

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

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<b>M.G., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 23-0136</b>
	)	<b>Issued: June 13, 2023</b>
<b>DEPARTMENT OF VETERANS AFFAIRS,</b>	)	
<b>OAKLAND REGIONAL OFFICE, Oakland, CA,</b>	)	
<b>Employer</b>	)	
_____	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On November 9, 2022 appellant filed a timely appeal from an October 17, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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<sup>1</sup> On his application for review (AB-1), appellant indicated that he was appealing from a May 10, 2022 merit decision of OWCP. The Board's review authority, however, is limited to appeals which are filed within 180 days from the date of issuance of OWCP's decision. 20 C.F.R. § 501.3(e). The 180<sup>th</sup> day following OWCP's May 10, 2022 decision was November 6, 2022. As that, fell on a Sunday, appellant had until the next business day, Monday, November 7, 2022, to file the appeal. As appellant did not file this appeal until November 9, 2022, more than 180 days after the May 10, 2022 decision, the Board lacks jurisdiction to review that decision. The only decision within the Board's jurisdiction is the October 17, 2022 merit decision.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## ISSUE

The issue is whether OWCP abused its discretion in denying appellant's request for authorization for a magnetic resonance imaging (MRI) scan of the brain.

## FACTUAL HISTORY

On January 27, 2022 appellant, then a 62-year-old agronomist, filed a traumatic injury claim (Form CA-1) alleging that on October 22, 2021 he sustained an adverse reaction to a COVID-19 vaccination. OWCP accepted the claim for adverse effect of other viral vaccines.

In a report dated March 21, 2022, Dr. Allen D. Bott, a Board-certified neurologist, discussed appellant's complaints of aching joints, cough, fatigue, headache, and muscle pain after receiving a COVID-19 vaccination. Appellant subsequently experienced wheezing and pain in his groin. Dr. Bott noted that appellant currently complained of problems with memory and balance. He diagnosed severe, recurrent major depressive disorder with anxious distress. Dr. Bott opined that appellant's headaches were compatible with tension headaches, likely due to his major depressive disorder. He acknowledged that it was controversial whether a vaccination could cause mood changes, but that the "clear temporal relationship of [appellant's] apparent mood disorder to the vaccine suggests it was likely etiological."

On June 3, 2022 Dr. Bott diagnosed complications following an immunization. He advised that appellant had complained of a difficulty with cognition since a COVID-19 infection. Dr. Bott indicated that he had prescribed an antidepressant that also helped with cognition. He related that appellant had symptoms of a severe major depressive disorder and complaints of headaches. Dr. Bott advised that the headaches were "most compatible with chronic tension-type headaches and intimately associated with [appellant's major depressive disorder]." He noted that appellant was anxious about his headaches and requested authorization for an MRI scan of the brain to rule out anatomic damage from COVID-19.

In a development letter dated June 10, 2022, OWCP advised Dr. Bott that it was currently unable to authorize an MRI scan of the brain and informed him of the deficiencies in the evidence. It requested that he provide a medical report explaining why an MRI scan of the brain was medically necessary due to the accepted condition. OWCP sent a copy of the letter to appellant.

In a progress report dated July 13, 2022, Dr. Bott discussed appellant's complaints of headaches and physical symptoms supporting the diagnosis of major depressive disorder with anxiety. He noted that the condition was "apparently precipitated by a presumed inflammatory reaction following his COVID-19 vaccine." Dr. Bott requested an MRI scan of the brain to eliminate other causes for the headaches and to determine whether the vaccine had caused a more significant adverse reaction. He maintained that an MRI scan was "warranted in view of how long [appellant's] symptoms have been ongoing."

On August 12, 2022 Dr. Bott discussed appellant's treatment with medications and noted that he would try to appeal the denial of the MRI scan of the brain. On September 14, 2022 he indicated that appellant had been scheduled for a sleep study and discussed his treatment.

On October 17, 2022 Dr. David I. Krohn, a Board-certified internist serving as a district medical adviser (DMA), opined that it was unlikely that appellant’s major depression was related to the COVID-19 vaccination. He discussed appellant’s continued symptoms of confusion, hopelessness, and difficulty concentrating. Dr. Krohn opined that “psychiatric side effects of the vaccine are extremely rare” and that only one case had been reported. He further found that Dr. Bott had not sufficiently explained the relationship between the COVID-19 vaccination and appellant’s headaches. Dr. Krohn advised that the only adequately documented cause of headaches due to a COVID-19 vaccination was cerebral venous thrombosis, but that Dr. Bott had not diagnosed this condition and no findings raised suspicion of such a diagnosis. He opined that, absent suspicion of cerebral venous thrombosis or a statement from Dr. Bott explaining how the headaches were related to the COVID-19 vaccination, there was insufficient support for approval of an MRI scan of the brain.

By decision dated October 17, 2022, OWCP denied appellant’s request for authorization for an MRI scan of the brain.

