United States Department of Labor
Employees' Compensation Appeals Board

A.O., Appellant	)	
and	)	**Docket No. 08-580**
	)	**Issued: January 28, 2009**
DEPARTMENT OF TRANSPORTATION, U.S. MERCHANT MARINE ACADEMY, Kings Point, NY, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 19, 2007 appellant filed a timely appeal from the October 4, 2007 merit decision of the Office of Workers' Compensation Programs, which denied authorization for a special mattress and pillow. He also filed a timely appeal from the Office's August 29 and December 4, 2007 merit decisions, which denied travel expenses. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case.

ISSUES

The issues are: (1) whether the Office abused its discretion in denying authorization to purchase a special mattress and pillow for treatment of the accepted medical conditions; and (2) whether the Office abused its discretion in denying authorization for appellant to travel from Florida to New York for medical treatment.

FACTUAL HISTORY

On December 3, 2004 appellant, then a 46-year-old security officer, sustained an injury in the performance of duty when a scuffle broke out during an arrest. The Office accepted his claim for contusion of knee(s), neck sprain and strain, and lumbar sprain and strain. It later accepted an aggravation of bilateral chondromalacia of the patella and left lateral meniscal tear.

On September 11, 2006 Dr. John M. Olsewski, appellant's pain management physician, prescribed a mattress and pillow.

In a decision dated November 27, 2006, the Office denied authorization for the durable equipment. It noted the cost of $3,692.49. The Office found no objective medical evidence to support the use of a special mattress or pillow and no literature recommending them as a form of medical treatment.

On April 24, 2007 Dr. Nicholas John Ruggiero, a chiropractor, noted that it was medically necessary for appellant to receive a select comfort adjustable bed because he had difficulty sleeping on a regular bed due to his spinal disorder and because he had difficulty getting in and out of bed. He stated:

> "This bed will help him with sleep and be much easier for him to maneuver in and out of [bed] while not aggravating his current condition of his cervical and lumbar spine. With this bed, I would expect patient [to] arise in the morning with less pain and less discomfort as well as hopefully sleep better which will improve his conditions to his neck, back and both knees. Patient will need the bed permanently and there is no alternative at this time."

Dr. Ruggiero diagnosed the following: L5-S1 disc protrusion and annular tear; cervical disc protrusion at C4-7; spinal cord deformity at C4-5; left/right shoulder internal derangement with upper extremity radiculopathy; bilateral knee contusion with chondromalacia patella; lumbar radiculopathy; and lumbar bulging disc at L4-5.

A price quote from the manufacturer showed the cost of the requested equipment to be over $6,000.00 with tax.

On July 3, 2007 Dr. Scott D. Tannenbaum, appellant's physiatrist, endorsed the idea of a special mattress:

> "Medically indicated to obtain an appropriate mattress for [appellant]. It is subjective as to what mattress would be appropriate. [Appellant] has not tried the [s]elect [c]omfort which is an adjustable type mattress may be the best option for him. I am reluctant to provide him any higher doses of hypnotic medication to provide him help with sleep. We do run potential risk with that. The bed may be the most cost effective means of managing his insomnia and his chronic pain with the least amount of side effects. I have therefore endorsed providing him with an appropriate mattress for that reason."

On July 12, 2007 Dr. Jason M. Goldman, appellant's internist, stated that appellant was in need of a special bed and mattress for treatment of his chronic disease: "He also needs additional padding and pillows manufactured by select comfort. This is for medical necessity."

In a decision dated October 4, 2007, the Office reviewed the merits of appellant's claim and denied modification of its November 27, 2006 decision. It found that the medical evidence did not substantiate the need for a special mattress and pillow: "You have not provided a rationalized statement from an orthopedic [specialist] that provides objective findings to support the need for the specialized equipment you requested." The Office noted that Dr. Olsewski's prescription did not explain the need for the equipment as it related to the accepted medical conditions and did not specify the type of mattress and pillow. It also noted no progress notes or treatment record showing any objective findings of the accepted conditions and rationale for how the work injury necessitated the use of special equipment. Further, the Office found that Dr. Ruggiero was not a qualified physician and did not fully explain the reasoning for a specific model and type of bed.

