. Theodore Vlahos, a Board-certified orthopedic surgeon for an impartial medical examination on the issue of work capacity. In a May 1, 2019 report, Dr. Vlahos indicated that he would not recommend continued physical therapy for appellant's carpal tunnel syndrome. He noted that there still were residuals of her tenosynovitis, which could be treated with "medication, therapy, probable injections, and possible surgical release."

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<sup>4</sup> Under a separate claim, assigned OWCP File No. xxxxxx910, OWCP accepted that appellant sustained a neck strain and strains of the lumbar and thoracic regions of the back due to lifting mail trays at work on May 14, 2015.

In a May 16, 2019 report, Dr. Seldes reiterated that continued physical/massage therapy would give appellant pain relief and improve her functioning with respect to activities of daily living.

By decision dated May 28, 2019, OWCP denied appellant's request for authorization of continued physical therapy. It determined that the case record did not contain a rationalized medical report establishing that the physical therapy recommended by Dr. Seldes was necessary to treat her accepted employment conditions.

On June 10, 2019 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. By decision dated August 16, 2019, OWCP's hearing representative set aside OWCP's May 28, 2019 decision and remanded the case for OWCP to administratively combine OWCP File Nos. xxxxxx910 and xxxxxx522 and then request a supplemental opinion from Dr. Seldes regarding appellant's continuing need for physical therapy.

OWCP subsequently administratively combined the case files for OWCP File No. xxxxxx910 and OWCP File No. xxxxxx522, with the latter designated as the master file. On October 18, 2019 it provided Dr. Seldes the combined case files along with an updated statement of accepted facts (SOAF), and requested that he provide a supplemental report regarding appellant's need for continued physical therapy.

In an October 30, 2019 report, Dr. Seldes discussed appellant's medical conditions and symptoms and diagnosed bilateral carpal tunnel syndrome, bilateral de Quervain's tenosynovitis, and bilateral ulnar nerve lesion at Guyon's canal. He indicated that she had been attending physical/massage therapy for three main reasons: pain relief, improving her functional capacity on a daily basis, and improving her ability to perform the activities of daily living. Dr. Seldes noted, "[t]hese are not documented or found in objective findings such as range of motion or strength basis only. These are basically found in [appellant's] quality of life and her ability to function." He maintained that the therapy had allowed appellant to cook, as well as to clean small areas around the house. Dr. Seldes produced additional requests for physical therapy authorization dated October 23, 2019.

On November 26, 2019 OWCP referred appellant's case to Dr. Kenekwue Ugokwe, a Board-certified orthopedic surgeon serving as an OWCP district medical adviser (DMA). It requested that he review the medical evidence of record, including Dr. Seldes' reports, and provide an opinion regarding whether the physical therapy for which authorization was requested was medically necessary to treat her accepted employment conditions.

In a December 11, 2019 report, Dr. Ugokwe opined that Dr. Seldes had not documented the progress and improvement in appellant's work-related conditions attributable to the physical therapy treatment she had received to date. He also maintained that Dr. Seldes had not provided a medical explanation for the necessity of prolonged physical therapy. Dr. Ugokwe maintained that the physical therapy for which authorization was requested was not medically necessary because there was no clinical improvement in appellant's accepted conditions.

By decision dated December 12, 2019, OWCP denied appellant's request for authorization of continued physical therapy, finding that Dr. Seldes failed to provide a rationalized medical report establishing the need for such therapy to treat her accepted employment conditions.

On December 17, 2019 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated February 11, 2020, OWCP's hearing representative set aside the December 12, 2019 decision, finding that there was a conflict in the medical opinion evidence between Dr. Seldes and Dr. Ugokwe on the issue of whether continued physical therapy was necessary to treat appellant's accepted employment conditions. The case was remanded for referral of appellant, pursuant to section 8123(a) of FECA, to an appropriate specialist for an impartial medical examination and an opinion on the matter.

On February 13, 2020 OWCP referred appellant, along with a SOAF and a series of questions to Dr. Robert Elkins, a Board-certified orthopedic surgeon, for an examination and evaluation regarding whether the physical therapy for which authorization was requested was necessary to treat her accepted employment conditions.

