

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

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H.S., Appellant )

and )

DEPARTMENT OF HOMELAND SECURITY, )  
U.S. CITIZENSHIP & IMMIGRATION )  
SERVICES, Laguna Niguel, CA, Employer )  
\_\_\_\_\_ )

**Docket No. 23-0557  
Issued: October 5, 2023**

*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 March 10, 2023 appellant filed a timely appeal from a January 13, 2023 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 to consider the merits of this case.

**ISSUE**

The issue is whether OWCP properly denied appellant’s request for a home health aide.

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<sup>1</sup> The Board notes that, following the January 13, 2023 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.*

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

## **FACTUAL HISTORY**

On June 13, 2005 appellant, then a 58-year-old assistant, filed an occupational disease claim (Form CA-2) alleging that she developed basilar joint arthritis in both hands due to factors of her federal employment. She stopped work on August 6, 2005 and accepted a position as a legal assistant with the Department of Health and Human Services. OWCP accepted the claim for aggravation of bilateral thumb basilar joint arthritis. OWCP paid appellant wage-loss compensation on the periodic rolls beginning April 3, 2006.

By decision dated June 6, 2008, OWCP reduced appellant's compensation, pursuant to 5 U.S.C. §§ 8106 and 8115, to find that she was capable of earning wages in the constructed position of receptionist, at the rate of \$400.00 per week. It continued to pay her wage-loss compensation on the periodic rolls based on this loss of wage-earning capacity determination.

Beginning on August 9, 2010 Dr. Badi Durain Jeffers, an osteopath, diagnosed osteoarthritis and provided work restrictions including no lifting over 5 pounds, very little computer work or grasping, no repetitive motion of the hands and wrists, exceeding more 15 minutes each every hour. On March 16, 2016 he recounted appellant's difficulty with household activities and activities of daily living. Dr. Jeffers noted that she was requesting home health assistance. He prescribed home health assistance for activities of daily living twice per week for four hours per day. On December 23, 2016 Dr. Jeffers repeated his findings and conclusions and noted that appellant had not received a response from OWCP regarding her request for home health assistance.

In a December 30, 2016 development letter, OWCP noted that appellant had requested assisted care. It advised that house cleaning and cooking were not covered by workers' compensation. OWCP requested additional information from Dr. Jeffers explaining the symptoms, findings, or event which precipitated the need for assisted care, whether it was related to the accepted work condition, and whether skilled nursing or simple custodial care was required. It afforded appellant 30 days to respond.

On March 22, 2018 Dr. Jeffers diagnosed a mild degree of diffuse degenerative joint disease (DJD) changes involving the joints of multiple fingers of both hands and multiple joint spaces of the bilateral wrists, and a moderate degree of DJD change of the bilateral first carpal metacarpal joints. He reported that appellant had bilateral hand/thumb pain that limited her ability to grip and grasp. Dr. Jeffers recounted that she dropped things due to her hand/thumb pain.

Dr. Jeffers completed an additional note on October 18, 2019, repeating appellant's diagnoses and work restrictions. He related that pain in her bilateral extremities was worse at the base of the thumbs, right greater than left, and that it affected the activities of daily living. Dr. Jeffers recounted that appellant dropped things due to the pain in her hands.

In a June 9, 2020 note, Dr. Jeffers, diagnosed mild degree of diffuse DJD changes involving joints of multiple fingers of both hands and multiple joint spaces of the bilateral wrists. He also found a moderate degree of DJD changes of the bilateral first carpal metacarpal joint. On August 25, 2020 Dr. Jeffers recounted appellant's symptoms of worsening pain in her right hand

which was interfering with her activities of daily living and related that she needed help with these activities.

Dr. Jeffers completed a report on August 24, 2021 repeating his diagnoses and appellant's work restrictions. He recounted that her activities of daily living were limited due to pain. Appellant had difficulty gripping, grasping, and lifting which limited her activities of daily living. Dr. Jeffers found decreased range of motion and weakness of her bilateral hands which were specific residuals of her accepted conditions.

On March 29, 2022 Dr. Jeffers requested assistance to help appellant perform household chores due to worsening pain in her hands, right more than left, causing her to drop things.

In an April 1, 2022 development letter, OWCP informed appellant that the services of an attendant were allowed where it was medically documented that assistance was required to care for personal needs such as bathing, dressing, and eating, but not for cooking or housekeeping. It requested that she complete a questionnaire and provide additional medical information. OWCP afforded appellant 30 days to respond.

OWCP subsequently received a March 31, 2022 note, wherein Dr. Jeffers prescribed a home health aide for appellant twice a week for four hours a day to perform household chores due to pain and limitations of her hands. Dr. Jeffers recounted that appellant asserted that she was having worsening pain in her hands, which was limiting her ability to perform household chores.

In an April 6, 2022 development letter, OWCP informed appellant that, pursuant to 20 C.F.R. § 10.314, a home health aide may be authorized to provide assistance for personal needs such as bathing, dressing, and eating, but not for tasks as cooking and housekeeping. It afforded her 30 days to respond.

In a letter dated April 15, 2022, appellant requested assistance for personal hygiene activities. She asserted that hygienic tools needed to perform these tasks required precision, and that constantly holding these tools hurt her hands.

In a May 24, 2022 development letter, OWCP requested that appellant and her treating physician complete questionnaires regarding her need for a home health aide. It afforded 30 days for a response.

On June 1, 2022 Dr. Jeffers recounted appellant's statements that she was having pain and difficulty with personal hygiene.

