United States Department of Labor
Employees' Compensation Appeals Board

O.M., Appellant	)	
and	)	**Docket No. 21-1383**
	)	**Issued: March 1, 2023**
U.S. POSTAL SERVICE, CAMDEN POST OFFICE, Camden, SC, Employer	)	

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
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On September 9, 2021 appellant filed a timely appeal from an August 26, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

ISSUE

The issue is whether OWCP abused its discretion by denying authorization for replacement of two twin-sized mattresses for appellant's existing Flex-A-Bed.

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that, following the August 26, 2021 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*.

FACTUAL HISTORY

This case has previously been before the Board.[3] The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On June 26, 1998 appellant, then a 53-year-old city carrier filed an occupational disease claim (Form CA-2) alleging that factors of his federal employment aggravated his lumbar disc disease for which he had undergone surgery in 1991. He noted that he first became aware of his condition on September 5, 1991 and realized its relation to his federal employment on April 3, 1998. Appellant stopped work on March 23, 1998 and medically retired from federal employment on July 31, 1998. OWCP accepted the claim for aggravation of lumbar degenerative disc disease.

On June 19, 2013 Dr. Peter J. Stahl, a family medical specialist, provided a prescription for a mattress for a Flex-A-Bed for treatment of appellant's lumbago and lumbar disc disease. On July 10, 2013 appellant called OWCP to clarify that he was requesting a mattress for his current Flex-A-Bed because the mattress was "over 10 years old."

By letter dated July 12, 2013, OWCP confirmed that it had previously reimbursed appellant for a Flex-A-Bed purchased on December 14, 2004. It noted that the mattress was, therefore, 8 1/2 years old, not 10 years old, as he had claimed. OWCP noted that it had received a prescription for a Flex-A-Bed on July 1, 2013 and that it would not approve elaborate or specialized equipment if a more basic alternative was suitable.

By decision dated May 20, 2019, OWCP denied appellant's request for a dual-King Flex-A-Bed and power chair lift. It found that the evidence of record was deemed insufficient to establish that those items were medically necessary "because the items are not integral to the care of [appellant] with regard to your work injury, but more of a convenience."

OWCP subsequently received additional evidence. In progress reports dated April 16 and July 17, 2019, Dr. John F. Mattei, a Board-certified family practitioner, diagnosed lumbosacral spondylosis with progressing stenosis, which he opined that was secondary to the March 3, 1998 work injury. In the April 16, 2019 progress report, Dr. Mattei advised that "we are currently trying to get [appellant] a new electric bed, which is medically necessary now as it was in early 2000s when it was originally prescribed." He noted that appellant had positive Kemp sign bilaterally, positive Laseque's sign bilaterally, depressed bilateral Achilles reflexes, and decreased range of motion with lumbosacral paraspinal spasm and gluteal spasm. In the July 17, 2019 progress report, Dr. Mattei noted that appellant "has an electronic bed, which was prescribed back in early year 2000 for [appellant], which was and still is medically necessary for him, so, hopefully, we will be able to get that covered again." He indicated that appellant was on pain medication, that appellant had trouble getting up from a sitting position secondary to pain and weakness in his legs, and that he could not walk for any prolonged distance without having to sit down and rest secondary to the pain.

[3] Docket No. 20-0640 (issued April 19, 2021).

In a November 13, 2019 report, Dr. William H. Crigler, a Board-certified family practitioner, noted the history of appellant's March 1998 employment injury and that appellant was not being followed by a specialist for his back. He indicated that appellant had diabetes, which was diagnosed in 1990 and for which appellant developed neuropathy in his feet before the March 1998 work-related injury. Dr. Crigler also reported that, with prolonged sitting, appellant's legs become numb. With regard to appellant's bed mattress, he indicated that appellant's mattress had been purchased in about the year 2000 and that it was worn out and lacked adequate support. Dr. Crigler noted that appellant reported cramps in his legs, at times when laying down from being in a position too long and that he had to change positions. Appellant felt that this was in part due to the poor support of the mattress. Dr. Crigler reported objective findings including that appellant's gait was slow, and that he was able to get up on the table unassisted. He noted that the strength of appellant's left leg was slightly weaker than the right, with a strength scale of 3 4/5. Dr. Crigler indicated that he was unable to elicit any ankle or knee jerks in either leg, and that appellant had 2/5 strength bilaterally in lifting his thighs off the table when sitting. Examination of the foot failed to reveal any calluses or skin breakdown and appellant was unable to detect sharp sensation in either foot. Dr. Crigler assessed lumbar spondylosis with previous history of disc rupture, neuropathy in appellant's legs at least in part due to diabetes and the injury to appellant's back.

