

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

W.H., Appellant)	
)	
and)	Docket No. 14-1662
)	Issued: February 3, 2015
DEPARTMENT OF HOMELAND)	
SECURITY, CUSTOMS & BORDER)	
PROTECTION, OFO-Los Angeles, CA,)	
Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 28, 2014 appellant filed a timely appeal from an April 29, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). 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.

FACTUAL HISTORY

On March 27, 2000 appellant, then a 50-year-old senior customs inspector, filed an occupational disease claim for exposure to different irritants during his assignments in Ismail,

¹ 5 U.S.C. § 8101 *et seq.*

Ukraine, Los Angeles International Airport, and Ontario International Airport. He first became aware of his condition in October 1992 and realized that it was caused or aggravated by his employment on August 21, 1999. OWCP accepted the claim for precipitation of extrinsic asthma and reactive airway disease. Appellant was off work intermittently from the date of first exposure and stopped work on July 6, 2002. OWCP later expanded the claim² to include aggravation of diabetes mellitus, Type 2; aggravation of hypertension; obstructive sleep apnea; bilateral carpal tunnel syndrome; left ulnar mononeuritis; and bilateral polyneuropathy secondary to diabetes.³

Under master claim number xxxxxx323, appellant filed several claims for travel reimbursement to and from his physician's offices and his residence in Big Bear City, California.⁴ These requests for travel reimbursements for medical appointments covered the

² Appellant also has additional work-related claims that have been combined under this claim, with this claim being the master file. In case number xxxxxx428 (subsidiary), he filed a traumatic injury claim stating that, on April 27, 1999, he sustained a puncture wound to his left thigh and an exacerbation of his respiratory condition. This short form closure claim was administratively handled. In case number xxxxxx700 (subsidiary), appellant filed a traumatic injury claim stating that, on June 18, 1999, he sustained an acute exacerbation of respiratory system due to inhalation of paint fumes. This short form closure claim was administratively handled. In case number xxxxxx160 (subsidiary), appellant filed a traumatic injury claim stating that, on October 3, 2001, he sustained airway inflammation and respiration impairment due to a coworker's cologne/after shave use. OWCP accepted a temporary aggravation of reactive airway disease/asthma. This claim is closed. Under claim number xxxxxx175 (subsidiary), appellant filed a traumatic injury claim stating that, on September 24, 2001, he sustained airway inflammation and respiration impairment due to a coworker's cologne/aftershave use. OWCP accepted a temporary aggravation of reactive airway disease/asthma. This claim is closed. In case number xxxxxx176 (subsidiary), appellant filed a traumatic injury claim stating that, on September 17, 2001, he sustained airway inflammation and respiration impairment due to a coworker's cologne /after shave use. OWCP accepted a temporary aggravation of reactive airway disease/asthma. This claim is closed. Under claim number xxxxxx177, appellant filed a traumatic injury claim stating that, on October 4, 2001, he sustained airway inflammation and respiration impairment due to a coworker's cologne/aftershave use. OWCP accepted a temporary aggravation of reactive airway disease/asthma. This claim is closed. Under claim number xxxxxx861 (subsidiary), appellant filed a traumatic injury claim stating that, on March 20, 2001, he was exposed to chemical inhalation from a coworker's scented personal care product. This short form closure claim was administratively handled. Under claim number xxxxxx124 (subsidiary), appellant filed a traumatic injury claim stating that, on March 25, 2002, he sustained a respiratory impairment due to a coworker's cologne. OWCP accepted a temporary aggravation of reactive airway disease/asthma. This claim is closed. Under claim number xxxxxx572 (subsidiary), appellant filed a traumatic injury claim stating that, on April 1, 2002, he sustained airway injury due to exposure to coworker's cologne. The short form claim was administratively handled. Under case number xxxxxx098 (subsidiary), appellant filed a traumatic injury claim stating that, on April 15, 2002, his reactive airways disease was aggravated as a result of exposure to a coworker's cologne. This short form closure claim was administratively handled. Under case number xxxxxx144 (subsidiary), appellant filed a traumatic injury claim stating that, on April 10, 2002, his reactive airways disease was aggravated as a result of exposure to a coworker's cologne. This short form closure claim was administratively handled. Under case number xxxxxx145 (subsidiary), appellant filed a traumatic injury claim stating that, on April 11, 2002, his reactive airways disease was aggravated as a result of exposure to a coworker's cologne. This short form closure claim was administratively handled. Under case number xxxxxx985 (subsidiary), appellant filed a traumatic injury claim stating that on May 15, 2002 the stress of his claims and medical treatment caused an elevation of Type 2 diabetes mellitus to insulin-dependent diabetes. On February 17, 2004 OWCP's Branch of Hearings and Review instructed OWCP to combine this claim with the accepted respiratory claim, case number xxxxxx985, and develop the case for a possible consequential injury.