Appellant subsequently submitted a May 3, 2022 report, wherein Dr. Jeffers noted that appellant had decreased strength in her hands and had difficulty performing tasks. Dr. Jeffers indicated that appellant was able to perform the following tasks unassisted: travel; walk; feed herself; dress herself; bathe, with pain and difficulty; use the bathroom; get out of bed, with difficulty; get out of doors; and take exercise, with difficulty. He noted that she did not currently have an attendant, but that she had pain and difficulty performing tasks due to dropping things and weakness of her hands.

In a June 1, 2022 response to OWCP’s development questionnaire, appellant noted that it was painful and difficult to perform certain hygienic activities. She requested an attendant for 45 minutes to 1 hour once a week to perform these tasks.

In an August 16, 2022 note, Dr. Jeffers again reported that appellant did not need a home health aide for bathing or personal care, but that she was having difficulty cutting her nails and removing hair from her face. He diagnosed right-hand joint pain. Dr. Jeffers requested authorization for hygiene care.

On August 26, 2022 appellant submitted medical reimbursement forms for July 5 and 22, 2022 for the hygienic procedures.

By decision dated January 13, 2023, OWCP denied appellant’s request for a home health aide in accordance with section 8103 of FECA (5 U.S.C. § 8103), finding that there was no rationalized medical opinion evidence establishing the need for such care to redress the effects of her accepted employment injury.

### **LEGAL PRECEDENT**

Section 8103(a) of FECA states in pertinent part: “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 the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation.”<sup>3</sup>

Section 10.314 of OWCP’s regulations establish that the cost of providing attendant services will be paid under section 8103 of FECA as medical bills, so long as the personal care services have been determined to be medically necessary and are provided by a home health aide, licensed practical nurse, or similarly trained individual, subject to requirements specified by OWCP.<sup>4</sup> Attendant services, however, are not intended for performance of domestic and housekeeping chores such as cooking, cleaning, doing the laundry, or providing transportation services. It is intended to pay an attendant for assisting a claimant in his or her personal needs such as dressing, bathing, or using the toilet.<sup>5</sup>

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<sup>3</sup> 5 U.S.C. § 8103(a); 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 2.810.17.h (June 2014); 20 C.F.R. S10.314; *id.* at Chapter 3.300.2a(5) (February 2012) (OWCP will pay for the services of an attendant under section 8103 of FECA, instead of section 8111(a)); *J.F.*, Docket No. 22-0164 (issued November 28, 2022); *J.M.*, Docket No. 20-0457 (issued July 16, 2020); *D.W.*, Docket No. 19-0402 (issued November 13, 2019).

<sup>4</sup> 20 C.F.R. § 10.314; *id.* at Chapter 3.300.2a(5) (February 2012).

<sup>5</sup> *L.H.*, Docket No. 15-1239 (issued August 22, 2016); *Nowling D. Ward*, 50 ECAB 496 (1999); *Allison Maxine McCauley*, 27 ECAB 128 (1975).

The Board has found that OWCP has discretion in determining whether a particular type of service or treatment is likely to cure or give relief.<sup>6</sup> The only limitation on OWCP's authority is that 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 so as to produce a contrary factual conclusion.<sup>8</sup> In order to be entitled to reimbursement of 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>

### ANALYSIS

The Board finds that OWCP properly denied appellant's request for a home health aide.

Dr. Jeffers provided a series of reports dated August 9, 2010 through August 16, 2022, indicating that appellant did not require a home health aide for bathing or personal care, but that she was having difficulty with hygienic activities. On March 22, 2018 he diagnosed moderate degree of DJD change of the bilateral first carpal metacarpal joints and reported that she had bilateral hand/thumb pain that limited her ability to grip and grasp causing her to drop things. Dr. Jeffers completed a May 3, 2022 development questionnaire and indicated that appellant was able to travel, walk, feed herself, dress herself, bathe, use the bathroom, get out of bed, get out of doors, and take exercise without assistance. He did not opine that a home health aide was medically necessary to assist appellant with hygiene activities.

The Board finds that OWCP did not abuse its discretion by finding that appellant had not submitted a rationalized medical opinion supporting the need for a home health aide for hygiene purposes and explaining how this need related to appellant's work-related conditions. Dr. Jeffers also failed to explain how the personal care services requested were medically necessary.

As noted above, the Board has found that OWCP has discretion in determining whether a particular type of service is likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation, and the only limitation on OWCP's authority is that of reasonableness.<sup>11</sup> Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to

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<sup>6</sup> *A.R.*, Docket No. 21-0097 (issued February 24, 2023); *R.C.*, Docket No. 18-0612 (issued October 19, 2018); *Vicky C. Randall*, 51 ECAB 357 (2000).

<sup>7</sup> *A.R.*, *id.*; *B.L.*, Docket No. 17-1813 (issued May 23, 2018); *Lecil E. Stevens*, 49 ECAB 673, 675 (1998).

<sup>8</sup> *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); *Zane H. Cassell*, 32 ECAB 1537, 1540-41 (1981).

<sup>10</sup> *A.R.*, *supra* note 6; *Zane H. Cassell, id.*; *John E. Benton*, 15 ECAB 48, 49 (1963).

<sup>11</sup> *See A.R.*, Docket No. 21-0907 (issued February 24, 2023); *S.N.*, Docket No. 21-0070 (issued March 9, 2022); *W.M.*, Docket No. 18-0957 (issued October 15, 2018).

both logic and probable deductions from established facts.<sup>12</sup> The Board finds that OWCP's denial of appellant's request for a home health aide was reasonable and did not constitute an abuse of discretion.

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 appellant's request for a home health aide.

**ORDER**

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

Issued: October 5, 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

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<sup>12</sup> *Supra* note 8.