File Number:
HR11-D-H

U.S. DEPARTMENT OF LABOR

OFFICE OF WORKERS' COMP PROGRAMS
PO BOX 8300 DISTRICT 50
LONDON, KY 40742-8300
Phone: (202) 693-0045



Date of Injury:
Employee:

Dear

This is in reference to your workers' compensation claim. Pursuant to your request for a hearing, the case file was transferred to the Branch of Hearings and Review.

A preliminary review has been completed, and it has been determined that the case is not in posture for a hearing at this time. The decision of the District Office has been vacated and returned to the district office for further action as explained in the attached Remand Order.

Your case file has been returned to the Jacksonville District Office. You may contact that office by writing to our Central Mail Room at the following address:

US DEPARTMENT OF LABOR
OFFICE OF WORKERS' COMP PROGRAMS
PO BOX 8300 DISTRICT 6 JAC
LONDON, KY 40742-8300

Sincerely,

Division of Federal Employees' Compensation

PAUL FELSER
7393 HODGSON MEMORIAL DRIVE
SUITE 102
SAVANNAH, GA 31406

***If you have a disability and are in need of communication assistance (such as alternate formats or sign language interpretation), accommodation(s) and/or modification(s), please contact OWCP.***

Washington DC, September 30, 2019

U. S. DEPARTMENT OF LABOR
Office of Workers' Compensation Programs

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DECISION OF THE HEARING REPRESENTATIVE

*In the matter of the claim for compensation under Title 5, U. S. Code 8101 et. seq. of claimant, employed by the case number*

*Merit Consideration of the case file was completed on Based on the review, the decision of the district office dated is set aside for the reasons set forth below.*

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The issue is whether the Office appropriately denied authorization for the medication Tramadol, pursuant to 8103(a) of the Federal Employees' Compensation Act.

born is employed as a with the . She filed Form CA-1 for a Traumatic Injury which occurred on On that date, she was assisting a passenger and tried to prevent her from falling. The claim was initially approved for a strain of muscle, fascia and tendon of lower back, strain of muscle, fascia and tendon at neck, strain of unspecified muscle, fascia and tendon at shoulder and upper arm level (right). It was subsequently expanded to include impingement syndrome of the right shoulder, a complete right rotator cuff tear, and lumbar spinal stenosis. Appropriate medical and wage loss benefits have been paid.

On the Office issued a letter advising that greater scrutiny of the prescription and utilization of opioid medications was being instituted.

On the Office received a CA-27 Authorization Request Form and Certification Letter of Medical Necessity for Opioid Medications from treating physiatrist, . The medication prescribed was Hydrocodone-Acetaminophen 10-325mg. This was authorized for the period of to However, in a letter of the claimant was advised that additional information would be required from her attending physician prior to any further authorization of an opioid medication.

While additional medical documentation was received, there was no further evidence forthcoming which specifically responded to the Office's development letter.

Another CA-27 Letter of Medical Necessity was received on for Hydrocodone-Acetaminophen 10-325mg. This was completed by Dr. and authorization for this medication was granted from to

The case was subsequently referred to the District Medical Advisor for further review in order to assess whether the requested opioid medication was medically indicated. A response dated was received from DMA , M.D. He opined that the Hydrocodone-Acetaminophen 10-325mg was medically indicated to treat the effects of the work related condition.

Washington DC, September 30, 2019

The Office subsequently wrote to the claimant and Dr. on relative to further authorization of an opioid medication. It was explained that additional medical evidence was required should the claimant require continued opioid medication beyond the 60 day period previously authorized. Another letter was sent to the claimant in this regard on

Again, additional medical evidence was forthcoming, none of which was written in direct response to the Office's development. The Office had also sent letters dated and within which they explained that a CA-27 form must be submitted in order for consideration to be given for further authorization of the prescribed opioid medication.

The Office subsequently received Form CA-27 dated from Dr. However, this particular request was for a different opioid medication, Tramadol 50mg, 1 every 8 hours. Dr. indicated that the claimant was having thigh pain seven months post-operatively. He stated that there may be some aspect of the threads of the screw that were broaching the medial wall of the pedicle which could be contributing to some of the left thigh irritation. The Office authorized this medication for the period of to . This was deemed appropriate because it was the first request received for the medication and it was calculated to be a lower MED value than the prior Hydrocodone-Acetaminophen prescription.

The Office subsequently referred the claimant for a second opinion examination to further assess the need for continued opioid medications. It was noted that cases with continued opioid use must be reviewed by the DMA or a second opinion examiner every six months. Therefore, the claimant was evaluated on by , D.O., a board certified specialist. However, the Office found that the report from this exam was insufficient as the practitioner was unable to adequately answer several of the questions posed.