By decision dated December 13, 2019, OWCP's hearing representative affirmed the May 20, 2019 decision.

Appellant appealed to the Board. By decision dated April 19, 2021, the Board affirmed in part and set aside in part OWCP's December 13, 2019 decision. The Board found that OWCP did not abuse its discretion in denying his request to purchase a new dual-King Flex-A-Bed and power lift chair. The Board however found that the case was not in posture for decision with regard to appellant's request for replacement mattresses for his existing Flex-A-Bed.[4] The Board remanded the case for a *de novo* decision regarding his request for authorization of replacement mattresses for his existing Flex-A-Bed.

On June 2, 2021 OWCP referred the medical record, along with a March 14, 2019 statement of accepted facts (SOAF), to Dr. Kenechukwu Ugokwe, a Board-certified neurosurgeon serving as a district medical adviser (DMA), for an opinion regarding whether the requested replacement mattresses were medically necessary.[5] It noted that appellant was not requesting a new bed. Rather, he was only requesting two twin-sized mattress replacements to go on the existing platform base.

OWCP subsequently received a May 13, 2021 report from Dr. Mattei, who continued to opine that appellant had severe lumbar spondylosis and multilevel disc disease secondary to his March 3, 1998 employment injury. Dr. Mattei noted that appellant's pain was moderately controlled with prescribed medication and that he had prescribed a new bed.

[4] *Id*.

[5] The March 14, 2019 SOAF noted that a permanent aggravation of lumbar or lumbosacral intravertebral disc had been accepted.

In a July 27, 2021 report, Dr. Ugokwe indicated that he reviewed the SOAF and medical record. He opined that the proposed two twin-sized mattress were not causally related to the accepted medical condition. Rather, appellant's current condition consisted of degenerative changes of the spine associated with the normal aging process. Dr. Ugokwe also noted that appellant had a nonwork-related diabetic neuropathy which affected his legs and contributed to the need for a lift chair and two twin-sized mattresses. He opined that the proposed twin-sized mattresses were not medically necessary as those items were not integral to the care of the appellant. Rather, as the current mattresses were worn, appellant would need to replace a worn mattress regardless of whether or not a work injury had occurred. Dr. Ugokwe also reviewed the medical record and disagreed that appellant's current condition was causally related to the original work injury, as the current imaging showed degenerative changes associated with normal wear.

In an August 19, 2021 prescription note, Dr. Mattei prescribed two Premier Latex mattresses for appellant's existing Flex-A-Bed.

By decision dated August 26, 2021, OWCP denied appellant's request for replacement of two twin-sized mattresses for the existing Flex-A-Bed as the evidence of record did not support that they were medically necessary to address the effects of his work-related injury.

LEGAL PRECEDENT

Section 8103(a) of FECA[6] 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 the amount of monthly compensation.[7] 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.[8]

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.[9]

In interpreting section 8103(a), the Board has recognized that OWCP has broad discretion in approving services provided under section 8103, with the only limitation on OWCP's authority

[6] *Supra* note 1.

[7] 5 U.S.C. § 8103; *see N.G.*, Docket No. 18-1340 (issued March 6, 2019); *G.A.*, Docket No. 18-0872 (issued October 5, 2018); *see Thomas W. Stevens*, 50 ECAB 288 (1999).

[8] *See D.K.*, Docket No. 20-0002 (issued August 25, 2020); *R.M.*, Docket No. 19-1319 (issued December 10, 2019); *Debra S. King*, 44 ECAB 203, 209 (1992).

