



## ISSUE

The issue is whether OWCP properly denied authorization for Butalbital-Acetaminophen-Caffeine-Codeine (BUT/APAP/CAF CAP CODEINE) for treatment of appellant's accepted employment-related conditions.

## FACTUAL HISTORY

On November 24, 1998 appellant, then a 42-year-old dental assistant, filed a traumatic injury claim (Form CA-1) alleging that on November 17, 1998 she sustained a low back injury when she fell to the floor after her chair rolled out from under her while in the performance of duty. She stopped work on November 17, 1998 and returned on November 20, 1998. OWCP accepted the claim for lumbar strain, thoracic/lumbosacral neuritis, and nerve root and plexus disorder.

In letters dated May 20, August 18, and October 4, 2022, OWCP informed appellant and Dr. Kenneth Barngrover, an osteopath and Board-certified anesthesiologist, that it had contracted with Optum to serve as FECA's Pharmacy Benefit Manager (PMB) for patients cover by FECA. It advised them that the medication, BUT/APAP/CAF CAP CODEINE, did not appear to be related to the accepted conditions of nerve root and plexus disorder, lumbosacral sprain, and thoracic or lumbosacral neuritis or radiculitis. OWCP requested that Dr. Barngrover provide a reasoned medical opinion explaining why the medication prescribed was required for appellant's accepted conditions. Or if the medication was prescribed for a condition not currently accepted, Dr. Barngrover was asked to explain the diagnosis of consequential condition and how this condition was causally related to appellant's November 17, 1998 employment injury.

OWCP subsequently received reports dated November 9 and December 9, 2022, January 10, February 9, March 13, April 12, and May 12, 2023 from Dr. Barngrover who noted appellant's continued pain complaints, her medical course, and provided examination findings. Diagnoses included lower back sprain, nerve root and plexus disorder, lumbar neuritis, lumbosacral neuritis, lumbosacral intervertebral disc, chronic pain, sacroiliitis, and long-term use of opiate analgesic.

In a January 10, 2023 letter, Optum advised Dr. Barngrover that it spoke with a nurse in his office on January 9, 2023 regarding the associated risks with concurrent meperidine, BUT/APAP/CAF CAP CODEINE, and carisoprodol including the need to taper one or more of these medications. It also discussed the use of nonformulary meperidine and BUT/APAP/CAF CAP CODEINE and the need to transition to a preferred formulary alternative such as morphine IR, tramadol IR, or hydrocodone-acetaminophen.

On April 14, 2023 Dr. Barngrover noted his disagreement with Optum's guidance in the January 10, 2023 letter. He noted that only #10 (ten) tablets of meperidine per mouth was prescribed and soma was used mainly at bedtime.

By decision dated June 1, 2023, OWCP denied authorization for BUT/APAP/CAF CAP CODEINE, finding that evidence was insufficient to establish that medication was medically necessary for the effects of the accepted employment injuries.

## 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 the amount of monthly compensation.<sup>4</sup> 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.<sup>5</sup>

In interpreting section 8103 of FECA, the Board has recognized that OWCP has broad discretion in approving services provided, with the only limitation on OWCP's authority being that of reasonableness.<sup>6</sup> 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.<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>

## ANALYSIS

The Board finds that OWCP properly denied authorization for BUT/APAP/CAF CAP CODEINE for treatment of appellant's accepted employment-related conditions.

On May 20, August 18, and October 4, 2022 OWCP informed appellant and Dr. Barngrover that it had contracted with Optum to serve as FECA's new PBM. It advised them that the medication, BUT/APAP/CAF CAP CODEINE, did not appear to be related to the accepted conditions of nerve root and plexus disorder, lumbosacral sprain, and thoracic or lumbosacral neuritis or radiculitis. OWCP requested that Dr. Barngrover provide a reasoned medical opinion explaining why the medication prescribed was required for appellant's accepted conditions. Alternatively, if the medication was prescribed for a condition not currently accepted,

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

<sup>4</sup> *Id.* § 8103(a); *see O.M.*, Docket No. 21-1383 (issued March 1, 2023); *R.B.*, Docket No. 21-0598 (issued May 19, 2022); *N.G.*, Docket No. 18-1340 (issued March 6, 2019); *Thomas W. Stevens*, 50 ECAB 288 (1999).

<sup>5</sup> *R.B., id.*; *J.M.*, Docket No. 20-0396 (issued April 9, 2020); *M.P.*, Docket No. 19-1557 (issued February 24, 2020); *M.B.*, 58 ECAB 588 (2007).

<sup>6</sup> *O.M.*, *supra* note 4; *J.M.*, Docket No. 20-0457 (issued July 16, 2020); *Daniel J. Perea*, 42 ECAB 214 (1990) (abuse of discretion by OWCP is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or administrative actions which are contrary to both logic, and probable deductions from established facts).

<sup>7</sup> *R.B. supra* note 4; *P.L.*, Docket No. 18-0260 (issued April 14, 2020).

<sup>8</sup> *R.B., supra* note 4; *J.M., supra* note 5; *C.S.*, Docket No. 19-0516 (issued August 15, 2019).

Dr. Barngrover was asked to explain the diagnosis of consequential condition and how this condition was causally related to appellant's November 17, 1998 employment injury.

On January 10, 2023 Optum advised Dr. Barngrover that it spoke with a nurse in his office on January 9, 2023 regarding the associated risks with his prescribed medication including BUT/APAP/CAF CAP CODEINE, the need to taper one or more of these medications, and that appellant be transitioned to alternative preferred formulary alternative such as morphine IR, tramadol IR, or hydrocodone-acetaminophen. On April 14, 2023 Dr. Barngrover disagreed with Optum and noted that only #10 (ten) tablets of meperidine per mouth was prescribed and soma was used mainly at bedtime. However, Dr. Barngrover did not provide any explanation as to why the opioid medication was medically necessary in his response to Optum's January 10, 2023 letter.<sup>9</sup>

The Board, therefore, finds that OWCP did not abuse its discretion in denying authorization for BUT/APAP/CAF CAP CODEINE for treatment of appellant's accepted employment-related conditions.

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 properly denied authorization for BUT/APAP/CAF CAP CODEINE for treatment of appellant's accepted employment-related conditions.

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<sup>9</sup> *Supra* note 6. *See also A.M.*, Docket 23-0593 (issued August 24, 2023).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 1, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 30, 2023  
Washington, DC

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

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

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