

Federal Employees' Compensation Act³ (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 authorization for a nonformulary prescription medication.

FACTUAL HISTORY

On March 13, 2006 appellant, then a 41-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that he developed neck and back pain radiating into his left leg due to factors of his federal employment, including driving a jeep, pulling heavy hampers of mail, lifting, and using a 20-pound steel bar. OWCP accepted the claim for brachial neuritis or cervical radiculitis. Appellant stopped work on April 7, 2006. OWCP paid compensation on the supplemental rolls beginning May 1, 2006, and on the periodic rolls beginning October 29, 2006.

Dr. Mark A. P. Filippone, a Board-certified physiatrist, prescribed Percocet to treat appellant's accepted conditions beginning on March 1, 2006.

OWCP expanded the acceptance of appellant's claim to include displacement of cervical intervertebral disc without myelopathy; intervertebral disc disorder with myelopathy, cervical region; and displacement of lumbar intervertebral disc without myelopathy.

Dr. Irfan Alladin, a Board-certified physiatrist, on December 6, 2021 prescribed Percocet for pain for two weeks. On January 4, 2022 he advised that appellant should continue with Percocet for pain for two weeks.

In a letter dated July 7, 2022, Optum, OWCP's pharmacy benefit manager (PBM), advised appellant that pharmacy benefits for injured employees under FECA were managed under a drug formulary that went into effect December 9, 2021. It related that the prescription for Percocet, was outside the formulary allowances, but would be allowed until December 8, 2022. The PBM requested that appellant's prescriber take appropriate action. It referred to the drug formulary and information regarding the prior authorization process including the prior authorization request form (PARF) *via* the FECA PBM prescriber portal.

In a second letter also dated July 7, 2022, the PBM informed Dr. Alladin that the formulary contained a list of medications, including quantity and generic allowances, that injured employees were eligible to receive under FECA. The PBM advised that appellant's prescription for Percocet was outside the formulary allowances, but would be allowed until December 8, 2022. It advised him to take one of the following actions: (1) transition appellant's prescription to comply with the formulary allowances; (2) transition appellant to a different formulary medication, complying with the formulary allowances; or (3) request a prior authorization *via* the prescriber portal to obtain approval or an exception to the formulary allowance. No response was received.

³ 5 U.S.C. § 8101 *et seq.*

On May 11, 2023 OWCP issued a final notice to appellant that Percocet in the formulations of 5-325 mg and 10-325 mg tablets were no longer covered by its formulary and indicated that it would only allow the medication until June 30, 2023. It again requested that he switch to a generic oxycodone with acetaminophen, to another alternative medication covered by the formulary, or submit a PARF and request approval for Percocet.

On June 7, 2023 Dr. Serge Menkin, a Board-certified physiatrist, reported that appellant should continue his prescribed Percocet for severe pain.

By decision dated June 23, 2023, OWCP denied authorization for the medication Percocet.

OWCP continued to receive medical evidence. On July 7, 2023 Dr. Menkin continued to prescribe Percocet medication. In a July 19, 2023 report, he advised that he had treated appellant since March 9, 2022 for injuries from an employment incident. He recounted appellant's reports of complications and side effects from taking generic opioids. Dr. Menkin requested that OWCP reconsider providing appellant with the brand-name medication.

In a report dated July 18, 2023, Dr. David Basch, an orthopedic surgeon, reported that he examined appellant on that day after appellant had taken generic oxycodone and reported itching. He further reported that appellant sought treatment in the emergency room and received topical anti-itch cream and hydroxyzine.

On July 19, 2023 Dr. Arthur M. Katz, a Board-certified dermatologist, examined appellant due to severe pain and itching. He related that appellant had used Percocet and had done well on the trademarked medication. Dr. Katz opined that the generic equivalent had caused severe itching and requested authorization of the trademarked medication.

On August 2, 2023 Dr. Menkin related that appellant reported itching after taking generic oxycodone/acetaminophen. He noted that appellant sought treatment in the emergency room and received topical anti-itch cream and hydroxyzine with no relief. Dr. Menkin discussed with appellant the option to rotate hydrocodone, codeine, tramadol, or other medications which he had tolerated in the past. Appellant believed, however, that his pain was best relieved by trademarked Percocet. Dr. Menkin continued to prescribe Percocet for severe pain.

On August 7, 2023 appellant, through counsel, requested reconsideration of the June 23, 2023 decision. Counsel asserted that the evidence established that appellant experienced itching and pain from the generic equivalent to Percocet.

On August 31, 2023 the PBM contacted Dr. Menkin regarding appellant's need to transition to the generic formulation of Percocet or a preferred formulary alternative. His office explained that appellant had experienced hives and vomiting with the generic formulation and that appellant did not wish to try morphine because of the addiction potential. The PBM recommended that appellant seek appeal through OWCP.

On November 8, 2023 Dr. Menkin indicated that appellant had taken generic oxycodone/acetaminophen but had itching and sought treatment in the emergency department, where he received hydroxyzine and anti-itch cream. He noted that appellant did not have issues

on Percocet. Dr. Menkin again advised that he had discussed rotation to another opioid, but appellant asserted that he had the best pain relief and function with brand-named Percocet.

