

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

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**CHARLOTTE T. HEMSLEY, Appellant**

**and**

**DEPARTMENT OF TRANSPORTATION,  
BUREAU OF SAFETY, Washington, DC,  
Employer**

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**Docket No. 04-2302  
Issued: September 1, 2005**

*Appearances:*  
*Charlotte T. Hemsley, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On September 22, 2004 appellant filed a timely appeal of a merit decision of the Office of Workers' Compensation Programs dated August 6, 2004, which denied modification of a May 11, 2004 decision, denying reimbursement for special foods, vitamins, nutritional supplements and unscented products. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether the Office properly denied appellant's request for reimbursement of expenses for nutrition treatment, vitamins, food and unscented products.

**FACTUAL HISTORY**

On November 6, 1995 appellant, a 54-year-old administrative assistant, filed a traumatic injury claim alleging that on October 18, 1995 she sustained a skin rash, burning eyes and severe headaches due to unknown fumes. The Office accepted the claim for neurotoxic syndrome,

cardiac arrhythmias, headaches, chronic fatigue and multiple chemical sensitivity due to workplace exposure. Appellant stopped work on September 30, 1996 and did not return.<sup>1</sup>

The Office has paid all appropriate compensation benefits for wage-loss compensation and medical treatment.<sup>2</sup>

In a report dated March 22, 2001, Dr. Grace Ziem, a treating physician specializing in occupational and environmental health, opined that appellant was “chronically ill from toxic injury” and was “in the process of identifying complications of that injury in a detailed manner.” She stated that she underwent tests for minerals, melatonin, osteoporosis, amino acids, adrenal stress index, fatty acids, food intolerance, gastrointestinal panel, liver detoxification profile and nutritional testings. Dr. Ziem indicated that these numerous tests were performed to evaluate how she was progressing with her treatment. She informed the Office previously that appellant:

“Would be working with a nutritionist for the nutrient deficiency secondary to her adrenal disturbance from her toxic injury, nutrient deficiency secondary to the repair process following toxic injury and also nutrient deficiency because of the need to detoxify.”

Based upon the tests performed, Dr. Ziem reported:

“[Appellant] had very significant elevation of her body’s hydrocortisone, also called cortisol, from her adrenal gland, which is common in toxic injury patients, but leads to protein and mineral depletion, which she also has. We tested her essential minerals and found many of them to be deficient, in particular magnesium was dramatically deficient. Others have improved some with working with a nutritionist, but until we can stabilize her adrenal function, she will continue to deplete minerals in excessive amounts. The magnesium deficiency has caused [appellant] to have muscle tightness which cause her pain with walking. Necessary means for stabilizing her adrenal function and bringing it back to normal include a relatively nontoxic home environment (I will be doing a follow up with her to insure that [appellant’s] home environment has adequately reduced levels of pollutants which can aggravate her medical condition): a low-glycemic diet (she will be working with a nutritionist and has a reference also on low-glycemic carbohydrates).... [Appellant] has low immune protection for her intestinal tract (which I find in the vast majority of toxic injury patients), which renders her more susceptible to picking up parasites. Therefore, we tested her for parasites and found that she has two parasites: toxoplasma and amoeba. I will be giving her specific treatment to kill both these parasites, using antibiotics which are good for these parasites. Toxic injury often disturbs female hormones in a manner, which exacerbates migraines by producing relative migraine dominance.

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<sup>1</sup> Appellant retired effective January 3, 1997 and began receiving benefits from the Office of Personnel Management. On May 3, 2000 and January 29, 2001 she filed forms electing benefits under the Federal Employees’ Compensation Act.

<sup>2</sup> Appellant was placed on the automatic rolls for temporary total disability by letter dated April 11, 2001.

I thus, tested [appellant's] female hormones and found that she does indeed have relative estrogen dominance and have recommended that she discontinue the Estrace, which is an estrogen that does not improve her symptoms and exacerbates estrogen dominance. She will also need some supplemental progesterone as this was reduced, as is common with toxic injury. [Appellant's] testosterone was also reduced, again common with toxic injury. Testosterone is present in women at lower levels than in men, but it is important for muscle strength, so that we need to supplement her. Once [appellant's] adrenal gland has stabilized, I anticipate that her reproductive hormones will become relatively more normal, since adrenal disturbance often disturbs reproductive hormones as well. Because of her achiness, I tested her essential fatty acids using the red blood cell.... Some essential fatty acids are anti-inflammatory and these have been dramatically low in the past. These have been improved with treatment but are still in the low range of normal. [Appellant] can obtain further reduction of achiness by supplementation and I have discussed the need for her to take flax oil to supplement her rather low ALA, as well as a supplement for her low EPA. She had multiple disturbances in her energy metabolism when we test this through organic acids and I wish [appellant] to work closely with the clinical nutritionist, Dana Laake, who has decades of experience in nutritional treatment of toxic injury patients and is extremely skilled with the biochemistry of the body and its nutritional disturbances with toxic injury. It is our goal to further assist this patient in developing a diet which will help to heal her toxic injury more rapidly as well as to test/identify deficiencies with supplements that are specific for those deficiencies, using brands that are well absorbed and well tolerated by patients who tend to be sensitive to various dyes and additives. [Appellant] tested as being deficient in glutathione, which is the most important intracellular antioxidant in the body, but is not well absorbed when taken by mouth. The most efficient and effective way of improving this vital substance is to use it by nebulizer, which will reduce respiratory inflammation for the mid and lower respiratory tract as well as build up levels in the body. I have also recommended that [appellant] try a nasal form to reduce the brain symptoms that she has during reactions, although this alone will not repair the brain changes that she has.”

