U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RONALD A. GILLIS and DEPARTMENT OF AGRICULTURE, FOREST SERVICE, WILLOWA-WHITMAN NATIONAL FOREST, Baker, OR

Docket No. 03-1481; Submitted on the Record;
Issued February 20, 2004

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON, MICHAEL E. GROOM

The issue is whether appellant is due additional compensation for services of a personal attendant for the period April 1, 1993 through December 31, 1995.

This case is before the Board for a second time. In a March 11, 2002 decision, the Board found that the Office of Workers' Compensation Programs properly terminated appellant's compensation in a February 19, 1998 decision and properly denied appellant's request for a new van. The Board also found that the Office improperly denied appellant's request for reimbursement for travel for repairs to his wheelchair. The Board remanded the case for consideration of whether appellant was entitled to more than the $2,700.00 awarded for an attendant's care. The Board noted that appellant had submitted a detailed list of personal services provided by his wife and daughters from April 1993 to December 1995, indicating that he needed assistance for incontinence, transfers to and from his wheelchair, bathing, dressing and shaving.[1] The Office authorized an attendant for two hours a day from May 1 to December 25, 1993, for pushing his wheelchair until he received an electric wheelchair. The Board noted that the Office was not obligated to pay an attendant's allowance for personal services provided solely due to the effects of the previous traumatic amputations of appellant's legs. The facts and the history of the prior appeal are incorporated by reference.[2]

In a medical report dated April 16, 1994, Dr. Barbara Jessen, a Board-certified neurologist, noted that appellant had a work-related sprain of the left wrist and strain of the right hand and wrist secondary to pain in the left wrist injury. Dr. Jessen also noted that appellant's original injury to his left thumb, compounded by his need to use a wheelchair which was still

[1] The Board notes that, the time appellant alleged he needed services, from April 1993 through December 1995, the new regulations, which require that the personal care services be provided by a home health aide, licensed practical nurse or similarly trained individual, *see* 20 C.F.R. § 10.314, were not yet in effect.

[2] *Ronald A. Gillis* (Docket No. 99-2617, issued March 11, 2002).

partially manual, had aggravated his work-related injury and made it unable for him to have a good recovery.

Appellant received medical care from Dr. Stan A. Kopp, a Board-certified orthopedic surgeon, commencing April 19, 1993. In a medical report dated March 12, 1996, Dr. Kopp noted:

> "The patient is basically trying to get money for attendants care. This patient from April of 1993 through December of 1994, needed complete assistance. He was having pain in both arms and hands, which precluded him from doing activities of daily living. Obviously, he is a wheelchair bilateral amputee and in 1995 he required less assistance but did require some as well. Certainly, he should be compensated for those attendant fees.
>
> "For the U.S. Department of Labor, this patent was a bilateral amputee with bilateral upper extremity problems and during the time that he was doing a manual wheelchair, he had to have assistance with traveling. He had to have somebody help him with the wheelchair to propel it, to drive him and he certainly was n[o]t independent. The only thing he could do unassisted was to feed himself. Dressing himself was painful, he had to have somebody to do that and bathe him as well, he had to have attendants do that. Just getting in and out of his wheelchair and getting out of bed, he had to have assistance and transfers. He had to get out of doors and into cars and transfers and needed assistance as well. This was before the time he obtained his wheelchair."
>
> * * *
>
> "So, at this point, clarifying the fact that this patient was debilitated in all four extremities for a significant period of time and was really dependent on assistance from 1993 through 1994. He finally got a new chair in 1995 and started becoming a little bit more independent. [Appellant] finally got a van here recently, but it only intermittently works properly with the hoisting and he still needs assistance, so I would recommend that he get assistance to fix that hoist, or whatever it takes to make sure it works properly so he does n[o]t need assistance and transfers to and from his vehicle."

By decision dated May 17, 2002, the Office found that the medical evidence of record did not support appellant's allegation that he was disabled to the extent that he required a full- or part-time attendant to assist with personal tasks such as bathing, dressing, shaving and transferring to and from his wheelchair. The Office denied appellant's claim for the services of a personal attendant during the period April 1993 through December 1995.

