

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

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**T.A., Appellant**

**and**

**DEPARTMENT OF THE AIR FORCE,  
MAUI SPACE SURVEILLANCE CENTER,  
Haleakala, HI, Employer**

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**Docket No. 12-368  
Issued: June 22, 2012**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On December 13, 2011 appellant, through his representative, filed a timely appeal from the September 9, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 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 OWCP properly denied reimbursement of travel expenses.

**FACTUAL HISTORY**

On October 13, 2010 appellant, a 43-year-old police officer, sustained a traumatic injury in the performance of duty when he struck his left shoulder on the latch mechanism for a hatch. OWCP accepted his claim for sprain of the shoulder and upper arm acromioclavicular and for an

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

unspecified disorder of the bursae and tendons in the left shoulder. It informed appellant that travel expenses exceeding \$75.00 were subject to prior approval.

When appellant informed OWCP that he traveled to Washington State to see a doctor because he could not find one on Maui who would accept workers' compensation cases, OWCP requested a written explanation. He explained that he had been on the island only a short time and had not obtained a new family doctor. Appellant's previous doctor was in Washington. He stated that his supervisors told him to make sure that he saw a doctor who took federal workers' compensation cases and who also accepted his personal insurance coverage.

Appellant stated that he went to the only hospital on Maui to obtain a referral sheet of all orthopedists on the island: four were private doctors and three were Kaiser insurance doctors (he did not have Kaiser insurance). One of the private doctors advised that he did not take federal workers' compensation cases and the others advised that the earliest appointment would be over a month away. When appellant stated that he was in pain and missing work, all the doctors advised that he find a doctor on the island of Oahu or fly to the mainland.

Appellant called the two large orthopedic practices on Oahu, but neither took federal workers' compensation claims. He contacted an orthopedic practice in his hometown in Washington. After it advised that an appointment was available within a week, appellant booked a flight and saw the doctor in Washington. He saw the doctor once again during the holidays and was advised to have surgery. Appellant requested reimbursement of \$847.58 in travel expenses due to an orthopedist not being available to see him for over a month while he was in pain.

OWCP authorized left shoulder surgery but on February 15, 2011 it denied reimbursement for travel expenses. It noted that appellant checked for physicians only on Maui and Oahu. Appellant did not state why he did not look elsewhere. OWCP found that he failed to establish that he was not able to find an orthopedist willing to treat him for his workers' compensation injury. It found that he did not meet his burden to establish that he was required to travel to Washington for treatment of his shoulder condition.

On February 24, 2011 in Washington appellant underwent an open rotator cuff repair on his left shoulder.

In a September 9, 2011 decision, an OWCP hearing representative noted that appellant sought medical treatment from an orthopedist in Washington without prior OWCP approval. She found that the evidence did not show that it was necessary for appellant to go to Washington to obtain medical treatment or that the particular type of treatment he received was available only from the physician in Washington. Appellant had indicated that a physician on Maui could see him but appellant felt the appointment was not soon enough. Further, after his first evaluation in Washington, there was no evidence that he was subsequently unable to establish care with an appropriate physician in Hawaii. The hearing representative found that appellant's travel was based on his preference of treating physicians and that the evidence was insufficient to support that the travel expenses were medically necessary or that OWCP was unreasonable in denying reimbursement.

## LEGAL PRECEDENT

The employee may initially select a physician to provide medical services, appliances and supplies, in accordance with such regulations and instructions as OWCP considers necessary, and may be furnished necessary and reasonable transportation and expenses incident to the securing of such services, appliances and supplies.<sup>2</sup>

The employee is entitled to reimbursement of reasonable and necessary expenses, including transportation needed to obtain authorized medical services, appliances or supplies. To determine what is a reasonable distance to travel, OWCP will consider the availability of the 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.<sup>3</sup>

OWCP has broad discretion to authorize necessary and reasonable transportation incident to the securing of services, appliances and supplies recommended for the treatment of accepted medical conditions.<sup>4</sup> It may authorize medical treatment but determine that the travel expense incurred for such authorized treatment was unnecessary or unreasonable.<sup>5</sup>

## ANALYSIS

Appellant explained how he came to see a physician in Washington. He indicated that he relied on advice from supervisors and on information he was able to gather from a hospital on Maui and from two practices on Oahu.

Appellant did not explain, however, why he did not contact OWCP. It was OWCP that had the resources to authorize and schedule treatment for his accepted left shoulder injury. It was OWCP that could authorize any necessary and reasonable travel expenses. In fact, when it accepted his claim, OWCP informed appellant that travel expenses exceeding \$75.00 were subject to prior approval. Rather than obtain prior approval, appellant risked incurring expenses for which he would be personally liable.

The hospital in Maui provided appellant a list of physicians. Four stated they did not take federal workers' compensation cases. Appellant discounted the others because they were Kaiser doctors and he did not have Kaiser insurance. OWCP, however, could have scheduled an appointment with one of those doctors and could have authorized medical and transportation expenses, but appellant's self-directed search took away that option.

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<sup>2</sup> *Id.* at § 8103(a).

<sup>3</sup> 20 C.F.R. § 10.315.

<sup>4</sup> *A.O.*, Docket No. 08-580 (issued January 28, 2009) (travel from Florida to New York to obtain medical treatment).

<sup>5</sup> *Dr. Mira R. Adams*, 48 ECAB 504 (1997).

In the case of *J.J.*,<sup>6</sup> the employee explained that he did not feel comfortable with the physicians in Ridgecrest, California, as they were not familiar with his case and would not accept workers' compensation cases. The Board found that this was not sufficient to establish that traveling to Redlands, California, for treatment of his accepted medical conditions was both reasonable and necessary.

OWCP gave due consideration to appellant's explanation and to relevant factors, and it found that travel from Hawaii to Washington was not necessary and reasonable for treatment of his accepted left shoulder injury. It has broad discretion in this matter and the Board finds that OWCP properly exercised that discretion to deny appellant's request for reimbursement of \$847.58 in travel expenses. The Board will affirm OWCP's September 9, 2011 decision.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

**CONCLUSION**

The Board finds that OWCP properly denied reimbursement of travel expenses.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 9, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 22, 2012  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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<sup>6</sup> Docket No. 10-1908 (issued June 16, 2011).