In a June 2, 2020 report, Dr. Elkins discussed appellant's factual and medical history, including the history of her upper and lower extremity symptoms and the treatment of her medical conditions. He noted that she reported the current average intensity of pain in her upper extremities was 8 to 10. Dr. Elkins reported the findings of his physical examination, noting that appellant had full range of motion of both elbows, wrists, and hand. He advised that, on a subjective basis, there was decreased sensation in the thumb and index and middle fingers of the right hand. Dr. Elkins diagnosed bilateral carpal tunnel syndrome with surgeries on the left side with fairly good results; lingering right carpal tunnel syndrome; chronic pain in the neck and lumbar/thoracic back regions; and moderate canal stenosis of the lumbar spine with bilateral neural foraminal narrowing and disc bulging at L3-4 and L4-5. He referenced the differences in opinion between Dr. Seldes and Dr. Ugokwe regarding the need for continuing physical therapy. Dr. Elkins noted, "I do not feel [appellant] needs any further physical therapy to her spine or her wrists and hands. She states this only gives her temporary relief lasting about an hour with no permanent relief and no accumulative relief." He indicated that he did not believe that the advantages of continuing therapy outweighed the cessation of the requested treatment modalities.

By decision dated August 18, 2020, OWCP denied appellant's request for authorization of continued physical therapy. It determined that the special weight of the medical opinion evidence rested with the well-rationalized opinion of Dr. Elkins.

On November 5, 2020 appellant, through counsel, requested reconsideration of the August 18, 2020 decision. Appellant submitted an October 2, 2020 report from Dr. Seldes who indicated that he had reviewed Dr. Elkins' June 2, 2020 report. Dr. Seldes noted that she advised him that she obtained sustained relief when she underwent therapy two to three times per week. He opined that physical therapy was medically necessary for appellant as she received some relief. Appellant also submitted additional reports, dated between October 2020 and March 2021 in which Drs. Seldes and Dr. Khader Muqtadir, Board-certified hand surgeon, discussed her medical condition.

On March 5, 2021 OWCP requested that Dr. Elkins provide clarification of his June 2, 2020 opinion regarding appellant's need for continuing physical therapy. In an April 12, 2021 report, Dr. Elkins noted that, at the time of his June 2020 evaluation, she did not need continuing physical therapy for her spine, wrists, or hands, especially as she reported the therapy only gave temporary relief lasting about an hour with no permanent effects. He noted, "[t]he question

involves physical therapy between the time period [February 12, 2019] and [September 11, 2019]. This indicates an approximate seven-month course of physical therapy for the right carpal tunnel and left carpal tunnel and de Quervain's disease." Dr. Elkins maintained that appellant's statement that the physical therapy did very little and gave her no lasting relief should have indicated a much shorter course of physical therapy since the treatment was not effective. Dr. Elkins indicated, "[t]here is really is [sic] no sense in continuing it in the hopes that miraculously it will start to become effective. I feel an accepted length of treatment that would be medically necessary for the above diagnoses would be a total of three months, three times a week...."

By decision dated April 15, 2021, OWCP denied modification of its August 18, 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."<sup>5</sup>

The Board has found that OWCP has great discretion in determining whether a particular type of treatment is likely to cure or give relief.<sup>6</sup> The only limitation on OWCP's authority is that of reasonableness.<sup>7</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>8</sup> 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.<sup>9</sup> Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.<sup>10</sup>

OWCP's procedures provide that, for most orthopedic injuries, physical therapy services within the first 120 days after a traumatic injury are allowed without any prior authorization required, and it is also customary to automatically authorize physical therapy postoperatively for orthopedic surgeries, usually for a period of 60 days post surgery. If a request for therapy beyond these time frames is received, OWCP needs to review the file to determine whether further services should be authorized.<sup>11</sup> To determine whether a claimant requires physical therapy beyond the

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<sup>5</sup> 5 U.S.C. § 8103.

<sup>6</sup> *R.C.*, Docket No. 18-0612 (issued October 19, 2018); *Vicky C. Randall*, 51 ECAB 357 (2000).

<sup>7</sup> *B.L.*, Docket No. 17-1813 (issued May 23, 2018); *Lecil E. Stevens*, 49 ECAB 673, 675 (1998).

<sup>8</sup> *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *Rosa Lee Jones*, 36 ECAB 679 (1985).

<sup>9</sup> *J.R.*, Docket No. 17-1523 (issued April 3, 2018); *Bertha L. Arnold*, 38 ECAB 282, 284 (1986).

<sup>10</sup> *Zane H. Cassell*, 32 ECAB 1537, 1540-41 (1981); *John E. Benton*, 15 ECAB 48, 49 (1963).