[9] 20 C.F.R. § 10.310(a); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Services and Supplies*, Chapter 3.400.3.d(5) (October 1995); *id.* at Chapter 2.810.17h (June 2014); *J.M.*, Docket No. 20-0457 (issued July 16, 2020); *D.W.*, Docket No. 19-0402 (issued November 13, 2019).

is that of reasonableness.[10] 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. The only limitation on OWCP's authority is that of reasonableness.[11] In order to be entitled to reimbursement for medical expenses, a claimant must establish that the expenditures were incurred for treatment of the effects of an employment-related injury by submitting rationalized medical evidence that supports such a connection and demonstrates that the treatment is necessary and reasonable.[12]

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.[13]

ANALYSIS

The Board finds that this case is not in posture for decision.

Following the Board's decision, OWCP requested clarification from Dr. Ugokwe, the DMA, as to whether appellant's request for two twin mattress replacements to go on the existing platform base were causally related to the accepted March 23, 1998 work injury and were medically necessary. It provided a March 14, 2019 SOAF, which indicated a permanent aggravation of lumbar or lumbosacral intravertebral disc had been accepted. Dr. Ugokwe, in his July 27, 2021 report, noted his review of the SOAF and the medical record, including the April 16, July 17, and November 13, 2019 reports of Drs. Mattei and Crigler, respectively. He opined that appellant's current condition consisted of degenerative changes of the spine associated with the normal aging process. Dr. Ugokwe also noted that appellant has a nonwork-related diabetic neuropathy which affected his leg and contributed to the need for the proposed two twin-sized mattresses. Based on his opinion that appellant's current condition was not causally related to the original work injury, Dr. Ugokwe further opined that the proposed two twin-sized mattresses were not medically necessary. Dr. Ugokwe indicated that, as the current mattresses were worn, appellant would need to replace them regardless of whether or not a work injury occurred.

In the present case, OWCP erred in relying on Dr. Ugokwe's report as he disregarded the accepted condition listed in the SOAF when providing an opinion regarding whether the proposed two twin-sized mattresses were causally related to the accepted medical condition and medically necessary.[14] As noted, it had accepted appellant's claim for permanent aggravation of lumbar or lumbosacral intravertebral disc and this was noted in the SOAF. Contrary to the SOAF, Dr. Ugokwe opined in his July 27, 2021 report that he did not believe that appellant's degenerative

[10] *M.B.*, Docket No. 17-1679 (issued February 8, 2018); *see D.K.*, 59 ECAB 141 (2007).

[11] *See D.K.*, *supra* note 8; *A.W.*, Docket No. 16-1812 (issued March 15, 2017).

[12] *M.G.*, Docket No. 18-0099 (issued April 26, 2018); *see Debra S. King*, *supra* note 8.

[13] *M.G.*, *id.*; *see Minnie B. Lewis*, 53 ECAB 606 (2002).

[14] *K.C.*, Docket No. 21-0260 (issued September 7, 2021).

changes of the spine were employment related, but rather were associated with the normal aging process. As a result, he found that the proposed two twin-sized mattresses were not medically necessary as appellant's spinal conditions were not causally related to the accepted work injury. The Board has held that it is well established that medical reports must be based on a complete and accurate factual and medical background, medical opinions based on an incomplete, or inaccurate history are of diminished probative value.[15]

As Dr. Ugokwe's opinion is contrary to the SOAF, the case shall be remanded to OWCP for referral of the case record and an updated SOAF to a new DMA. The DMA shall provide a reasoned opinion based on the SOAF and the medical record as to whether the proposed two twin-sized mattresses are causally related to the accepted medical condition and are medically necessary. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

[15] *K.C., id.*; *N.C.*, Docket No. 15-1855 (issued June 3, 2016); *L.A.*, Docket No. 14-1138 (issued September 9, 2014).

ORDER

IT IS HEREBY ORDERED THAT the August 26, 2021 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: March 1, 2023
Washington, DC

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

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