On October 26, 2023 OWCP referred the case record and a statement of accepted facts (SOAF) to Dr. Kenechukwu Ugokwe, Board-certified in emergency medicine and serving as the OWCP district medical adviser (DMA), for review and an opinion of whether the medication prescribed, Percocet, was medically warranted as there was a generic version available.

In a November 10, 2023 report, the DMA, Dr. Ugokwe, opined that the requested trademarked version of Percocet was not medically necessary. He reviewed the reports of Dr. Katz and Dr. Menkin and disagreed with their conclusions. Dr. Ugokwe, in consultation with Nakia Shaw, a PBM pharmacist, found that there were no known drug allergies discussed in the medical record, and that there were many generic formulations of Percocet to consider. The DMA related that not all generic formulations of Percocet “can be considered an allergy unless considering the active ingredients to be the issue. It is the only consistent aspect of the drug formulation as active ingredients” per the Food and Drug Administration (FDA). He further recommended that appellant try “less habit-forming medications first prior to escalating therapy to oral narcotic pain medications.”

In a decision dated November 28, 2023, OWCP denied modification of the June 23, 2023 decision.

LEGAL PRECEDENT

Section 8103(a) of FECA⁴ 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 in the amount of monthly compensation.⁵ In general, drugs and medications which are necessary to treat an injury or occupational disease may be purchased at OWCP’s expense on the recommendation of the attending physician. These include prescription as well as nonprescription medications.⁶

The Board has found that OWCP has great discretion in determining whether a particular type of treatment is likely to cure or give relief.⁷ The only limitation on OWCP’s authority is that of reasonableness.⁸ Abuse of discretion is generally shown through proof of manifest error, clearly

⁴ *Id.*

⁵ 5 U.S.C. § 8103; *see T.W.*, Docket No. 23-0504 (issued July 11, 2023); *L.W.*, Docket No. 21-0607 (issued October 18, 2022); *N.G.*, Docket No. 18-1340 (issued March 6, 2019).

⁶ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Services and Supplies*, Chapter 3.400.3a (October 1995).

⁷ *T.W.*, *supra* note 5; *C.Y.*, Docket No. 21-0335 (issued November 7, 2022); *R.C.*, Docket No. 18-0612 (issued October 19, 2018); *Vicky C. Randall*, 51 ECAB 357 (2000).

⁸ *T.W.*, *id.*; *M.S.*, Docket No. 22-0113 (issued June 7, 2022); *B.L.*, Docket No. 17-1813 (issued May 23, 2018); *Lecil E. Stevens*, 49 ECAB 673, 675 (1998).

unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts.⁹

ANALYSIS

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

Drs. Menkin and Basch discussed appellant's accepted employment injuries and recounted his reports of complications and side effects from taking a generic formulation of Percocet including itchiness. In his several reports, Dr. Menkin continued to opine that appellant had side effects from the generic formulation of Percocet and thus his need for trademarked Percocet. Dr. Katz also noted that appellant used Percocet to manage chronic pain and that the generic version caused severe itching. He requested that appellant be continued on Percocet.

On November 10, 2023 the DMA, Dr. Ugokwe, opined that the requested prescription for Percocet was not medically necessary. He disagreed with Dr. Katz, Dr. Basch, and Dr. Menkin. Dr. Ugokwe found that there were no known drug allergies discussed in the medical record. He noted that there were many generic versions of Percocet to consider and that not all of those versions "can be considered an allergy unless considering the active ingredients to be the issue. It is the only consistent aspect of the drug formulation as active ingredients" per the FDA. However, appellant's treating physicians have provided reports documenting that appellant suffered from an allergic reaction from taking the generic versions of Percocet. The Board therefore finds that Dr. Ugokwe's report is based on an inaccurate history. The Board has held that medical reports based on an incomplete or inaccurate history are of limited probative value.¹⁰

It is well established that proceedings under FECA are not adversarial in nature and, while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.¹¹ Accordingly, once OWCP undertakes development of the medical evidence, it must resolve the relevant issue in the case.¹²

The case shall, therefore, be remanded for OWCP to refer the case record to a new DMA for a rationalized medical opinion as to whether it should authorize appellant to use the

⁹ *M.M.*, Docket No. 23-1088 (issued February 7, 2024); *B.B.*, Docket No. 23-0648 (issued November 17, 2023); *A.M.*, Docket No. 23-0593 (issued August 24, 2023); *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

¹⁰ *See S.E.*, Docket No. 26-0036 (issued January 29, 2026); *B.C.*, Docket No. 24-0036 (issued March 19, 2024); *S.B.*, Docket No. 21-0646 (issued July 22, 2022); *D.H.*, Docket No. 21-0537 (issued October 18, 2021); *T.B.*, Docket No. 17-0304 (issued May 16, 2017); *S.R.*, Docket No. 14-1086 (issued February 26, 2015) (medical conclusions based on an incomplete or inaccurate factual background are of limited probative value).

¹¹ *See V.S.*, Docket No. 25-0836 (issued February 26, 2026); *N.B.*, Docket No. 23-0690 (issued December 5, 2023); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *D.S.*, Docket No. 17-1359 (issued May 3, 2019); *A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999).

¹² *See S.E.*, *supra* note 10; *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).

nonformulary prescription medication, Percocet.¹³ After 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 28, 2023 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: March 13, 2026
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

¹³ See *S.K.*, Docket No. 25-0227 (issued April 1, 2025).