

² The Board notes that, following the November 25, 2022 decision, a appellant submitted additional evidence to OWCP. 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.*

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish entitlement to continuation of pay (COP); and (2) whether OWCP properly denied appellant's request for authorization for physical therapy.

FACTUAL HISTORY

On July 14, 2022 appellant, then a 49-year-old rural delivery specialist, filed a traumatic injury claim (Form CA-1) alleging that on May 18, 2022 she pulled muscles in her forearm and developed tennis elbow and golf elbow during a food drive while in the performance of duty. She did not stop work.

By decision dated October 20, 2022, OWCP accepted appellant's claim for lateral epicondylitis of the right elbow. By separate decision of even date, it denied her claim for COP, finding that she had not reported her injury on an OWCP-approved form within 30 days of the accepted May 18, 2022 employment injury. OWCP noted that the denial of COP did not affect appellant's entitlement to other compensation benefits.

On October 24, 2022 OWCP received appellant's request for authorization for physical therapy covering the period November 1 through December 31, 2022, to address a diagnosis of brachial plexus disorders. The attached order was signed by Dr. John G. Maijub, a Board-certified vascular surgeon.

In an October 25, 2022 development letter, OWCP informed appellant of the deficiencies of her request for authorization of physical therapy. It advised her of the type of medical evidence needed and afforded her 30 days to submit the necessary evidence.³

Appellant subsequently submitted a request for authorization for physical therapy dated October 28, 2022, indicating that she would be treated for the accepted condition of lateral epicondylitis. The attached order was signed by Dr. Maijub.

In an October 27, 2022 report, Dr. Ryan Kozlowski, a Board-certified orthopedic surgeon, related appellant's history of injury and treatment, including therapy. Dr. Kozlowski's examination of the right upper extremity demonstrated a moderate-size superficial soft and mobile mass about the anterior shoulder and chest; tenderness to palpation about the lateral epicondyle, cubital tunnel, and dorsal proximal forearm radial tunnel; mild swelling of the lateral elbow and proximal dorsal forearm; tenderness near the extensor carpi radialis brevis; and pain with resisted wrist extension and passive wrist flexion. He performed an intra-articular injection to the right lateral epicondyle extensor tendon and recommended the use of counterforce and wrist braces. Dr. Kozlowski diagnosed right lateral epicondylitis and radial tunnel syndrome of the right upper extremity.

³ A July 20, 2022 cervical spine magnetic resonance imaging scan revealed mild multilevel degenerative changes of the cervical spine.

On October 31, 2022 appellant requested reconsideration of OWCP's October 20, 2022 COP decision. She explained that she informed management that her arm was bothering her on May 7, 2022 and sought medical attention on May 18, 2022. Appellant noted that she communicated with her manager, C.W., regarding her ongoing symptoms and medical treatment on May 18 and 31 and June 8 and 15, 2022. She additionally reached out on June 15, 2022 to B.T., the postmaster, to advise him of the same, and he referred her to T.E. to submit her documentation. Appellant also, on June 18, 2022 contacted J.B., a union official, and was advised to complete an occupational disease claim (Form CA-2), a duty status report (Form CA-17), and claim for compensation (Form CA-7). She indicated that she was never advised of the need to submit any information or documentation to receive COP. Appellant also submitted screenshots of a May 31, 2022 text message conversation with C.W. regarding her medical treatment.

By decision dated November 16, 2022, OWCP denied modification of its October 20, 2022 COP decision.

By decision dated November 25, 2022, OWCP denied appellant's request for authorization of physical therapy, finding that the medical evidence of record was insufficient to establish that the requested therapy was necessary to treat an accepted work-related condition.

LEGAL PRECEDENT -- ISSUE 1

Section 8118(a) of FECA authorizes COP, not to exceed 45 days, to an employee who has filed a claim for a period of wage loss due to a traumatic injury with his or her immediate superior on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of this title.⁴ This latter section provides that written notice of injury shall be given within 30 days.⁵ The context of section 8122 makes clear that this means within 30 days of the injury.⁶

OWCP's regulations provide, in pertinent part, that to be eligible for COP, an employee must: (1) have a traumatic injury which is job related and the cause of the disability and/or the cause of lost time due to the need for medical examination and treatment; (2) file Form CA-1 within 30 days of the date of the injury; and (3) begin losing time from work due to the traumatic injury within 45 days of the injury.⁷

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish entitlement to COP.