The Board finds that the Office properly denied appellant's claim for additional services by a personal attendant.

Section 8111(a) of the Federal Employees' Compensation Act provides:

> "The Secretary of Labor may pay an employee who has been awarded compensation an additional sum of not more than $1,500[.00] a month, as the Secretary considers necessary, when the Secretary finds that the service of an attendant is necessary constantly because the employee is totally blind, or has lost the use of both hands or both feet, or is paralyzed and unable to walk, or because of other disability resulting from the injury making him so helpless as to require constant attendance."[3]

Under this provision, the Office may pay an attendant's allowance upon finding that a claimant is so helpless that he or she is in need of constant care.[4] A claimant is not required to need around-the-clock care, but only has to have a continually recurring need for assistance in personal matters. An attendant's allowance, however, is not intended to pay an attendant for performing domestic and housekeeping chores such as cooking, cleaning, doing the laundry or providing transportation services. It is intended to pay an attendant for assisting the injured employee in personal needs, such as dressing, bathing or using the toilet.[5] In requesting an attendant's allowance, the employee bears the burden of proof in establishing by competent medical evidence that he or she needs attendant care within the meaning of the Act.[6] An attendant's allowance is not granted simply upon request of a disabled employee or upon request of the employee's physicians. The need for attendant care must be established through rationalized medical opinion evidence.[7] The Office, in turn, may pay up to $1,500.00 a month for full-time services, but it is not required to pay the maximum amount if not found to be necessary. It need only pay as much as it finds under the particular facts of a case necessary and reasonable for an attendant's services.[8]

The only physician who gave an opinion contemporaneous to the time appellant is seeking the services of an attendant, April 1, 1993 to December 31, 1995, was Dr. Jessen. In an opinion dated April 16, 1994, Dr. Jessen noted that the original injury to the left thumb, compounded by appellant's need to use a manual wheelchair, aggravated his work-related injury. However, Dr. Jessen did not address the relevant issue as to whether appellant needed the services of a personal attendant. The only physician who offered an opinion as to whether appellant needed the services of an attendant is appellant's treating physician, Dr. Kopp. In an opinion dated March 12, 1996, Dr. Kopp opined that appellant needed complete assistance from April 1993 through December 1994. He also noted that appellant needed some assistance in 1995. However, this opinion is dated March 12, 1996, approximately three years after the beginning of the time that appellant alleged he needed an attendant. Dr. Kopp failed to

[3] 5 U.S.C. § 8111(a).

[4] *Michael W. Dombrowski*, 52 ECAB 213 (2001); *see Nowling D. Ward*, 50 ECAB 496, 497 (1999).

[5] *Michael W. Dombrowski, supra* note 4; *see Bonnie M. Schreiber*, 46 ECAB 989 (1995).

[6] *See Cynthia S. Snipes (Edward S. Snipes)*, 33 ECAB 379, 383 (1981).

[7] *See Kenneth Williams*, 32 ECAB 1829, 1832 (1981).

[8] *See Grant S. Pfeiffer*, 42 ECAB 647, 652 (1991).

adequately explain how appellant required assistance in excess of the two hours a day approved by the Office. The report does not address the two hours of assistance which was approved by the Office or explain those services requiring greater time for assisting appellant. Accordingly, the Office did not abuse its discretion when it denied appellant additional reimbursement for the services of a personal attendant.

The decision of the Office of Workers' Compensation Programs dated May 17, 2002 is hereby affirmed.[9]

Dated, Washington, DC
February 20, 2004

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

[9] The Board's jurisdiction to consider and decide appeals from final decisions of the Office, extends only to decisions issued within one year prior to the filing of the appeal, *i.e.*, May 15, 2002. *Marilyn F. Wilson,* 51 ECAB 234, 235 (1991). Accordingly, the only decision the Board will review is the May 17, 2002 decision denying an additional attendant's allowance.