

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

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**B.B., Appellant** )

and )

**DEPARTMENT OF THE ARMY, FORT  
HAMILTON, Brooklyn, NY, Employer** )  
\_\_\_\_\_ )

**Docket No. 23-0648  
Issued: November 17, 2023**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On March 31, 2023 appellant filed a timely appeal from a February 13, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUE**

The issue is whether OWCP abused its discretion in denying appellant's request for authorization for the medication Tegretol XR, effective March 9, 2023.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the February 13, 2023 decision, appellant submitted 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**

OWCP accepted that on June 27, 1972 appellant, then a 25-year-old automotive mechanic, sustained an injury when he fell off the back of a tank and hit his head while in the performance of duty. It accepted the claim for cerebral concussion, fracture base of the skull, and traumatic epilepsy. Appellant stopped work following his injury and returned to modified work on November 6, 1972. He sustained a recurrence of disability on May 31, 1973 and did not return to work. OWCP paid appellant wage-loss compensation pursuant to a loss of wage-earning capacity determination, effective June 9, 1980.

In a February 7, 2022 report, Clare A. Beagen-McHugh, a physician assistant, evaluated appellant for post-traumatic seizure disorder sustained as a result of a work-related injury on June 27, 1972. Appellant noted no new seizure activity and indicated that he was stable for many years and seizure-free for the past few decades. Ms. Beagen-McHugh noted that Tegretol XR managed his seizures and diagnosed post-traumatic seizure disorder. She listed appellant's medications, including Tegretol XR, taken two times daily.

On May 16, 2022 Optum, a subsidiary of UnitedHealth Group, advised appellant that it had contracted with OWCP to manage pharmacy benefits for injured employees covered under FECA. It noted that, a drug formulary, *i.e.*, a list of medications that a claimant was eligible to receive under FECA, had gone into effect on December 9, 2021. Optum informed appellant that his currently prescribed drug Tegretol XR was not allowed under its formulary. It requested that he notify his physician to determine if there was an alternative medication available or, if not, to have his physician complete a prior authorization request (PAR) form to request continued use of the nonformulary medicine. Optum indicated that it would allow the medication until December 8, 2022.

In May 16 and July 7, 2022 letters, Optum requested that Madeline P. Buchanan, a physician assistant, transition appellant to a formulary-approved medication or complete a PAR form to request approval for the nonformulary medication. In a June 6, 2022 letter, it provided appellant information regarding medication authorization, which was similar to that contained in its May 16, 2022 letter.

In a report dated July 11, 2022, Ms. Beagen-McHugh diagnosed seizure disorder and cerebral vascular accident. She listed appellant's prescribed medications, including Tegretol XR.

On October 14, 2022 Optum issued a final reminder to appellant that Tegretol XR was not covered by its formulary and indicated that it would only allow the medication until December 8, 2022. It again requested that he switch to another medication covered by the formulary or submit a PAR form and request approval for Tegretol XR. In a separate letter of even date, Optum advised Marissa Maurino, a physician assistant, that Tegretol XR was not covered under its formulary and requested that she either transition appellant to another medication or submit a PAR form to request approval for Tegretol XR.

A memorandum of telephone call (Form CA-110) dated November 16, 2022 memorialized a voice mail message appellant left with OWCP on that date advising that he would be running out of his prescription medication soon. He reported contacting Optum about his medication and being

advised that it was waiting for clearance from an OWCP claims examiner. On November 17, 2022 appellant left a voice mail message with OWCP reporting that his medication had not been authorized and that he was at the end of the month and would soon run out.

On January 5, 2023 OWCP notified appellant that he was receiving medication for his employment injury through Optum. 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 Optum had notified appellant and his provider on May 16, July 7, and October 14, 2022 that Tegretol XR was not covered under the formulary and had requested the submission of a PAR form if there were no appropriate alternative medications. It informed appellant that this was his final notice to allow time for his prescriber to transition him to an alternative medication covered by the formulary or to submit a PAR form if his prescriber believed that the medication was currently necessary. OWCP indicated that coverage for Tegretol XR would continue until March 8, 2023.