⁴ *Supra* note 1 at § 8118(a).

⁵ *Id.* at § 8122(a)(2).

⁶ *E.M.*, Docket No. 20-0837 (issued January 27, 2021); *J.S.*, Docket No. 18-1086 (issued January 17, 2019); *Robert M. Kimzey*, 40 ECAB 762-64 (1989); *Myra Lenburg*, 36 ECAB 487, 489 (1985).

⁷ 20 C.F.R. § 10.205(a)(1-3); *see also T.S.*, Docket No. 19-1228 (issued December 9, 2019); *J.M.*, Docket No. 09-1563 (issued February 26, 2010); *Dodge Osborne*, 44 ECAB 849 (1993); *William E. Ostertag*, 33 ECAB 1925(1982).

The record reflects that appellant filed written notice of her traumatic injury on a Form CA-1 on July 14, 2022 alleging that on May 18, 2022 she pulled muscles in her forearm and developed tennis elbow and golf elbow during a food drive while in the performance of duty. Because she filed her Form CA-1 on July 14, 2022 the Board finds that it was not filed within 30 days of the claimed May 18, 2022 employment injury, as specified in sections 8118(a) and 8122(a)(2) of FECA.⁸ Accordingly, appellant is not entitled to COP.

LEGAL PRECEDENT -- ISSUE 2

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.”⁹

The Board has found that OWCP has great discretion in determining whether a particular type of treatment is likely to cure or give relief.¹⁰ The only limitation on OWCP’s authority is that of reasonableness.¹¹ 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.¹² 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.¹³ Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.¹⁴

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant’s request for authorization for physical therapy.

Appellant requested authorization for physical therapy as referred by Dr. Maijub. She submitted an October 27, 2022 report from Dr. Kozlowski relating her history of injury and treatment, recommending the use of counterforce and wrist braces, and diagnosing right lateral

⁸ *Supra* notes 5 and 6.

⁹ *Supra* note 1 at § 8103.

¹⁰ *R.C.*, Docket No. 18-0612 (issued October 19, 2018); *Vicky C. Randall*, 51 ECAB 357 (2000).

¹¹ *B.L.*, Docket No. 17-1813 (issued May 23, 2018); *Lecil E. Stevens*, 49 ECAB 673, 675 (1998).

¹² *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *Rosa Lee Jones*, 36 ECAB 679 (1985).

¹³ *J.R.*, Docket No. 17-1523 (issued April 3, 2018); *Bertha L. Arnold*, 38 ECAB 282, 284 (1986).

¹⁴ *Zane H. Cassell*, 32 ECAB 1537, 1540-41 (1981); *John E. Benton*, 15 ECAB 48, 49 (1963).

epicondylitis and radial tunnel syndrome of right upper extremity. However, this medical evidence is of no probative value as it did not provide an opinion regarding appellant's need for physical therapy. The Board has held that a medical report that does not offer an opinion on causal relationship is of no probative value.¹⁵ Consequently, this evidence is insufficient to establish that the requested physical therapy was causally related to the accepted employment injury.

The only limitation on OWCP's authority to authorize medical treatment is one of reasonableness.¹⁶ As none of the medical evidence explained how the proposed physical therapy was medically necessary and causally related to the accepted condition under this claim, the Board finds that OWCP acted reasonably in denying appellant's request for physical therapy.

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 appellant has not met her burden of proof to establish entitlement to COP. The Board further finds that OWCP properly denied appellant's request for authorization for physical therapy.

¹⁵ *T.M.*, Docket No. 21-1310 (issued March 7, 2022); *K.F.*, Docket No. 19-1846 (issued November 3, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁶ *Supra* note 11.

ORDER

IT IS HEREBY ORDERED THAT the November 16 and 25, 2022 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 26, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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