

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

M.E., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Kalamazoo, MI, Employer**

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**Docket No. 14-809
Issued: August 6, 2014**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 26, 2014 appellant filed a timely appeal from a January 27, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his request for reimbursement for travel expenses to attend a doctor's appointment. Pursuant to the Federal Employees' Compensation Act¹ (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 abused its discretion by denying appellant's request for reimbursement of travel expenses for an April 15, 2013 medical appointment.

On appeal, appellant contends that the examination was preapproved.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On July 1, 2011 appellant, then a 63-year-old rural carrier who resides in Michigan, filed a claim for occupational disease alleging that the opening and closing of mailboxes and casing letters and flats with his right arm caused a shoulder condition. On August 24, 2011 OWCP accepted his claim for rotator cuff tendinitis. It later accepted right rotator cuff impingement syndrome, right shoulder impingement syndrome, disorder of burse and tendons in right shoulder and right shoulder tendinitis. Appellant underwent surgery on December 30, 2011 for right shoulder arthroscopy with subacromial decompression and distal clavicle excision.

On August 31, 2012 appellant filed a claim for a schedule award. He indicated on the claim form that he was filing a claim for three cases, OWCP File Nos. xxxxxx298, xxxxxx357 and xxxxxx003. OWCP responded by letter dated September 10, 2012. It requested that appellant submit a medical report from his physician describing his impairment and providing objective findings.²

In an October 22, 2013 memorandum, OWCP doubled appellants claim. File No. xxxxxx298 was accepted for the right shoulder conditions with surgery as the master file. The memorandum also listed subsidiary claims in File No. xxxxxx244, accepted for left shoulder condition with surgery; File No. xxxxxx357, accepted for an aggravation of left lateral epicondylitis; and File No. xxxxxx003, accepted for left thumb tendinitis.

By letter dated September 24, 2012, appellant requested that OWCP schedule a second opinion evaluation with regards to his right shoulder. He noted that he was unable to find a physician to provide an impairment determination under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. OWCP responded on October 2, 2012 that it would schedule a second opinion examination in order to obtain an impairment rating.

In a January 26, 2013 letter to his congressman, appellant indicated that he had requested a second opinion with regards to his claims for a schedule award. As it had been almost four months and he heard no response, he contacted a claims examiner and found a physician, Dr. John W. Ellis, a physician Board-certified in family medicine in Oklahoma City, Oklahoma that would conduct an impairment evaluation. Appellant requested travel expenses but did not receive a reply. He noted that he found two places in northern Indiana where an evaluation could be obtained, but it had to be preauthorized by OWCP. Appellant noted that the claims examiner advised him that it was too late to find someone to perform the evaluation since he requested a second opinion. In a letter to appellant's congressman dated February 12, 2013, OWCP apologized for the delay in obtaining a second opinion and noted that he was scheduled for examination by Dr. Emmanuel Obianwu, a Board-certified orthopedic surgeon, on March 4, 2013 for the purpose of an impairment evaluation.

² In a previous claim, OWCP File No. xxxxxx244, OWCP accepted appellant's claim for left tendinitis and appellant received a schedule award for 15 percent impairment of the left upper extremity.

Appellant saw Dr. Obianwu on March 4, 2013, and in a report of that date Dr. Obianwu found that appellant had a 10 percent impairment of his right upper extremity based on his accepted post distal clavicle resection under Table 15-5. In reports dated May 13 and August 7, 2013, OWCP's medical adviser agreed with Dr. Obianwu that appellant had a right upper extremity impairment of 10 percent based on the right shoulder distal clavicle resection.

In a June 10, 2013 letter, appellant advised OWCP that on April 15, 2013 he traveled to Oklahoma City to the Ellis Clinic for an impairment evaluation of his left elbow and left thumb. He submitted a request for travel expenses of \$420.60 for airfare and \$56.69 for car rental. Appellant stated that he was unable to find a qualified physician close to his home even though he had contacted over 50.

By letter dated June 13, 2013, OWCP asked Dr. Todd Ream, appellant's treating Board-certified orthopedic surgeon, for an evaluation of impairment with regard to appellant's left lateral epicondylitis. Dr. Ream did not respond.

In a letter dated July 18, 2013 to his congressman, appellant stated that he was advised by OWCP that it would not pay for him to go to Oklahoma City for examination as there were physicians in Michigan who could provide an impairment rating. He could only locate two physicians in Michigan who requested payment in advance. Appellant provided the names to the claims examiner. He contended that his only recourse was to go to Oklahoma City to obtain an impairment rating.

In a decision dated August 5, 2013, OWCP denied appellant's request for reimbursement for airfare and rental car expenses in Oklahoma City. It noted that it made all the necessary arrangements for his evaluation by Dr. Obianwu for an impairment assessment, so appellant knew that OWCP was capable of arranging a second opinion evaluation for the thumb condition. OWCP also noted that Oklahoma City was more than 800 miles from appellant's home in Michigan.

By letter dated August 22, 2013, appellant stated that he filed a claim on August 31, 2012 for three schedule awards and that there had only been activity on one of the claims. He inquired about what action was being taken on the other two claims. Appellant also filed a request for review of the written record by an OWCP hearing representative with regard to the August 5, 2013 decision denying his claim for travel reimbursement.

In an August 12, 2013 letter, appellant indicated that the Ellis Clinic requested authorization for the medical examination and it was authorized for claim File Nos. xxxxxx852, xxxxxx 855 and xxxxxx846.