### **LEGAL PRECEDENT**

Section 8103(a) of FECA<sup>3</sup> 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.<sup>4</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>5</sup> The only limitation on OWCP’s authority is that of reasonableness.<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 to produce a contrary factual conclusion.<sup>7</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

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<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at § 8103; *see L.W.*, Docket No. 21-0607 (issued October 18, 2022); *N.G.*, Docket No. 18-1340 (issued March 6, 2019).

<sup>5</sup> *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).

<sup>6</sup> *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).

<sup>7</sup> *D.H.*, Docket No. 22-0533 (issued August 4, 2022); *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *Rosa Lee Jones*, 36 ECAB 679 (1985).

of an employment-related injury or condition.<sup>8</sup> Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.<sup>9</sup>

### ANALYSIS

The Board finds that OWCP did not abuse its discretion in denying appellant's request for authorization for an MRI scan of the brain.

In a report dated March 21, 2022, Dr. Bott diagnosed severe, recurrent major depressive disorder with anxious distress. He found that appellant's symptoms were compatible with tension headaches likely due to his depressive disorder. Dr. Bott acknowledged that it was controversial whether a vaccine could cause mood changes, but found that the temporal relationship suggested causation.

On June 2, 2022 Dr. Bott indicated that appellant complained of cognitive difficulties following a COVID-19 infection. He diagnosed major depressive disorder and headaches most likely due to tension and the depressive disorder. Dr. Bott recommended an MRI scan of the brain to rule out anxiety about headaches or damage from COVID-19. He did not, however, explain why appellant's headaches resulted from the accepted condition of a vaccine reaction. As Dr. Bott did not provide medical rationale explaining why the MRI scan of the brain was necessary to treat appellant's accepted condition, his opinion is of limited probative value.<sup>10</sup>

In a report dated July 13, 2022, Dr. Bott advised that appellant's major depressive disorder with headaches was apparently caused by an inflammatory reaction after a vaccination for COVID-19. He related that he had requested an MRI scan of the brain to rule out other causes of the headaches and to determine whether the vaccination had caused any significant issues. Dr. Bott asserted that the MRI scan was warranted due to the duration of appellant's symptoms. He did not, however, identify what conditions caused by vaccination could result in headaches or provide any rationale for his opinion. As discussed, a report is of limited probative value if it does not contain medical rationale which explains a physician's opinion.<sup>11</sup> Dr. Bott's report is therefore insufficient to establish an abuse of discretion.<sup>12</sup>

On October 17, 2022 Dr. Krohn advised that it was unlikely that the diagnosis of major depression was not related to the COVID-19 vaccination, noting that only one such case had been reported. He opined that Dr. Bott had insufficiently explained the relationship between the COVID-19 vaccination and appellant's headaches. Dr. Krohn indicated that cerebral venous thrombosis could cause vaccination-related headaches, but noted that Dr. Bott had not rendered

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<sup>8</sup> *J.R.*, Docket No. 17-1523 (issued April 3, 2018); *Bertha L. Arnold*, 38 ECAB 282, 284 (1986).

<sup>9</sup> *L.W.*, Docket No. 21-0607 (issued October 18, 2022); *Zane H. Cassell*, 32 ECAB 1537, 1540-41 (1981); *John E. Benton*, 15 ECAB 48, 49 (1963).

<sup>10</sup> *See C.Y.*, Docket No. 21-0335 (issued November 7, 2022); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

<sup>11</sup> *See D.K.*, Docket No. 20-0002 (issued August 25, 2020); *D.L.*, Docket No. 19-0900 (issued October 28, 2019); *Y.D.*, *id.*; *C.M.*, Docket No. 14-0088 (issued April 18, 2014).

<sup>12</sup> *D.K.*, *id.*

that diagnosis. He opined that, without suspicion of cerebral venous thrombosis or rationale from Dr. Bott explaining the relationship of the headaches and the COVID-19 vaccination, there was insufficient evidence to authorize approval from an MRI scan of the brain.

The only limitation on OWCP's authority is approving or disapproving service under FECA is one of reasonableness.<sup>13</sup> OWCP referred the case record to Dr. Krohn for review. Dr. Krohn found that appellant did not require an MRI scan of the brain due to his accepted employment injury. He provided a well-reasoned opinion explaining why the proposed MRI scan of the brain was unrelated to the accepted employment injury.<sup>14</sup> Thus, the Board finds that OWCP did not abuse its discretion in denying authorization for the requested procedure.

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 appellant's request for authorization for an MRI scan of the brain.

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<sup>13</sup> See *B.I.*, Docket No. 22-0090 (issued July 19, 2022); *W.M.*, Docket No. 18-0957 (issued October 15, 2018).

<sup>14</sup> See *M.S.*, *supra* note 6; *A.S.*, Docket No. 19-0745 (issued October 10, 2019); *M.M.*, Docket No. 19-0491 (issued August 14, 2019); *N.M.*, Docket No. 18-1584 (issued March 15, 2019).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 17, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 13, 2023  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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