

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MARTHA R. SARKIS and U.S. POSTAL SERVICE,  
POST OFFICE, Flushing, N.Y.

*Docket No. 96-2448; Submitted on the Record;  
Issued October 8, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
MICHAEL E. GROOM

The issue is whether appellant sustained an injury in the performance of duty, as alleged.

The Board has duly reviewed the case record and finds that that the case is not in posture for decision.

On February 28, 1996 appellant, then a 40-year-old window clerk, filed a claim for a traumatic injury, Form CA-1, alleging that on February 27, 1996 she injured her back and lower neck and felt stiffness in a car accident. Appellant sought treatment from her physician the next day. In an undated letter received by the Office of Workers' Compensation Programs on March 13, 1996, appellant stated that the injury occurred when she was on her way to a medical appointment for a prior job injury. She stated that at about 11:30 a.m. she was driving east on Hempstead Turnpike in the right lane when a car hit the rear of her car and she felt shaking and pain in her back and neck. Appellant did not miss any time from work. The contemporaneous medical evidence shows that appellant sought medical treatment for her back and neck on the date of the accident. On Form 2562 (Injury Compensation Program) dated March 16, 1996, the employing establishment noted that on February 27, 1996 appellant injured her neck and back while traveling east on Hempstead Turnpike when another car came from a side street, turned right and hit appellant's car in the right rear.

In a telephone conference dated April 3, 1996 between the Office and appellant's supervisor, appellant's supervisor stated that appellant was injured in a car accident at 11:30 a.m., and that appellant told him that she was heading east to Franklin Immediate Care for a revisit to a physician for her prior ankle injury in January 1996. Appellant's supervisor also told the Office that the employing establishment was a few blocks off Hempstead Turnpike and appellant was using a main route to visit the doctor. Appellant's supervisor stated that it was all on the postal clock, that appellant did not miss any time from work and she returned to finish the day at work. Appellant's supervisor stated that appellant used her own car to go to the doctor for convenience. He also stated that he went with appellant to the physician and he sat with her in

the waiting room. A police accident report received by the Office on March 27, 1996 confirmed that the accident happened, as alleged, on February 27, 1996 at 11:25 a.m. On March 26, 1996 in response to questions from the Office, appellant's supervisor stated that on February 27, 1996 appellant last performed her official duty at 11:00 a.m. A handwritten note from the Office dated April 26, 1996 stated that the prior January 1996 work injury had been denied. On another form, EN-1014, dated April 11, 1996, appellant's supervisor stated that appellant was expected to perform her next official duty on February 27, 1996 at 1:00 p.m.

By decision dated May 6, 1996, the Office denied the claim, stating that the evidence of record failed to establish that the February 27, 1996 employment injury occurred in the performance of duty.

By letter dated June 4, 1996, appellant stated that on February 27, 1996 she was instructed by her branch manager to leave for the doctor's office at 11:00 a.m. and was given permission to use her own car to go to the doctor while on the clock. Appellant stated that when she had the car accident, she was not aware that her claim No. 02079482, the one for which she was seeking treatment, had been denied.

By letter dated June 4, 1996, appellant requested reconsideration of the Office's decision. Appellant stated that regarding her January 25, 1996 injury, she injured her foot at work on that date.

By decision dated June 27, 1996, the Office denied appellant's reconsideration request. The Office noted in its decision that appellant's claim for an injury occurring on January 25, 1996, No. A20709482, was denied by decision dated April 12, 1996 as the fact of injury had not been established, and that appellant's request for reconsideration of that decision was denied on February 27, 1996.

The Office is required by section 8103 of the Federal Employees' Compensation Act<sup>1</sup> to provide all medical care necessary as a result of an employment injury. The Office has broad discretionary authority in the administration of the Act and must, in fact, exercise such discretion to achieve the objectives of section 8103.<sup>2</sup> The Office has the discretionary authority to approve unauthorized medical care which it finds necessary and reasonable and is required to exercise that discretion.<sup>3</sup> Ordinarily, when an employee sustains a job-related injury which may require medical treatment, the designated agency official shall promptly authorize such treatment by giving the employee a properly executed Form CA-16 (Request for Examination and Treatment) authorizing medical treatment and expenses within four hours.<sup>4</sup> Once the employing establishment issues a CA-16 form authorizing medical expenses, the Office is obligated to pay for treatment until the authorization is rescinded.<sup>5</sup> The Office's federal regulations provide that

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<sup>1</sup> 5 U.S.C. § 8103.

<sup>2</sup> *Id.*; *Marjorie S. Greer*, 39 ECAB 1099, 1101 (1988).

<sup>3</sup> *Marjorie S. Greer*, *supra* note 2 at 1101.

<sup>4</sup> 20 C.F.R. § 10.402(a).

<sup>5</sup> *Mary J. Briggs*, 37 ECAB 578, 582 (1986).

it has the discretion in unusual circumstances or emergencies to approve payment for medical expenses incurred otherwise than authorized in this section.<sup>6</sup> Office procedures provide that it may approve payment for medical expenses incurred even if a Form CA-16 authorizing medical treatment and expenses has not been issued and the claim is subsequently denied; payment in such situations must be determined on a case-by-case basis.<sup>7</sup>

In the present case, the record does not contain a CA-16 nor is there any indication whether one was issued. In her June 4, 1996 letter, appellant stated that her branch manager instructed her to leave for the doctor's office at 11:00 a.m. and to use her own car to go to the doctor while on the clock. Appellant was seeking medical treatment for an ankle injury she sustained in January 1996 for which she had filed a workers' compensation claim. While appellant was on her way to the doctor to treat her ankle, she was in a car accident and sought medical treatment for shaking and pain in her back and neck the next day. In the April 3, 1996 telephone conference, appellant's supervisor told the Office that appellant went to see the doctor while she was on the clock. He also stated that he went with her to the physician apparently, for her ankle and sat with her in the waiting room.

The Office failed to determine whether appellant's request for medical treatment on February 27, 1996 was authorized either implicitly, through her supervisor's approval, or by means of a CA-16, if one was issued. Authorization by the employing establishment of appellant's request for treatment would render the Office responsible for appellant's medical expenses related to the February 27, 1996 car accident even though appellant's claim for the ankle injury was subsequently denied. The case must therefore be remanded for the Office to exercise its discretion and adjudicate the issue of appellant's entitlement to medical expenses. After further development consistent with this decision, the Office shall issue a *de novo* decision.

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<sup>6</sup> 20 C.F.R. § 10.403; *Val D. Wynn*, 40 ECAB 666, 668-669 (1989).

<sup>7</sup> *Thomas W. Keene*, 42 ECAB 623, 631 (1991); Federal (FECA) Procedural Manual, Part 3 -- Medical Services, Chapter 3.300(3) (May 1991).

The decisions of the Office of Workers' Compensation Programs dated June 27 and May 6, 1996 are hereby set aside, and the case is remanded for further consideration consistent with this opinion.

Dated, Washington, D.C.  
October 8, 1998

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Michael E. Groom  
Alternate Member