

² The Board notes that following the November 8, 2024 decision, appellant submitted additional evidence to OWCP and on appeal to the Board. 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

On October 4, 2007 appellant, then a 47-year-old communication specialist, filed a traumatic injury claim alleging that on October 3, 2007 she sustained a back injury when she pulled a floor tile loose while in the performance of duty. She stopped work on October 9, 2007. OWCP assigned the claim OWCP File No. xxxxxx075 and initially accepted it for lumbar sprain. It subsequently expanded the acceptance of appellant's claim to include, *inter alia*, dislocation of unspecified cervical vertebrae, inflammatory lumbar spondylopathies and lumbar spondylosis without myelopathy or radiculopathy. OWCP paid appellant wage-loss compensation on the supplemental rolls effective November 26, 2007, and on the periodic rolls effective March 29, 2020.³

Beginning in late October 2007, OWCP authorized physical therapy to treat appellant's accepted October 3, 2007 employment injury. She continued to undergo periodic OWCP-authorized physical therapy sessions thereafter.

On August 19, 2020 Dr. John J. Labiak, a Board-certified orthopedic surgeon, performed OWCP-authorized decompressive laminectomy, discectomy, and posterior lumbar interbody fusion at L4-5.

On February 22, 2024 OWCP authorized massage therapy for the period March 4 through April 28, 2024.

In an April 16, 2024 prescription note received by OWCP on that date, Dr. Douglas L. Swinson, a chiropractor, diagnosed cervicalgia, low back pain, and muscle spasm of back, and indicated that appellant should continue to undergo massage therapy two to three times per week for eight weeks. Appellant later requested continued authorization for manual therapy for periods after April 28, 2024.

In an April 16, 2024 letter, OWCP's payment management service advised appellant's therapy provider that the authorization request could not be approved at that time because further medical development was needed.

In an April 18, 2024 development letter, OWCP advised appellant that physical therapy had been authorized from October 22, 2007 through April 28, 2024 and noted that, if physical therapy continued to be medically necessary thereafter, authorization would be contingent upon receipt of additional medical information, including an updated treatment plan based upon a current medical examination. It detailed the type of the medical evidence appellant needed to submit and stated, "In cases where therapy is merely palliative, and the medical evidence does not reflect any significant benefits after many months, we cannot authorize additional [physical therapy]." OWCP afforded appellant 30 days to submit the requested information.

³ Under a separate claim, OWCP File No. xxxxxx699, OWCP accepted that appellant sustained a traumatic injury on April 23, 2010 in the form of a C6-7 disc subluxation. It administratively combined OWCP File Nos. xxxxxx699 and xxxxxx750, with the latter serving as the master file.

In response, appellant submitted a July 12, 2022 treatment note, wherein Dr. Labiak noted that appellant complained of continued low- and mid-back pain, and that she reported temporary benefit from massage therapy. He detailed physical examination findings and diagnosed cervical spondylosis without myelopathy, and status post decompression with interbody fusion. Dr. Labiak stated, “She will continue with chiropractic as well as massage therapy[,] which have benefited her[;] she will also continue with acupuncture.”

On August 10, 2022 Dr. Labiak prescribed cervical traction.

In a January 26, 2024 report, Elaine Bringle, an advanced practice registered nurse, reported physical examination findings, diagnosed neck and back conditions, and prescribed medication. She indicated that appellant could return to work with restrictions. In a January 26, 2024 form report, Ms. Bringle recommended massage therapy twice per week, for four weeks.

In March 2 and 7, 2024 reports, Dr. Nathaniel Schilling, a chiropractor, indicated appellant had cervical and lumbar vertebral subluxations, and maintained that chiropractic manual therapy was medically necessary to reduce pain and improve function.

In April 9, 11, 16, 18, 23, and 25, 2024 reports, Sally Rickolt, a massage therapist, described appellant’s therapeutic massage treatments on those dates. Appellant also submitted an unsigned April 22, 2024 general medical authorization request, and unsigned April 26 and May 27, 2024 nurse intervention progress reports. In an April 29, 2024 report, Ms. Bringle listed the diagnoses made in connection with magnetic resonance imaging (MRI) scans of appellant’s right shoulder and cervical, thoracic, and lumbar areas of the spine.

In a May 2, 2024 report, Dr. Brittney Lambie, a Board-certified orthopedic surgeon, noted that appellant presented for evaluation of her neck and lumbar spine problems. She detailed physical examination findings and diagnosed chronic low back pain, chronic neck pain, and history of lumbar fusion.

The case record also contains several diagnostic tests obtained on May 2, 2024. Cervical spine x-rays revealed mild-to-moderate degenerative changes from C2 through C7 with an aligned cervical spine, intact vertebral bodies, and preservation of the C1-2 relationship. Pelvis x-rays revealed no acute depressed/displaced fractures with a maintained pelvic ring and intact/symmetric sacral arcuate lines. Lumbar spine x-rays revealed no acute fractures with an aligned lumbar spine and intact vertebral bodies, as well as L4-5 discectomy changes and early multilevel endplate changes.

By decision dated June 26, 2024, OWCP denied appellant’s request for continued authorization of massage therapy and manual therapy for periods after April 28, 2024, finding that the medical evidence of record was insufficient to establish that they continued to be medically necessary.

On July 25, 2024 OWCP referred appellant, along with the medical record, a statement of accepted facts (SOAF), and a series of questions, to Dr. Louis N. Radden, an osteopath and Board-certified orthopedic surgeon for a second opinion examination to determine appellant’s work-related disability and residuals, and to provide treatment recommendations.