In a June 11, 2002 report, Dr. Ziem opined that appellant's thyroid problem was related to the accepted employment injury.

On July 17, 2002 the Office received appellant's May 31, 2002 letter requesting reimbursement of \$2,783.68 in expenses for nutrition treatment, medications, purchases of vitamins, food and unscented products. On October 31, 2002 the Office received appellant's August 26, 2002 letter updating her request for reimbursement for these expenses. Accompanying her request were copies of bills for prescriptions for testosterone, progesterone and thyroid.

In a letter dated February 14, 2003, the Office requested additional information, including a rationalized medical opinion, for some of the medical services appellant was requesting reimbursement.

On February 26, 2003 the Office received a January 6, 2003 request for reimbursement.

By letter dated April 30, 2003, the Office informed appellant that it was referring her for a second opinion examination regarding her compensation claim and claim for reimbursement for medications, treatments and products prescribed by her physician.

In a report dated September 2, 2003, Dr. John B. Parkerson, Jr., a Board-certified occupational health physician, diagnosed hypothyroidism, possible depression, tobacco abuse disorder and history of toxic exposure at work.<sup>3</sup> With regards to whether appellant's special order of products, foods, medications and treatments were essential, he opined that they were not required. In support of this opinion, he stated:

"The provided nutritional medical information does not support the need for special foods, vitamins and nutritional supplements from the work exposure. Thyroid hormone replacement is appropriate to treat her hypothyroidism. This is not causally related this (sic) to the workplace exposure. What has been described as a toxic exposure to petrochemicals/molds would not lead to a nutritional disorder. There are apparently other conditions for which [appellant] is being treated as some medication's indications (Vioxx, Ultracet and testosterone) are not related to the described exposure. The nebulizer, Cortef and Zyrtec are appropriate and related as the workplace exposure had made her more sensitive.

On September 29, 2003 the Office received a June 11, 2003 report by Dr. Ziem. She stated that appellant needed "to continue thyroid medication to suppress the autoimmune thyroid disease" and that "[t]his is the most common form of autoimmune disease in toxic injury patients." Dr. Ziem also stated that estrogen dominance has been shown by testing to be "a classic pattern" for women due to toxic exposure and that this condition "has been corrected with natural progesterone to physiologic levels, which also improves migraine status." She concluded that appellant "needs to repeat thyroid antibodies and TSH to ensure that her autoimmune thyroid condition is under adequate control" and that "[o]ngoing glutathione is important to reduce exacerbations."

On April 22, 2004 appellant submitted a request for reimbursement for medical expenses for the period February 12 to April 14, 2004, in the amount of \$1,027.84. She also indicated that she had not received reimbursements for medical expenses in the amount of \$3,172.82 for 2002 and \$3,703.75 for 2003.

On May 5, 2004 the Office received an April 4, 2004 report by Dr. Ziem, who requested authorization to provide appellant with hyperbaric oxygen and stated that appellant require a nontoxic living space, travel and the availability of nontoxic food and water. She stated that "[t]hese extra expenses can all be avoided if you approve [her] to be properly fitted for this hyperbaric mask." Dr. Ziem diagnosed autoimmune thyroid disease, which she attributed to appellant's toxic encephalopathy and that she required Armour thyroid "to reduce her cold intolerance and reduce the progression of this disease." She also attributed appellant's adrenal disruption to her toxic chemical exposure and noted that she "has not been reimbursed for her

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<sup>3</sup> The Board notes that Dr. Parkerson related an incorrect smoking history.

medical costs” for the past two years.” Dr. Ziem stated that the high levels of adrenal disruption “deplete her body of minerals and proteins” as well as causes “disruption of her female hormones.”

By decision dated May 11, 2004, the Office denied appellant’s claim for payment of medical treatment by Dr. Godbout Laake, a nutritionist, and related services including special vitamins, purchase of unscented products and organic food; medical nutrition therapy; a diagnostic thyroid test and ultra meal. It was found that these were not related to treatment of her accepted employment injury. The Office relied upon the opinion of Dr. Parkerson.

Appellant requested reconsideration on June 29, 2004. Subsequent to her request, the Office received additional medical evidence including a report from Dr. Ziem. She alleged that the Office failed to provide Dr. Parkerson with all of the information including, tests and treatment plans, she had forwarded regarding appellant’s condition.

In an August 6, 2004 decision, the Office denied modification of the May 11, 2004 decision.

