United States Department of Labor
Employees' Compensation Appeals Board

ZONYA MINOR, Appellant	)	
and	)	**Docket No. 05-1302**
	)	**Issued: January 3, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Aurora, CO, Employer	)	

Appearances:
Celia Harnet, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On May 20, 2005 appellant, through her attorney, filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated May 20, 2004, which denied her request for an attendant's allowance.[1] Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3 the Board has jurisdiction over the issue of this case.

ISSUE

The issue is whether the Office properly denied appellant's request for payment of an attendant's allowance.

FACTUAL HISTORY

On October 25, 1999 appellant, a 39-year-old postal source data system technician, filed an occupational disease claim alleging that she first became aware of stress on September 1, 1998 and on September 21, 1999 realized it was employment related. The Office accepted the

[1] The timeliness of the appeal was determined by the postmark on the envelope.

claim for adjustment disorder with mixed symptoms of anxiety, depression and somatization. Appellant had intermittent periods of disability from September 1, 1998 to May 31, 2000 and stopped work on February 4, 2002.[2]

In a letter dated September 26, 2003, the Office noted receipt of her request for the services of an attendant. Appellant was informed that additional medical evidence was required from her treating physician and advised her of the limitations on payment for attendant services, if her request was approved.

On May 6, 2004 the Office received an August 27, 2003 letter recommended short-term certification to the court by Dr. Lee S. Altman, a treating Board-certified psychiatrist, and a September 29, 2003 request for attendant services questionnaire. Dr. Altman noted that he began treating appellant after she was brought in by the police on April 24, 2003 and being deemed a threat to herself and others. He opined that appellant "suffers from a mental illness that has caused her to be gravely disturbed and a danger to others." He opined that this condition inferred with her daily life and grossly impair her decision-making abilities.

In a request for attendant services questionnaire, Dr. Altman diagnosed severe anxiety, post-traumatic stress and panic attacks. He opined that appellant was "gravely disabled" and that the requirement of an attendant would be for an indefinite period. He noted that appellant was able to walk, feed and bathe herself without assistance, but required assistance in traveling, dressing, getting out of bed four hours per day, getting out of doors once a week and exercising once a week. Dr. Altman indicated that the attendant would assist with getting dressed, attending doctor's appointments, filing paperwork, grocery shopping and hygiene assistance. He noted that the employing establishment considered appellant "injurious to self also."

By decision dated May 20, 2004, the Office denied appellant's request for the services of an attendant on the grounds that the medical evidence failed to demonstrate that she required such services due to her accepted employment injury.[3]

LEGAL PRECEDENT

Section 8111(a)[4] of the Federal Employees' Compensation Act. This section provides:

> "(a) 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

[2] On April 10, 2003 appellant filed a claim for a recurrence of disability for wage-loss compensation beginning February 4, 2003, which was denied by the Office on June 2, 2003. On July 1, 2003 appellant requested an oral hearing, which was held on April 27, 2004. Appellant also filed an occupational disease claim on June 5, 2003 for adjustment disorder, which she noted was the same condition as her claim number A12-0186538. On July 31, 2003 appellant requested to withdraw the occupational disease claim she filed on June 5, 2003.

[3] Subsequent to the May 20, 2004 hearing representative's decision, the Office received additional medical and factual evidence. The Board, however, cannot consider evidence that was not before the Office at the time of the final decision. *See Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952); 20 C.F.R § 501.2(c).

[4] 5 U.S.C. § 8111(a).

> 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."

Under this provision, the Office may pay an attendant's allowance upon finding that a claimant is so helpless that she is in need of constant care.[5]

> "The claimant is not required to need around-the-clock care. She only has to have a continually recurring need for assistance in personal matters. The attendant's allowance, however, is not intended to pay an attendant for performance of domestic and housekeeping chores such as cooking, cleaning, doing the laundry or providing transportation services. It is intended to pay an attendant for assisting a claimant in her personal needs such as dressing, bathing or using the toilet."[6]

In interpreting section 8111, 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.[7] 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. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.[8]

ANALYSIS

The Office accepted appellant's claim for adjustment disorder with mixed symptoms of anxiety, depression and somatization. Appellant had intermittent periods of disability from September 1, 1998 to May 31, 2000 and stopped work on February 4, 2002.[9] On May 6, 2004 the Office received an August 27, 2003 certification from Dr. Altman, a treating Board-certified psychiatrist, and a September 29, 2003 request for attendant services. Dr. Altman requested expenses for an attendant's allowance for appellant. He noted appellant was able to walk, feed

[5] *Ronald A. Gillis*, 53 ECAB 437 (2002).

[6] *Id.*

[7] *Dr. Mira R. Adams*, 48 ECAB 504 (1997).

[8] *Daniel J. Perea*, 42 ECAB 214 (1990).

[9] On April 10, 2003 appellant filed a claim for a recurrence of disability for wage-loss compensation beginning February 4, 2003, which was denied by the Office on June 2, 2003. On July 1, 2003 appellant requested an oral hearing, which was held on April 27, 2004. Appellant also filed an occupational disease claim on June 5, 2003 for adjustment disorder, which she noted was the same condition as her claim number A12-0186538. On July 31, 2003 appellant requested to withdraw the occupational disease claim she filed on June 5, 2003.

and bathe herself without assistance, but required assistance in traveling, dressing, getting out of bed four hours per day, getting out of doors once a week and exercising once a week. He indicated that the attendant would assist appellant with getting dressed, attending doctor's appointments, filing paperwork, grocery shopping and hygiene assistance.

Appellant had submitted insufficient medical evidence to establish that her disability prevents her from performing essential life functions such as bathing, eating or walking without assistance. Rather, Dr. Altman noted that appellant was capable of performing these functions without the assistance of an attendant. The only assistance he requested was for traveling, dressing and exercising, which are not essential life functions. Furthermore, transportation services are not reimbursable through an attendant's allowance. Based on the evidence of record, the Board finds that the Office did not abuse its discretion in denying appellant claim for payment of an attendant's allowance.

CONCLUSION

The Board finds that the Office properly denied appellant's request for payment of an attendant's allowance.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 20, 2004 is affirmed.

Issued: January 3, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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