

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

C.J., Appellant	)	
	)	
and	)	<b>Docket No. 24-0058</b>
	)	<b>Issued: May 4, 2026</b>
DEPARTMENT OF AGRICULTURE,	)	
WALNUT GRANGE SERVICE CENTER,	)	
Beltsville, MD, Employer	)	
	)	

*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  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On October 11, 2023 appellant filed a timely appeal from a September 18, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUE**

The issue is whether OWCP properly denied authorization for a nonformulary prescription medication.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that following the September 18, 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.*

## **FACTUAL HISTORY**

This case has previously been before the Board on a different issue.<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 June 24, 1994 appellant, then a 46-year-old accounting technician, filed an occupational disease claim (Form CA-2) alleging that he sustained an emotional condition causally related to factors of his federal employment which arose as of April 1, 1994. He stopped work on June 17, 1994. OWCP initially accepted the claim for major depressive disorder. It paid appellant wage-loss compensation on the supplemental and periodic rolls.

In May 16 and June 6, 2022 letters, 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 on December 9, 2021. It related that appellant's prescription for Zolpidem ER,<sup>4</sup> was outside the formulary allowances because it exceeded the maximum allowed daily dosage and it exceeded the cumulative day supply limit. However, the requested prescription 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 letters dated May 16 and July 7, 2022, the PBM informed Dr. Patrick J. Sheehan, a Board-certified psychiatrist, 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 Zolpidem ER was outside the formulary allowances because it exceeded the maximum allowed daily dosage and it exceeded the cumulative day supply limit. However, the prescription would be allowed until December 8, 2022. It further 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.

OWCP subsequently received a July 5, 2022 report, wherein Dr. Sheehan noted appellant's prescribed medications, including Ambien CR for sleep.

In a September 28, 2022 report, Dr. Sheehan related appellant's history of injury and medical treatment. He listed appellant's prescribed medications, including Ambien CR for sleep. Dr. Sheehan noted that appellant goes to bed at 12:00 a.m., but it takes 45 to 60 minutes for him to go to sleep. He further noted that appellant wakes up at 8:00 a.m. and feels rested. Dr. Sheehan indicated that he discussed decreasing his Ambien dosage, but appellant responded that with Ambien he sleeps and without it he does not sleep. He continued appellant on his prescribed medications.

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<sup>3</sup> Docket No. 97-2047 (issued December 8, 1998).

<sup>4</sup> The Board notes that one of the brand names for Zolpidem ER is Ambien CR.

In a December 28, 2022 report, Dr. Sheehan listed appellant's prescribed medications, including Ambien CR for sleep. He noted that appellant goes to bed at about 11:00 p.m. and takes the prescribed dosage of Ambien CR. It takes 15 to 20 minutes to fall asleep. Dr. Sheehan further noted that appellant wakes up between 7:00 a.m. and 8:00 a.m. and feels rested. He indicated that he discussed decreasing appellant's Ambien dosage, but appellant responded that with Ambien he sleeps and without it he does not sleep. Dr. Sheehan continued appellant on his prescribed medications.

In an April 11, 2023 report, Dr. Sheehan again listed appellant's currently prescribed medications, including Ambien CR for sleep. He noted that appellant went to bed the prior night at 12:00 a.m. and it took 30 minutes to fall asleep. Dr. Sheehan further noted that appellant woke up the next day at 7:00 a.m., went back to sleep, and woke up again at 9:00 a.m., feeling rested.

In a July 19, 2023 report, Dr. Sheehan again listed appellant's prescribed medications, including Ambien CR for sleep. He noted that appellant went to bed the prior night at 12:30 a.m. Dr. Sheehan further noted that appellant woke up the next day at 8:00 a.m. feeling rested.

On August 3, 2023, the PBM received a Prior Authorization Request Form (PARF) dated August 1, 2023 for the Zolpidem ER prescription from Dr. Sheehan. In this PARF, Dr. Sheehan explained that appellant had previously tried using an alternative medication for sleep, but the trial was discontinued due to negative side effects.

The PBM reviewed the PARF, but denied medical authorization on August 4, 2023, finding that the medication dosage was outside of recommended guidelines.

