



## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>3</sup> 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 March 21, 2014 appellant, then a 51-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that she injured her right shoulder on February 20, 2014, while performing continuous reaching and stretching in the course of her federal employment. She stopped work on March 8, 2014. OWCP accepted the claim for bilateral complete rotator cuff rupture, right sprain of shoulder, upper arm, and rotator cuff, left shoulder impingement, bilateral carpal tunnel syndrome, and cervical spine ligament sprain.<sup>4</sup>

On April 21, 2023 OWCP received a Congressional inquiry regarding an unpaid bill for Dr. J. Soborowicz, a chiropractic physician at Active Health.

By development letter dated April 27, 2023, OWCP advised appellant that the evidence submitted was insufficient to authorize chiropractic treatment. It advised her of the criteria for authorization of chiropractic treatment under FECA and noted that the June 17, 2010 x-rays did not reveal a subluxation. OWCP further advised that the chiropractor should indicate whether the attending physician had referred appellant for chiropractic treatment and afforded 30 days to submit the necessary evidence.

OWCP received treatment notes from Dr. Joseph T. Hebl, a specialist in occupational medicine, dating from March 2014 to May 2023. In a report dated March 20, 2023, Dr. Hebl summarized appellant's medical treatment course, including physical therapy and chiropractic treatment since February 20, 2014. He noted that she reported overall worsening of her right shoulder and wrist symptoms with increased physical activity she has been attempting to do as part of her exercise program. Dr. Hebl noted that appellant should continue her physical therapy, chiropractic treatment, and deep tissue myofascial release treatments as much as possible to try to relieve her worsened symptoms regarding her right upper extremity and her ongoing neck spasm.

In a May 15, 2023 report, Dr. Hebl noted appellant's medical treatment. He noted that she returned for reevaluation of her multiple musculoskeletal and neurologic conditions. Dr. Hebl related that appellant's neck symptoms continued to be problematic and she had continued to be attending chiropractic sessions with Dr. Soborowicz at Active Health Chiropractic Care. He noted that DOL had questioned appellant's chiropractic care for her work-related condition, and therefore he had ordered x-rays of the affected spinal areas.

A May 18, 2023 lumbar x-ray report revealed that appellant had moderate-to-marked degenerative and hypertrophic changes to the posterior facet joints, most marked at L4-5 and L5-

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<sup>3</sup> Docket No. 18-0305 (issued September 4, 2018).

<sup>4</sup> OWCP File No. xxxxxx214. The record indicates that five of appellant's claims have been combined with the instant case, OWCP File Nos. xxxxxx606, xxxxxx111, xxxxxx331, and xxxxxx289. OWCP File No. xxxxxx289 was accepted for cervical and lumbar ligament sprains, with a November 4, 2015 date of injury.

S1, which in turn resulted in grade 1 anterolisthesis at L5 on S1, which had progressed when compared with a June 17, 2010 x-ray. No fractures, dislocations, or osseous lesions were noted. Dr. Hebl wrote a note to the claims examiner on the x-ray report, relating that appellant had a subluxation at L5-S1 and that she, therefore, met the requirement for chiropractic care.

In a May 25, 2023 statement, appellant indicated that she had submitted the documentation requested by OWCP. In a May 25, 2023 response to OWCP, Dr. Hebl related that x-rays of the spine were taken on May 18, 2023, opined that the findings were work related, and referred appellant for chiropractic treatment at L5-S1.

By decision dated May 31, 2023, OWCP denied authorization for chiropractic treatment. It noted that it had not received the required statement from the chiropractor, indicating that a referral for chiropractic treatment was made by appellant's physician and that the x-ray findings were work related.

### **LEGAL PRECEDENT**

Section 8103(a) of FECA<sup>5</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 by 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 the monthly compensation.<sup>6</sup> While OWCP is obligated to pay for treatment of employment-related conditions, the employee has the burden of proof to establish that the expenditures were incurred for treatment of the effects of an employment-related injury or condition.<sup>7</sup>

Section 10.310(a) of OWCP's implementing regulations provides 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.<sup>8</sup>

In interpreting this section 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>9</sup> OWCP has the general objective of ensuring that an employee recovers

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<sup>5</sup> 5 U.S.C. § 8103(a).

<sup>6</sup> *Id.*; see *J.K.*, Docket No. 20-1313 (issued May 17, 2021); *Thomas W. Stevens*, 50 ECAB 288 (1999).

<sup>7</sup> *M.P.*, Docket No. 19-1557 (issued February 24, 2020); *R.M.*, Docket No. 19-1319 (issued December 10, 2019); *J.T.*, Docket No. 18-0503 (issued October 16, 2018); *Debra S. King*, 44 ECAB 203, 209 (1992).

<sup>8</sup> 20 C.F.R. § 10.310(a); see *D.W.*, Docket No. 19-0402 (issued November 13, 2019).

<sup>9</sup> *B.I.*, Docket No. 18-0988 (issued March 13, 2020); see also *Daniel J. Perea*, 42 ECAB 214, 221 (1990) (holding that a 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).

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>10</sup>

Abuse of discretion is 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>11</sup>

### **ANALYSIS**

The Board finds that OWCP properly denied authorization for chiropractic care.

In his March 20, 2023 report, Dr. Hebl noted that appellant reported overall worsening of her right shoulder and wrist symptoms with increased physical activity she has been attempting to do as part of her exercise program. He noted that she should continue her physical therapy, chiropractic treatment, and deep tissue myofascial release treatments as much as possible to try to relieve her worsened symptoms regarding her right upper extremity and her ongoing neck spasm. However, Dr. Hebl did not indicate that he had referred appellant to Dr. Soborowicz for physical therapy treatment, under his direction, for appellant's accepted right upper extremity and cervical conditions under this claim.

The Board notes that a May 18, 2023 report from Dr. Hebl contained a handwritten note to the claims examiner stating that the x-ray of appellant's lumbar spine indicated that she had a subluxation at L5-S1. Dr. Hebl thereafter concluded that appellant met the DOL requirement for chiropractic care. However, he failed to explain that the chiropractor was treating appellant under his direction, for her accepted conditions under this claim.

The Board thus finds that OWCP did not abuse its discretion in denying authorization for chiropractic care.<sup>12</sup>

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

### **CONCLUSION**

The Board finds that OWCP properly denied authorization for chiropractic care.

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<sup>10</sup> *Id.*

<sup>11</sup> *P.L.*, Docket No. 18-0260 (issued April 14, 2020); *E.L.*, Docket No. 17-1445 (issued December 18, 2018); *L.W.*, 59 ECAB 471 (2008); *P.P.*, 58 ECAB 673 (2007); *Daniel J. Perea*, *supra* note 9.

<sup>12</sup> To the extent that appellant is requesting chiropractic care in relation to one of her other accepted claims, OWCP should consider adjudicating her request under that other claim file.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 31, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 17, 2024  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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