The April 15, 2013 report of Dr. Ellis was received by OWCP on September 23, 2013. Dr. Ellis opined that for claim File No. xxxxxx357 appellant had a seven percent impairment of his left upper extremity due to lateral epicondylitis and in claim File No. xxxxxx003, he found an eight percent impairment of the left thumb.

On September 26, 2013 OWCP issued a schedule award for a 10 percent impairment of the right upper extremity.

In a letter to appellant dated October 22, 2013, OWCP noted that appellant's claim in File No. xxxxxx003 has been accepted for left thumb tendinitis; File No. xxxxxx292 had been accepted for left lateral epicondylitis and that it had received a request for left elbow surgery in claim File No. xxxxxx292 which had been approved. It noted that as he was not at maximum medical improvement with regards to his left upper extremity and no additional action would be taken on the schedule award. In a statement of accepted facts dated November 12, 2013, OWCP noted that on December 20, 2012 appellant began to experience pain in his left elbow which he attributed to his federal duties. Under File No. xxxxxx292, accepted for left lateral epicondylitis, appellant stopped work on November 11, 2013 to undergo left elbow repair.

By decision dated January 27, 2014, an OWCP hearing representative affirmed the August 5, 2013 decision denying appellant's request for travel expenses for attending a medical examination in Oklahoma.

LEGAL PRECEDENT

Section 8103 of FECA³ 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 OWCP considers likely to cure, give relief, reduce the degree of the period of disability or aid in lessening the amount of monthly compensation.

Section 10.315 of Title 20 of the Code of Federal Regulations provide, in relevant part:

“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 services, the employee's condition and the means of transportation. Generally, 25 miles from the place of injury, the worksite or the employee's home, is considered a reasonable distance to travel. The standard form designated for [f]ederal employees to claim travel expenses should be used to seek reimbursement under this section.”⁴

The only limitation on OWCP's authority is reasonableness. 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 known facts.⁵ The Board has long held that OWCP has broad discretion in approving services provided under FECA.⁶

³ 20 C.F.R. § 10.315.

⁴ 5 U.S.C. § 8103; *see Thomas W. Stevens*, 50 ECAB 288 (1999).

⁵ *Supra* note 3.

⁶ *See W.T.*, Docket No. 13-197 (issued June 3, 2013); *see also William B. Webb*, 56 ECAB 156 (2004); *Lecil E. Stevens*, 49 ECAB 673 (1998).

ANALYSIS

The Board finds that OWCP did not abuse its discretion when it denied appellant's request for reimbursement of travel expenses for a medical examination in Oklahoma City on April 15, 2013.

On August 31, 2012 appellant requested schedule awards under three different cases, OWCP claim File Nos. xxxxxx298, xxxxxx357 and xxxxxx003. On September 24, 2012 he requested that OWCP schedule a second opinion evaluation with regard to his right shoulder. An impairment evaluation with a second opinion physician, Dr. Obianwu, was scheduled for March 4, 2013. He rated impairment to the left arm of 10 percent. The report of Dr. Obianwu was reviewed by OWCP's medical adviser and appellant was granted a schedule award for 10 percent impairment of his right upper extremity on September 26, 2013.⁷

Appellant went to Oklahoma on April 15, 2013 to obtain an impairment rating for his left thumb and left elbow by Dr. Ellis. Contrary to his assertions on appeal, there is no evidence of record that his travel to Oklahoma City was ever authorized by OWCP.

Appellant resides in Michigan and flew to Oklahoma City to obtain a medical evaluation on his left thumb and left elbow, a distance which OWCP noted was over 800 miles from his home. He asked for reimbursement for his airfare and automobile rental. Appellant contends that he could not locate a physician to provide impairment rating in Michigan or Northern Indiana. However, the record reflects that in response to his request for assistance to obtain a second opinion impairment rating of his right shoulder OWCP scheduled an evaluation on March 4, 2013 by Dr. Obianwu, a physician with offices in Southfield and Grand Rapids, Michigan. Thereafter, on his own volition, appellant traveled to Oklahoma City for an evaluation on April 15, 2013 by Dr. Ellis. OWCP denied reimbursement for travel expenses, noting a second opinion examination could be scheduled much closer to his home, as with the appointment with Dr. Obianwu. Appellant has not established that his examination by Dr. Ellis was reasonable or necessary to the adjudication of his claims for schedule awards. His expenses were incurred for medical services not authorized by OWCP. Section 8103 provides that medical care shall be furnished by or on the order of physicians designated or approved by OWCP.⁸ In the absence of an emergency, an employee may not recover the cost of medical care obtained without prior approval.

The Board finds that OWCP properly considered the factors enumerated in section 10.315 of its regulations and denied appellant's request for authorization for travel expenses to see Dr. Ellis in Oklahoma City. OWCP did not abuse its discretion by denying authorization of travel expenses between Michigan and Oklahoma City.

⁷ The Board notes that appellant has not appealed the schedule award decision of September 26, 2013. Thus, it is not currently before the Board. See 20 C.F.R. § 501.3(a).

⁸ See *Mildred A. Lindell*, 56 ECAB 287 (1983).

CONCLUSION

The Board finds that OWCP did not abuse its discretion by denying appellant's request for reimbursement of travel expenses for an April 15, 2013 medical appointment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 27, 2014 is affirmed.

Issued: August 6, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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