In an August 7, 2024 report, Ms. Bringle detailed physical examination findings and further discussed appellant's orthopedic conditions.

The case record also contains a form report dated August 7, 2024, wherein Ms. Bringle requested authorization for massage therapy. Appellant also submitted a report dated August 7, 2024 by Ms. Bringle listing medical referrals, and a diagnostic testing order.

In an August 16, 2024 report, Dr. Radden reported the findings of his physical examination. In the "recommendation/plan" portion of the report, he stated, "It is within my reasonable medical opinion that [appellant] should continue physical therapy for acute aggravations and exacerbations to her cervical, thoracic, lumbar, lumbosacral spine, and bilateral shoulders." Dr. Radden also indicated that, after reviewing additional diagnostic testing of the cervical, thoracic, and lumbar spine, further treatment recommendations that he would consider included "intermittent physical therapy for acute aggravations exacerbations of her cervical, thoracic, and lumbar spine as well as the possibility of a trial/permanent spinal cord stimulator to help her mitigate her pain and radicular symptoms and increase her quality of life." In a work capacity evaluation (Form OWCP-5c) of even date, he indicated that appellant did not have any work restrictions.

Appellant also submitted a September 10, 2024 report by Ms. Bringle, which detailed physical examination findings and further discussed appellant's orthopedic conditions. The case record also contains a form report and a diagnostic testing order dated September 10, 2024 by Ms. Bringle.

On October 26, 2024 appellant requested reconsideration of the June 26, 2024 decision.

Appellant submitted documents dated October 17 and 18, 2024, including a narrative report, a form report, a diagnostic testing order, and a referral document by Ms. Bringle.

By decision dated November 8, 2024, OWCP denied modification of the June 26, 2024 decision.

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."⁴

The Board has found that OWCP has broad discretion in determining whether a particular type of treatment is likely to cure or give relief.⁵ The only limitation on OWCP's authority is

⁴ 5 U.S.C. § 8103.

⁵ *R.C.*, Docket No. 18-0612 (issued October 19, 2018); *Vicky C. Randall*, 51 ECAB 357 (2000); *Daniel J. Perea*, 42 ECAB 214 (1990).

that of reasonableness.⁶ 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.⁷ 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.⁸ Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.⁹

ANALYSIS

The Board finds that this case is not in posture for decision.

On July 25, 2024 OWCP referred appellant, along with the medical record, a SOAF, and a series of questions to Dr. Radden for a second opinion examination to determine appellant's work-related disability and residuals, and to provide treatment recommendations.

In an August 16, 2024 report, Dr. Radden reported the findings of his physical examination. In the "recommendation/plan" portion of the report, he stated, "It is within my reasonable medical opinion that [appellant] should continue physical therapy for acute aggravations and exacerbations to her cervical, thoracic, lumbar, lumbosacral spine, and bilateral shoulders." Dr. Radden also indicated that, after reviewing additional diagnostic testing of the cervical, thoracic, and lumbar areas of the spine, further treatment recommendations that he would consider included "intermittent physical therapy for acute aggravations exacerbations of her cervical, thoracic, and lumbar spine as well as the possibility of a trial/permanent spinal cord stimulator to help her mitigate her pain and radicular symptoms and increase her quality of life." However, he did not explain why continued massage therapy and manual therapy beyond April 28, 2024 was medically necessary.

Once OWCP undertakes development of the medical evidence, it must produce medical evidence that will resolve the relevant issues in the case.¹⁰ In a situation where OWCP secures an opinion from a second opinion physician and the opinion from such second opinion physician requires clarification or elaboration, it has the responsibility to secure a supplemental report from the physician for the purpose of correcting the defect in the original opinion.¹¹

⁶ *B.L.*, Docket No. 17-1813 (issued May 23, 2018); *Lecil E. Stevens*, 49 ECAB 673, 675 (1998).

⁷ *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *Rosa Lee Jones*, 36 ECAB 679 (1985).

⁸ *J.R.*, Docket No. 17-1523 (issued April 3, 2018); *Bertha L. Arnold*, 38 ECAB 282, 284 (1986).

⁹ *Zane H. Cassell*, 32 ECAB 1537, 1540-41 (1981); *John E. Benton*, 15 ECAB 48, 49 (1963).

¹⁰ See *K.A.*, Docket No. 23-0773 (issued November 1, 2024); *S.A.*, Docket No. 18-1024 (issued March 12, 2020); *L.B.*, Docket No. 19-0432 (issued July 23, 2019); *William J. Cantrell*, 34 ECAB 1223 (1983).

¹¹ See *G.L.*, Docket No. 23-0584 (issued April 1, 2024); *M.F.*, Docket No. 23-0881 (issued December 6, 2023); *G.T.*, Docket No. 21-0170 (issued September 29, 2021); *Ayanle A. Hashi*, 56 ECAB 234 (2004) (when OWCP refers a claimant for a second opinion evaluation and the report does not adequately address the relevant issues, OWCP should secure an appropriate report on the relevant issues).

On remand, OWCP shall request clarification from Dr. Radden regarding why continued massage therapy and manual therapy for periods after April 28, 2024 were medically necessary. If Dr. Radden is unavailable or unwilling to provide such clarification, OWCP must refer the case to a new second opinion physician for a rationalized medical opinion on the issue in question.¹² Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the November 8, 2024 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: May 5, 2025
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

¹² *G.L., id.*; *S.F.*, Docket No. 23-0509 (issued January 24, 2024); *D.W.*, Docket No. 20-0674 (issued September 29, 2020).