

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

T.W., Appellant)	
)	
and)	Docket No. 23-0504
)	Issued: July 11, 2023
DEPARTMENT OF JUSTICE, FEDERAL)	
BUREAU OF INVESTIGATION,)	
Clarksburg, WV, Employer)	

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
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On February 27, 2023 appellant filed a timely appeal from a February 3, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether OWCP abused its discretion in denying authorization for the medication Dronabinol effective March 9, 2023.

FACTUAL HISTORY

On January 5, 2000 appellant, then a 28-year-old legal instrument examiner, filed a traumatic injury alleging that on December 8, 1999 she injured a nerve in her left arm when she

¹ 5 U.S.C. § 8101 *et seq.*

donated blood while in the performance of duty. She asserted that a technician hit a nerve in her arm with a needle at a blood drive sponsored by the employing establishment. OWCP accepted the claim for reflex sympathetic dystrophy of the upper limb. It subsequently expanded its acceptance of the claim to include nausea with vomiting and chronic atrophic gastritis without bleeding. Appellant stopped work following her injury and returned to modified work on May 8, 2002.² She sustained intermittent recurrences of disability. Appellant subsequently resumed modified full-time work.

In a December 21, 2021 report, Dr. Samuel W. Samuel, a Board-certified anesthesiologist, evaluated appellant for left hand pain due to complex regional pain syndrome (CRPS), Type 1. He noted that the medication Dronabinol managed her nausea. Dr. Samuel diagnosed CRPS, Type 1 of the left upper extremity and nausea. He listed appellant's prescription medications, including Dronabinol daily for six months. The report was prepared by Dr. Emily L. Bitticker, an anesthesiologist, but signed by Dr. Samuel.

On May 5, 2022 Optum, the pharmacy benefits manager (PBM), advised appellant that it was managing pharmacy benefits for injured employees covered under FECA. It noted that a drug formulary, or list of medications that a claimant was eligible to receive under FECA, had gone into effect on December 9, 2021. The PBM informed appellant that her currently prescribed drug Dronabinol was not allowed under its formulary. It requested that she notify her physician to determine if there was an alternative medication available or, if not, to have her physician complete a Prior Authorization Request (PAR) form to request continued use of the nonformulary medicine. The PBM indicated that it would allow the medication until December 8, 2022.

In a May 6, 2022 letter, the PBM requested that Dr. Bitticker transition appellant to a formulary-approved medication, or complete a PAR form to request approval for the nonformulary medication. It provided similar letters to appellant and Dr. Bitticker on July 6 and 7, 2022, respectively. On October 4, 2022 the PBM issued a final reminder to appellant that Dronabinol was not covered by its formulary, and indicated that it would only allow the medication until December 8, 2022. It again requested that she switch to another medication covered by the formulary or submit a PAR form and request approval for Dronabinol. In a separate letter of even date, the PBM advised Dr. Samuel C. Overley, a Board-certified orthopedic surgeon, that Dronabinol was not covered under its formulary, and requested that he either transition appellant to another medication or submit a PAR form to request approval for Dronabinol.

In a report dated December 7, 2022, Dr. Samuel diagnosed CRPS of the left upper extremity and nausea. He listed appellant's prescribed medications, including Dronabinol for 180 days.

On December 21, 2022 OWCP again notified appellant that she was receiving medication for her employment injury through its PBM. It indicated that it now used a drug formulary, or list of medications covered by FECA, as a way to ensure the safe and effective use of medication. OWCP asserted that its PBM had notified appellant and her provider on May 5, July 6, and

² By decision dated August 8, 2002, OWCP reduced appellant's wage-loss compensation to zero based on its finding that her actual earnings as a modified legal instruments examiner effective May 6, 2002 fairly and reasonably represented her wage-earning capacity.

October 4, 2022 that Dronabinol was not covered under the formulary, and had requested a PAR form if there were no appropriate alternative medications. It informed her that this was her final notice to allow time for her prescriber to transition her to an alternative medication covered by the formulary or submit a PAR form if her prescriber believed that the medication was currently necessary. OWCP indicated that coverage for Dronabinol would continue until March 8, 2023.

In a memorandum of telephone call (Form CA-110) dated December 29, 2022, appellant left a voicemail message advising that OWCP's December 21, 2022 letter was the first notice that she had received regarding her medication, and requested the necessary form to complete. In a January 6, 2023 voicemail, she advised that the director of her agency had approved her use of the medication.