### **LEGAL PRECEDENT**

Section 8103 of the Act<sup>4</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 the Office 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>5</sup> The language of section 8103 contains the term “shall” in authorizing the furnishing of services, appliances and supplies, but this directive is qualified by the phrase “which the Secretary of Labor considers likely to cure, give relief, reduce the degree or period of disability or aid in lessening the amount of monthly compensation.” This phrasing underscores the intent of Congress that discretion be delegated to the Secretary and hence to the Office in determining whether to grant or reimburse an employee for prescribed services, appliances and supplies under section 8103.<sup>6</sup>

In interpreting section 8103, the Board has recognized that the Office has broad discretion in approving services provided under the Act. The Office has the general objective of ensuring that an employee recovers from his or her injury to the fullest extent possible, in the shortest amount of time. The Office, therefore, has broad administrative discretion in choosing means to achieve this goal. The only limitation on the Office’s authority is that of reasonableness.<sup>7</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

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<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> 5 U.S.C. § 8103(a); *see Kennett O. Collins, Jr.*, 55 ECAB \_\_\_\_ (Docket No. 04-1018, issued August 23, 2004).

<sup>6</sup> *James R. Bell*, 49 ECAB 642 (1998).

<sup>7</sup> *Dr. Mira R. Adams*, 48 ECAB 504 (1997).

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>8</sup>

In order to be entitled to reimbursement for medical expenses, a claimant must establish that the expenditures were incurred for treatment of the effects of an employment-related injury by submitting rationalized medical evidence that supports such a connection and demonstrates that the treatment is necessary and reasonable.<sup>9</sup> The fact that the Office authorized and paid for some medical treatment does not establish that the condition for which appellant received treatment was employment related.<sup>10</sup> Furthermore, the issues of authorization of medical treatment and reimbursement of travel expense for medical treatment are separate and distinct. The Office may authorize medical treatment, but determine that the travel expense incurred for such authorized treatment was unnecessary or unreasonable.<sup>11</sup>

### ANALYSIS

In the present case, the Office accepted appellant's claim for neurotoxic syndrome, cardiac arrhythmias, headaches, chronic fatigue and multiple chemical sensitivity due to workplace exposure. A review of the medical evidence reveals that her treating physician, Dr. Ziem prescribed thyroid medication and natural progesterone and referred her a nutritionist for treatment of a "nutrient deficiency secondary to her adrenal disturbance from her toxic injury, nutrient deficiency secondary to the repair process following toxic injury and also nutrient deficiency because of the need to detoxify."

The Office referred appellant to Dr. Parkerson, Jr., a Board-certified occupational health physician, for a second opinion examination and opinion on appellant's need for such treatments. He concluded that she did not require the services of a nutritionist, special order of products, foods, medications and treatments. In support of this conclusion, Dr. Parkerson noted "the nutritional medical information does not support the need for special foods, vitamins and nutritional supplements from the work exposure." He noted that what had been described as a toxic exposure to petrochemicals and molds would not lead to a nutritional disorder. With regard to thyroid hormone replacement, Dr. Parkerson opined that this was appropriate for treatment of her hypothyroidism, but was unrelated to appellant's accepted injury. As this condition was not accepted as employment related, appellant has the burden of proof to establish causal relationship.<sup>12</sup> The medical evidence submitted does not provide a rationalized explanation as to the nexus, if any, between the hypothyroidism and the accepted employment exposure. Similarly, Dr. Parkerson noted that "other conditions" requiring the use of medications such as Vioxx, Ultracet and testosterone were not related to appellant's workplace exposure.

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<sup>8</sup> *Daniel J. Perea*, 42 ECAB 214 (1990).

<sup>9</sup> *See Debra S. King*, 44 ECAB 203 (1992).

<sup>10</sup> *Dr. Mira R. Adams*, *supra* note 7.

<sup>11</sup> *See Leoard E. Fritz*, 30 ECAB 170 (1987).

<sup>12</sup> *See Charlene Herrera*, 44 ECAB 361, 370 (1993).

Based on Dr. Parkerson's report, the Office denied appellant's claim for payment of medical treatment by Dr. Laake, a nutritionist, and expenses for special vitamins, purchase of unscented products and organic food; medical nutrition therapy; a diagnostic thyroid test and ultra meal, finding these were not for treatment of her accepted employment injury. The Office also denied appellant's claim for reimbursement for her thyroid and progesterone medication on the grounds that they were unrelated to the treatment of her accepted work condition.

The Board finds that the weight of the medical evidence is represented by the second opinion physician, Dr. Parkerson, who provided a complete comprehensive report based on a review of the medical records, a statement of accepted facts and physical examination. Dr. Ziem, did not provide adequate rationale explaining how appellant's accepted conditions due to her workplace exposure would result in a nutritional disorder necessitating special foods, nutritional supplements and vitamins or how such treatments would cure, give relief, reduce the degree or the period of disability or aid in lessening the amount of the monthly compensation. Appellant has not met her burden to establish entitlement to reimbursement for these expenses.

**CONCLUSION**

The Board finds that the Office properly denied reimbursement for medical expenses for nutrition treatment, purchases of vitamins, food and unscented products.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated August 6 and May 11, 2004 are affirmed.

Issued: September 1, 2005  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board