On August 23, 2023, OWCP expanded the acceptance of the claim to include major depressive disorder, recurrent, severe with psychotic symptoms; insomnia due to other mental disorder; panic disorder with agoraphobia; and aggravation of bipolar disorder, current episode mixed, severe, with psychotic features.

On August 31, 2023, a PBM pharmacist contacted Dr. Sheehan's office to discuss appellant's ongoing Zolpidem ER use. The PBM pharmacist advised that long-term use of sedative hypnotics was not recommended; that Zolpidem ER should be avoided and/or used with caution in older adults; and that DOL formulary plan parameters limit use of sedative hypnotics to a maximum of 180 days. The PBM pharmacist recommended transitioning to a safer, guideline-supported alternative treatment option. Dr. Sheehan's office contended that Zolpidem ER was the only treatment that has helped with appellant's insomnia, noting that alternative medications were ineffective. The PBM pharmacist requested that Dr. Sheehan formally respond "as soon as possible" whether he agreed or disagreed with medication changes. No further response was received.

A September 12, 2023 memorandum, OWCP reiterated why continued use of Zolpidem ER could not be authorized.

On September 13, 2023, OWCP advised appellant that the prescription medication Zolpidem ER could not be authorized. It noted that Dr. Sheehan was unwilling to adjust his medication regimen. OWCP advised that formulary plan parameters limit the use of sedative hypnotics such as Zolpidem ER to a maximum of 180 days. It also noted that long-term use of sedative hypnotics was not recommended due to limited supporting evidence and serious risks of

adverse drug events, and that Zolpidem ER should be avoided and/or used with caution in older adults. OWCP further noted that the PBM pharmacist contacted Dr. Sheehan on August 31, 2023 to discuss alternatives. It advised that if appellant disagreed with this determination, then he could request a formal decision with appeal rights from OWCP.

On September 17, 2023, appellant requested that OWCP issue a final decision with regard to the denial of authorization for Zolpidem ER.

By decision dated September 18, 2023, OWCP denied authorization for Zolpidem ER, finding that the evidence of record was insufficient to establish that it was “safe and medically indicated to address the effects of [appellant’s] work-related injury or condition” under FECA.

### **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 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.<sup>6</sup> 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.<sup>7</sup>

The Board has found that OWCP has great discretion in determining whether a particular type of treatment is likely to cure or give relief.<sup>8</sup> The only limitation on OWCP’s authority is that of reasonableness.<sup>9</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.<sup>10</sup>

### **ANALYSIS**

The Board finds that OWCP properly denied authorization for a nonformulary prescription medication.

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<sup>5</sup> *Id.*

<sup>6</sup> 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).

<sup>7</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Services and Supplies*, Chapter 3.400.3a (October 1995).

<sup>8</sup> *T.W.*, *supra* note 6; *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).

<sup>9</sup> *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).

<sup>10</sup> *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) (Thomas, Alternate Member, dissenting).

In letters dated May 16 and July 7, 2022, the PBM informed Dr. Sheehan 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 Zolpidem ER was outside the formulary allowances because it exceeded the maximum allowed daily dosage and it exceeded the cumulative day supply limit. However, the prescription would be allowed until December 8, 2022. It further 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. OWCP subsequently received medical evidence including September 28 and December 28, 2022 reports, wherein Dr. Sheehan noted that he had discussed decreasing appellant's Ambien dosage, but appellant indicated that he could not sleep without it. In a PARF dated August 1, 2023, Dr. Sheehan explained that appellant had previously tried an alternative medication for sleep, but the trial was discontinued due to negative side effects. On August 31, 2023, a PBM pharmacist contacted Dr. Sheehan's office to discuss appellant's ongoing Zolpidem ER use. The PBM pharmacist requested that Dr. Sheehan formally respond "as soon as possible" whether he agreed or disagreed with medication changes. No further response was received.

As explained above, an 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.<sup>11</sup> The PBM explained that long-term use of sedative hypnotics was not recommended; that Zolpidem should be avoided and/or used with caution in older adults. Although OWCP provided Dr. Sheehan with an additional opportunity to respond, he did not do so. Thus, the Board finds that OWCP's denial of authorization for Zolpidem ER was reasonable.

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 authorization for a nonformulary prescription medication.

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<sup>11</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 18, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 4, 2026  
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