Appellant relocated to Florida in March 2007. He submitted a travel request to return to New York to see his doctors. Appellant stated that he was not able to cope with the severe cold of New York winters. He also was not satisfied with most of the doctors he had seen in Florida: "I have not become comfortable with the several doctors that I had seen in Florida to look to treat my neck, upper and lower back, knees, shoulders and arms." Appellant added that his doctors in New York were comfortable seeing him every six months so long as Dr. Goldman monitored him for changes in Florida.

In a decision dated August 29, 2007, the Office denied authorization for the requested travel expenses. It noted that the state of Florida had many recognized medical providers in the fields of orthopedic and neurological medicine. The Office found that it was unreasonable to accept appellant's argument that there were no competent specialists within his state of residence.

On September 4, 2007 Dr. Tannenbaum wrote: "Patient needs to find local physicians rather than having him follow-up with New York doctors on a regular basis."

Appellant requested reconsideration of the Office's August 29, 2007 decision. He explained that his move to Florida was medically necessary and he wanted medical treatment from the physicians who had treated him since the onset of his injuries. Appellant detailed his efforts to locate doctors in Florida, but stated that very few accepted workers' compensation cases and he felt comfortable with very few of the doctors he encountered.

In a decision dated December 4, 2007, the Office reviewed the merits of appellant's claim and denied modification of its August 29, 2007 decision. It found that appellant did not provide sufficient evidence for the need to be seen by a specialist more frequently than once a year. The Office further denied his request to go to New York for medical treatment. It was not evident, the Office stated, that appellant had exhausted all the possible orthopedists or neurologists in his area. The Office noted:

> "After reviewing the availability of services within the area you currently live and your accepted medical conditions, there is no reason you should return to New York to seek medical treatment. Although this office cannot deny your treatment by physicians in New York, or anywhere in the country, the reimbursement of travel to have that treatment is not reasonable or necessary."

LEGAL PRECEDENT

Medical expenses, along with transportation and other expenses incidental to securing medical care, are covered by section 8103 of the Federal Employees' Compensation Act. This section 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 Secretary of Labor considers likely to cure, give relief, reduce the degree of the period of any disability or aid in lessening the amount of any monthly compensation. These services, appliances and supplies shall be furnished by or on the order of the United States medical officers and hospital or at the employee's option, by or on the order of physicians and hospitals designated or approved by the Secretary.[1] The Office may apply a test of cost-effectiveness to appliances and supplies.[2]

The employee may be furnished necessary and reasonable transportation and expenses incident to the securing of such services, appliances and supplies.[3] To determine what a reasonable distance to travel is, the Office will consider the availability of services, the employee's condition, and the means of transportation. Generally, 25 miles from the place of injury, the work site, or the employee's home, is considered a reasonable distance to travel.[4]

The Office has broad discretionary authority in the administration of the Act and must exercise that discretion to achieve the objectives of section 8103.[5]

Section 8101(2) of the Act provides that the term "physician," as used therein, "includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray

[1] 5 U.S.C. § 8103(a).

[2] 20 C.F.R. § 10.310(b).

[3] 5 U.S.C. § 8103(a).

[4] 20 C.F.R. § 10.315.