Additional medical records were received into the file which included a urine drug screen dated . According to this, there was a negative finding for Tramadol. Additionally, a billing inquiry revealed that there was not a paid fill for this medication unti

By correspondence dated and the Office wrote to the claimant again advising that Form CA-27 must be completed for authorization of an opioid medication.

In response, a CA-27 was received again requesting authorization for Tramadol HCL 50mg. This request was completed by , PA-C who was in the same practice as Dr. The dosage of the medication differed from the prior CA-27. Specifically, the claimant was to take one pill orally every four to six hours and this increased the MED level from 15 to 30. In support of this request, it was noted that the claimant was having pain in the back and leg which radiated into the anterior aspect of the leg. It was suggested that some of this was due to stress neuropraxia and the extension of the fusion.

On the above noted CA-27 it was indicated that the claimant had undergone a physical examination on although the actual treatment note from this visit was not provided. Therefore, by letter dated the Office wrote to Dr. and Mr. requesting a copy of this report. Additionally, it was noted that given the length of time since the last exam, a complete and current evaluation was needed which included pertinent clinical diagnostic evidence, demonstrated improvement in both pain and function, and a rationalized explanation on the continued medical necessity of the opioid medication. The record also indicates that the Office had attempted to contact Southeastern Spine Institute by phone on and again on for a response to the above noted development letter. However, no response was forthcoming.

Therefore, by decision dated the Office formally denied authorization for Tramadol HCL 50mg from to The basis for this decision was the fact that the evidence of record failed to support that it was medically indicated to treat the effects of the work injury. The Office pointed to the fact that the last medical report in file which discussed physical exam findings was dated and despite requests, they had not received a copy of the exam findings from the claimant's evaluation. In the Office's decision they stated that this evidence was pertinent to the consideration of continued authorization of the opioid medication, especially in light of the fact that the dosage had increased.

Following this decision, the Office received a treatment note from Dr. The claimant described pain in her back and leg which he stated may be due to stress neuropraxia or extension of her fusion. The assessment was low back pain and postlaminectomy syndrome. She was said to be medically stationary and remained under Dr. care for a work related injury. She was instructed to follow-up in two to three months.

The claimant disagreed with the decision and an oral hearing was requested. In accordance with this request, I have conducted an initial review of the file and find that the case is not in posture for a hearing at this time.

Based on my review of the file, the decision of the District Office should be *SET ASIDE* and *REMANDED* for further development.

Section 8103 of the Federal Employees' Compensation Act 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 the Office considers likely to cure, give relief, reduce the degree of the period of any disability or aid in lessening the amount of monthly compensation.[1] In interpreting this section of the Act, the Board has recognized that the Office has broad discretion in approving services provided under Section 8103, with the only limitation on the Office's authority being that of reasonableness.[2]

In the instant case, the Office accepted the Traumatic Injury for a strain of muscle, fascia and tendon of lower back, strain of muscle, fascia and tendon at neck, strain of unspecified muscle, fascia and tendon at shoulder and upper arm level (right), impingement syndrome of the right shoulder, a complete right rotator cuff tear, and lumbar spinal stenosis. The claimant has continued to treat with Dr. who has prescribed various treatment modalities, including medication, for her ongoing symptoms. As outlined above, the claimant's provider had initially submitted a CA-27 Authorization Request Form and Certification Letter of Medical Necessity for Opioid Medications for Hydrocodone-Acetaminophen. The Office initiated appropriate development in this regard and authorization was granted for the requested medication as supported by the evidence of record.

However, the Office subsequently received Form CA-27 dated from Dr. within which he requested authorization for a different opioid medication, Tramadol 50mg (1 every 8 hours). This medication was initially authorized for the period of to The basis for this was the fact that it was the first request for this particular medication and it also had a lower MED value than the Hydrocodone-Acetaminophen.

However, to further assess the need for continued opioid medication, the Office initiated development in the form of a second opinion examination. This took place on with Dr. A report

[1] 20 C.F.R. 10.401(a).
[2] *Joseph P. Hofmann*, 57 ECAB 456 (2006)

from this visit was received however Dr. specifically stated "It is not acceptance for an independent medical examiner to comment on current prescribing habits of other physicians who are treating the patient on a regular basis." He stated that the Office's questions should be directed to the regular treating physician who was prescribing the opioids as he was not privy to discussions he had with the claimant relative to this, what monitoring was being performed, whether this was felt to be the best form of treatment, etc. Dr. did state that many nonpharmacologic and non-opioid therapies could be used to control pain however he stated that he did not have all records addressing which treatments had tried and whether they were effective. As such, he did not answer the questions posed by the Office.