<sup>11</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.19 (September 2010).

initial authorization period, it reviews the record to determine whether the need for physical therapy is due to the accepted work injury and whether the additional therapy is expected to yield functional improvement. Additionally, its procedures provide that, to authorize additional physical therapy for pain or to maintain function, OWCP should ensure that the pain is associated with measurable objective findings such as muscle spasm, atrophy and/or radiologic changes in joints, muscles, or bones, or that pain has placed measurable limitations upon the claimant's physical activities.<sup>12</sup>

Section 8123(a) of FECA provides that, if there is a disagreement between the physician making the examination for the United States and the physician of an employee, the Secretary shall appoint a third physician (known as a referee physician or impartial medical examiner/specialist) who shall make an examination.<sup>13</sup> In situations where the case is properly referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>14</sup>

### ANALYSIS

The Board finds that OWCP did not abuse its discretion in denying authorization for continuing physical therapy.

OWCP properly determined that there was a conflict in the medical opinion evidence between Dr. Seldes, an attending physician, and Dr. Ugokwe, a DMA, on the issue of whether continuing physical therapy was necessary to treat appellant's accepted work conditions. In order to resolve the conflict, it properly referred appellant, pursuant to section 8123(a) of FECA, to Dr. Elkins for an impartial medical examination and an opinion on the matter. As noted above, in situations where the case is referred to an impartial medical examiner for the purpose of resolving a medical conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>15</sup>

In his June 2, 2020 report, Dr. Elkins referenced the differences in opinion between Dr. Seldes and Dr. Ugokwe regarding the need for continuing physical therapy. He noted, "I do not feel [appellant] needs any further physical therapy to her spine or her wrists and hands. Appellant states this only gives her temporary relief lasting about an hour with no permanent relief and no accumulative relief." Dr. Elkins indicated that he did not believe that the advantages of continuing therapy outweighed the cessation of the requested treatment modalities. In his supplemental April 12, 2021 report, he noted, "[t]he question involves physical therapy between the time period of [February 12, 2019] and [September 11, 2019]. This indicates an approximate seven-month course of physical therapy for the right carpal tunnel and left carpal tunnel and de Quervain's disease." Dr. Elkins maintained that appellant's statement that the physical therapy

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<sup>12</sup> *Id.* at Chapter 2.810.19b.

<sup>13</sup> 5 U.S.C. § 8123(a); *see E.L.*, Docket No. 20-0944 (issued August 30, 2021); *R.S.*, Docket No. 10-1704 (issued May 13, 2011); *S.T.*, Docket No. 08-1675 (issued May 4, 2009); *M.S.*, 58 ECAB 328 (2007).

<sup>14</sup> *See D.M.*, Docket No. 18-0746 (issued November 26, 2018); *R.H.*, 59 ECAB 382 (2008); *James P. Roberts*, 31 ECAB 1010 (1980).

<sup>15</sup> *Id.* *See also H.N.*, Docket No. 18-0501 (issued February 20, 2020).

did very little and gave her no lasting relief should have indicated a much shorter course of physical therapy since the treatment was not effective. He indicated, “[t]here is really is [sic] no sense in continuing it in the hopes that miraculously it will start to become effective. I feel an accepted length of treatment that would be medically necessary for the above diagnoses would be a total of three months, three times a week....” The Board finds that Dr. Elkins provided a well-rationalized medical opinion that continuing physical therapy was not necessary to treat appellant’s accepted employment conditions, and the special weight of the medical opinion evidence on this matter rests with his opinion.

The only limitation on OWCP’s authority in approving or disapproving service under FECA is one of reasonableness.<sup>16</sup> Appellant has not submitted reasoned medical evidence supporting that continued physical therapy was medically necessary and causally related to the accepted employment injury. Thus, the Board finds that OWCP did not abuse its discretion in denying authorization for continuing physical therapy.<sup>17</sup>

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 in denying authorization for continuing physical therapy.

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<sup>16</sup> See *S.N.*, Docket No. 21-0070 (issued March 9, 2022); *W.M.*, Docket No. 18-0957 (issued October 15, 2018).

<sup>17</sup> See *J.C.*, Docket No. 21-0301 (issued March 3, 2022); *D.S.*, Docket No. 18-0353 (issued February 18, 2020).

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 15, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 24, 2023  
Washington, DC

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

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

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board