On January 13, 2023 appellant left a voice mail message with OWCP indicating that he needed to speak to the person handling his claim because his medication was being cut off.

By decision dated February 13, 2023, OWCP denied authorization for the medication Tegretol XR, effective March 9, 2023, finding that the evidence of record did not support that this medication was medically necessary to address the effects of his employment-related condition under FECA.

### **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> 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.<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

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<sup>3</sup> *Supra* note 1.

<sup>4</sup> 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).

<sup>5</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Services and Supplies*, Chapter 3.4003a (October 1995).

<sup>6</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).

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 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>

FECA Bulletin No. 22-02 provides that OWCP has contracted with Optum to serve as its Pharmacy Benefits Management (PBM) System for claimants covered under FECA.<sup>11</sup> It further provides, “PBMs are primarily responsible for developing and maintaining formularies which include an approved listing of prescriptions....”<sup>12</sup>

### ANALYSIS

The Board finds that OWCP did not abuse its discretion in denying appellant’s request for authorization for the medication Tegretol XR, effective March 9, 2023.

On February 7, 2022 Ms. Beagen-McHugh, a physician assistant provided a list of appellant’s medications, including Tegretol XR.

In letters dated May 16, June 6, and October 14, 2022, Optum informed appellant that Tegretol XR was not allowed under its formulary of medications that a claimant was eligible to receive under FECA. It requested that he ask his physician if there was alternative medication available or, if not, have the physician complete a PAR form to request continued use of Tegretol XR. Optum also sent May 16 and July 7, 2022 letters to Ms. Buchanan, a physician assistant, and an October 14, 2022 letter to Ms. Maurino, a physician assistant, regarding the procedures for authorizing appellant’s medication.

On October 14, 2022 OWCP notified appellant that Tegretol XR was not covered under the drug formulary and noted that he had received prior letters from Optum requesting that he transition to another medication or have his provider submit a PAR form. It advised that this was

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<sup>7</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>8</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).

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

<sup>10</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>11</sup> FECA Bulletin No. 22-02 (issued November 23, 2021); *see also* FECA Bulletin No. 21-07 (issued March 9, 2021).

<sup>12</sup> *Id.*

his final notice for his provider to change to another medication or submit a PAR form. OWCP informed appellant that his coverage for Tegretol XR would end on December 8, 2022.

In voice mail responses, appellant requested assistance and asserted that his prescription medication had not been authorized and he would soon run out.

As noted, OWCP contracted with Optum to serve as its PBM for claimants covered under FECA, and Optum developed a list of medications, or drug formulary, for claimants covered by FECA.<sup>13</sup> As Tegretol XR was not a medication on Optum's drug formulary, on October 14, 2022 OWCP requested that appellant submit a PAR form from his physician or transition to another medication as Tegretol XR. It provided him over four months to respond to its request. Appellant, however, did not submit a PAR form from his provider requesting authorization for Tegretol XR to Optum within the time allotted. 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.<sup>14</sup> It has the general objective of fully ensuring that an employee recovers from his or her injury possible, in the shortest amount of time, and has broad administrative discretion in choosing means to achieve this goal.<sup>15</sup> Thus, the Board finds that OWCP did not abuse its discretion in denying appellant's request for authorization for Tegretol XR.

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 the medication Tegretol XR effective March 9, 2023.

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<sup>13</sup> *Id.*

<sup>14</sup> *See R.B.*, Docket No. 21-0598 (issued May 19, 2022).

<sup>15</sup> *See R.C.*, Docket No. 18-0612 (issued October 19, 2018); *M.G.*, Docket No. 18-0099 (issued April 26, 2018).

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 13, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 17, 2023  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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