The Office proceeded to initiate further development to the claimant by letters dated and . She was advised of the evidence needed to warrant further authorization of the requested medication (Tramadol). Another CA-27 was received for this medication however the dosage had changed. Specifically, the medication was prescribed with increased frequency which changed the MED level from 15 to 30. Based upon this, the Office wrote to the claimant on requesting additional information however no further evidence was forthcoming. It was based upon this that the denial was issued.

On review, however, I find that the Office's decision was premature. Bulletin 18-04, issued addresses opioid prescribing guidelines, short-term, long-term and high dose opioid use. It states that should additional development be indicated, the Office may contact the claimant's physician for clarification. Depending on the sufficiency of the file describing the medical necessity for opioid usage, the District Medical Advisor (DMA) may also be consulted to determine the appropriateness of the opioid prescription and pain management plan, including requests for treatment/rehabilitation plans to treat dependence on opioids resulting from prescriptions for an employment-related condition. Additionally, the Office may also choose to send the claimant for a second opinion (SECOP) examination if warranted based on the evidence of record.

In the instant case, the Office felt that additional medical development was indicated, in the form of a second opinion exam, to further assess the need for continued opioid medication. Ms. was seen on by Dr. however as indicated above, he was not willing to respond to the questions posed. Instead of either requesting a supplemental opinion from Dr. or referring the claimant for a new second opinion exam, the Office issued an additional development letter to on and then proceeded to issue a formal denial shortly thereafter. I find this to be erroneous.

If the second opinion specialist submits an opinion which is equivocal, lacks rationale, or fails to address the specified medical issues, the CE should seek clarification or further rationale from that physician. *When the OWCP undertakes to develop the evidence by referring the case to an Office-selected physician, it has an obligation to seek clarification from its physician upon receiving a report that did not adequately address the issues that the OWCP sought to develop.* As such, the CE should seek clarification from the referral physician and request a supplemental report to clarify specifically-noted discrepancies or inadequacies in the initial second opinion report.[3]

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter.[4] While the claimant has the responsibility to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence and has the obligation to see that justice is done.[5]

[3] FECA PM 2-810-9(j).
[4] See Vanessa Young, 55 ECAB 575 (2004).
[5] See Richard E. Simpson, 55 ECAB 490 (2004).

Upon return of the case file, the District Office should update the Statement of Accepted Facts (SOAF) as appropriate. Ms. should then be referred for a new second opinion exam to address the questions outlined in the prior referral of As outlined above, Dr. was unwilling to respond to the questions posed. As such, a new examination should be scheduled to assess the need for continued authorization of the prescribed medication, Tramadol HCL 50mg. The examiner should list all opioid medications the claimant is taking and whether he/she agrees with this medication regimen. It should be indicated whether this is consistent with the 2016 CDC Guideline for Prescribing Opioids for Chronic Pain. The examiner must also address the following: Whether the current dose is the lowest effective opioid dose for the claimant; whether the claimant is taking other drugs that could be harmful when combined with opioids; whether the claimant is aware of the possible adverse drug interactions; whether the claimant has any comorbidities that would contraindicate continued opioid use at the current level; whether the claimant is aware of the risks and whether these comorbidities could be more optimally managed to improve pain management; whether there are any non-pharmacologic or non-opioid therapies that could be utilized in the claimant's pain management; whether the claimant is aware of the risks or dangers of opioid medications; and whether the use of opioids outweigh the risks of opioid use for the claimant. The examiner should also address the claimant's goals for pain control/function and whether these are realistic. Additionally, he/she should indicate how often the claimant should receive drug testing and what the recommendation is for pain management. If it is felt that the claimant could benefit from medication-assisted treatment for opioid use disorder, this should be stated. Lastly, it should be indicated whether the claimant has been informed about the signs and symptoms of opioid overdose and what to do and whether she should have naloxone (Narcan®) or other opioid overdose reversal medication on hand. It is also imperative that the second opinion examiner address the Letters of Medical Necessity on file which include the attending physician's basis for prescribing Tramadol 50mg. The examiner must be sure to address any/all points of disagreement. Following receipt and review, the Office should take any further development action deemed necessary and issue a *de novo* decision relative to authorization for the prescribed opioid medication.

Consistent with the above findings, the decision of the District Office dated is ***remanded.*** The case file is returned for further processing as noted.

ISSUED:

WASHINGTON, D.C.

Hearing Representative
Branch of Hearings and Review
for
Director, Office of Workers'
Compensation Programs

Washington DC, September 30, 2019