By decision dated February 3, 2023, OWCP denied authorization for the medication Dronabinol effective March 9, 2023.

LEGAL PRECEDENT

Section 8103(a) of FECA³ 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 in the amount of monthly compensation.⁴ In general, drugs and medications which are necessary to treat an injury or occupational disease may be purchased at OWCP's expense on the recommendation of the attending physician. These include prescription as well as nonprescription medications.⁵

The Board has found that OWCP has great discretion in determining whether a particular type of treatment is likely to cure or give relief.⁶ The only limitation on OWCP's authority is that of reasonableness.⁷ 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.

³ *Supra* note 1.

⁴ 5 U.S.C. § 8103; *see L.W.*, Docket No. 21-0607 (issued October 18, 2022); *N.G.*, Docket No. 18-1340 (issued March 6, 2019).

⁵ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Services and Supplies*, Chapter 3.400.3(a) (October 1995).

⁶ *C.Y.*, Docket No. 21-0335 (issued November 7, 2022); *R.C.*, Docket No. 18-0612 (issued October 19, 2018); *Vicky C. Randall*, 51 ECAB 357 (2000).

⁷ *M.S.*, Docket No. 22-0113 (issued June 7, 2022); *B.L.*, Docket No. 17-1813 (issued May 23, 2018); *Lecil E. Stevens*, 49 ECAB 673, 675 (1998).

FECA Bulletin No. 21-07 provides that OWCP has contracted with a PBM for claimants covered under FECA.⁸ It further provides, “PBMs are primarily responsible for developing and maintaining formularies which include an approved listing of prescriptions....”⁹

ANALYSIS

The Board finds that OWCP did not abuse its discretion in denying authorization for the medication Dronabinol effective March 9, 2023.

On December 21, 2021 Dr. Samuel diagnosed CRPS, Type 1 and nausea. He provided a list of appellant’s prescribed medications, including Dronabinol. The report was prepared by Dr. Bitticker and signed by Dr. Samuel.

In letters dated May 5, July 6, and October 4, 2022, the PBM informed appellant that Dronabinol was not allowed under its formulary of medications that a claimant was eligible to receive under FECA. It requested that she ask her physician if there was alternative medication available or, if not, have the physician complete a PAR form to request continued use of Dronabinol. The PBM also sent the May 6 and July 7, 2022 letters to Dr. Bitticker.¹⁰

On December 21, 2022 OWCP notified appellant that Dronabinol was not covered under the drug formulary, and noted that she had received prior letters from the PBM requesting that she transition to another medication or have her provider submit a PAR form. It advised that this was her final notice for her provider to change to another medication or submit a PAR form. OWCP informed appellant that her coverage for Dronabinol would end on March 8, 2023. In a voicemail response, appellant asserted that she had not received any letters from the PBM; however, these letters were properly addressed and mailed in the ordinary course of business and thus presumed to have been received under the mailbox rule.¹¹

As noted, OWCP contracted with a PBM for claimants covered under FECA and the PBM developed a list of medications, or drug formulary, for claimants covered by FECA.¹² As Dronabinol was not a medication on the PBM’s drug formulary, on December 21, 2022 OWCP requested that appellant submit a PAR form from her physician or transition to another medication. It provided her a reasonable period of time to respond to its request. Appellant, however, did not submit a PAR form from her provider requesting authorization for Dronabinol to the PBM as repeatedly requested. 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.¹³ It has the general objective of fully ensuring that an employee recovers from his

⁸ FECA Bulletin No. 21-07 (issued March 9, 2021).

⁹ *Id.*

¹⁰ The PBM sent the October 4, 2022 letter to Dr. Overley instead of appellant’s physician.

¹¹ *See C.W.*, Docket No. 21-0943 (issued February 17, 2023); *James A. Gray*, 54 ECAB 277 (2002).

¹² *Id.*

¹³ *See R.B.*, Docket No. 21-0598 (issued May 19, 2022).

or her injury possible, in the shortest amount of time, and has broad administrative discretion in choosing means to achieve this goal.¹⁴ Accordingly, the Board finds that OWCP did not abuse its discretion in denying authorization for Dronabinol.

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 the medication Dronabinol effective March 9, 2023.

ORDER

IT IS HEREBY ORDERED THAT the February 3, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 11, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

¹⁴ See *R.C.*, Docket No. 18-0612 (issued October 19, 2018); *M.G.*, Docket No. 18-0099 (issued April 26, 2018).