[5] *Marjorie S. Geer*, 39 ECAB 1099 (1988).

to exist and subject to regulation by the Secretary."[6] Without diagnosing a subluxation from x-ray, a chiropractor is not a "physician" under the Act.[7]

ANALYSIS -- ISSUE 1

The Board has recognized that the Office has broad discretion in approving services or supplies under section 8103.[8] The only limitation on the Office's authority is that of reasonableness. The issue, therefore, is whether the Office abused its discretion. It is immaterial whether a special mattress and pillow were recommended for the treatment of conditions that are not causally related to the December 3, 2004 incident at work. The record establishes that appellant suffers from a number of medical conditions that the Office has not accepted. The issue is whether the Office abused its discretion in denying authorization to purchase a special mattress and pillow for treatment of the accepted contusion of knee(s), neck sprain and strain, lumbar sprain and strain, aggravation of bilateral chondromalacia patella or left lateral meniscal tear. The Board must review the Office's exercise of discretion on October 4, 2007 to determine whether the evidence is sufficient to demonstrate an abuse of that discretion.

Dr. Olsewski, the pain management physician, prescribed a mattress and pillow but offered no rationale for such supplies. Dr. Ruggiero explained that it was medically necessary for appellant to receive a select comfort adjustable bed, but he is not a "physician" as defined under the Act. He did not diagnose a subluxation of the spine as demonstrated by x-ray to exist. Moreover, the Office did not accept that appellant sustained a subluxation of the spine as a result of the December 3, 2004 work injury. So for purposes of the Act, Dr. Ruggiero's opinion that a special mattress and pillow are medically necessary for treatment of the accepted conditions is of no probative value.

Dr. Tannenbaum, the physiatrist, reported that an appropriate mattress was medically indicated, but he was unsure what was appropriate and he did not explain how it was medically indicated for treatment of the accepted medical conditions. He wanted to avoid higher doses of hypnotic medication to help appellant sleep, but did not explain how this was related to the accepted medical conditions. Dr. Goldman, the internist, supported the need for a special bed and mattress and called it a medical necessity. However, Dr. Goldman, too, did not explain how this would aid to cure, give relief or reduce the disability associated with the accepted medical conditions.

On October 4, 2007 the Office found that appellant failed to submit a rationalized medical opinion to support his request for a special mattress and pillow. It noted the lack of objective findings pertaining to the accepted conditions and the lack of medical rationale explaining how the December 3, 2004 work injury necessitated the use of any special equipment. These are relevant considerations. The Board has duly considered the matter and finds that the Office did not abuse its broad discretion under section 8103 of the Act when it denied

[6] 5 U.S.C. § 8101(2).

[7] *See generally Theresa K. McKenna*, 30 ECAB 702 (1979).

[8] *See Thomas Lee Cox*, 54 ECAB 509 (2003); *Peggy J. Reed*, 46 ECAB 139 (1994).

authorization for the purchase of a special mattress and pillow. The Board will affirm the Office's October 4, 2007 decision.

ANALYSIS -- ISSUE 2

The Office has broad discretion under section 8103 of the Act to authorize necessary and reasonable transportation incident to the securing of services, appliances and supplies recommended for the treatment of accepted medical conditions. In determining what a reasonable distance of travel is, the Office will consider the availability of services, the employee's condition and the means of transportation.[9] The issue is whether the Office abused its discretion in denying authorization for appellant to travel to New York for treatment of the accepted medical conditions.

As noted, the distance of such travel is much greater than the 25 miles (50 miles roundtrip) that is generally considered reasonable under Office regulations. The Office considered appellant's accepted conditions and the availability of medical services in Florida. The Board finds that the Office gave due regard to these relevant factors and did not abuse its discretion when it denied authorization for continued treatment in New York. Appellant argues that he has earnestly endeavored to find physicians in Florida, but the fact that some physicians will not accept workers' compensation cases or the fact that appellant did not feel comfortable with other physicians, are not sufficient reasons to establish that returning to New York for treatment of his accepted medical conditions was both reasonable and necessary. The Board will affirm the Office's August 29 and December 4, 2007 decisions.

CONCLUSION

The Board finds that the Office did not abuse its discretion in denying authorization for a special mattress and pillow or authorization of travel expenses for medical treatment in New York.

[9] *See Julia A. Strickland*, 54 ECAB 649 (2003).

ORDER

IT IS HEREBY ORDERED THAT the December 4, October 4 and August 29, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 28, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board