³ Appellant also has an accepted hearing loss claim under master file number xxxxxx532; that appeal is before the Board under Docket No. 14-1661.

⁴ *See id.*

period September 21, 2011 through June 20, 2013 and exceeded 100 miles round-trip. The record reflects that appellant lives in the San Bernardino Mountains of Riverside County, California, in near Big Bear City, California. There are two routes from his home on the mountain to the valley below: Highway CA-38 and Highway CA-330/CA-18. The closest city in the valley, below the mountain where appellant lives, is Highland City, California. From Highland City, the roads branch out to other cities and towns. The cities and towns nearest to Highland City include Riverside, San Bernardino, Yucaipa, Redlands and Loma Linda.

In support of his claims for reimbursement of travel beyond the 100-mile round-trip distance limitation, appellant argued that he lives in a remote geographical area with limited local medical services. In a December 2, 2011 letter, he stated that he lives “7200 feet up in the San Bernardino Mountains,” in order to “avoid airborne irritants that aggravate his reactive airways disease.” Appellant stated that the safest route from his home to the nearest freeway ramp in the valley which encompassed Highway CA-38 was a distance of 52 miles. He defined “safest route” as the route “without commercial truck traffic, no diesel exhaust, and no scent of brake asbestos from people burning their brakes driving down the mountain, etc.” Appellant noted the shorter route from his home to the nearest freeway ramp in the valley, which encompassed Highway CA-18/CA-330, was 36 miles to the nearest freeway ramp. However, this shorter route was not the safest travel route for his work-related conditions. Appellant also noted that there are frequent road closures due to traffic accidents, mud and rock slides, avalanches, and complete road washouts on Highway CA-18/CA-330, stating that “mountain driving is inconsistent and unpredictable.”

In a December 19, 2011 letter, OWCP’s District Director Andrew Tharp noted that, although OWCP had previously paid appellant’s mileage reimbursement claims for medical appointments in the Los Angeles area, which required more than 100 miles of travel round-trip from appellant’s home, all future claims for travel reimbursement would follow the provisions of the 100-mile round-trip limitation set forth in 20 C.F.R. § 10.315, amended effective August 29, 2011. 20 C.F.R. § 10.315 allows an injured worker to have a primary treating physician located a maximum distance of 100 miles round-trip between the place of treatment and the claimant’s residence. Mr. Tharp noted that appellant had not provided any evidence that there were no physicians located within 50 miles of his residence who could provide adequate medical treatment for his accepted work injuries. He noted that appellant had attended medical appointments in Loma Linda (approximately 41 miles one-way) and that there were several medical specialists located in the San Bernardino, Redlands and Riverside areas, who accept injured federal workers as patients and are within the 100-mile round-trip limitation. Appellant was to be paid claims through October 21, 2011.

Appellant continued to submit claims for travel reimbursement for physicians located more than 100 miles round-trip from his home.

In a January 17, 2012 letter, OWCP advised appellant that 20 C.F.R. § 10.315 had been amended effective August 29, 2011 and allowed an injured worker to have a primary treating physician located a maximum distance of 100 miles round-trip from their residence. It noted that he was previously instructed to locate a physician within a 50-mile radius of his home. However, appellant provided no evidence showing that he was unable to locate a neurologist in the Loma Linda, San Bernardino, Redlands or Riverside areas who accepted injured federal workers as patients. OWCP stated that, if he declined to find a new physician, it could only

reimburse him a maximum of 100 miles round-trip for future mileage reimbursement claims related to attending medical appointments.

Appellant continued to submit claims for reimbursement of travel beyond 100 miles round-trip from his residence.

In a February 11, 2012 statement, appellant indicated that he conducted a search within a 50-mile radius of “Big Bear Lake, Fawnskin, Angeles Oaks, Forest Falls, Mountain Home Village, Mentone, Yucaipa, Arrowbear, Running Springs, Green Valley Lake, Lake Arrowhead, Blue Jay, Crestline, and Lake Gregory, California” as well as areas outside of the 50-mile radius, including the “cities of Highland, Redlands, Loma Linda, San Bernardino, Colton, Grand Terrace, Riverside, Lucerne Valley, Victorville, and Apple Valley” for “suitable providers” in the form of a “board[-]certified endocrinologist” competent to treat his accepted diabetes mellitus claim. In a May 27, 2012 statement, he stated that Loma Linda University Medical Center denied his request to be cared for. Appellant also stated that the internet listing, which the claims examiner provided to him on April 5, 2012, failed to take into account the actual driving distances between his remote mountain residence and the locations of the medical offices indicated.

Appellant submitted four video DVDs in support of his assertion that there were no physicians within a 50-mile radius of his home in Big Bear City. He also alleged that he could not locate any physicians closer to his residence who would care for him or who would accept FECA patients.

By decision dated June 26, 2013, OWCP denied appellant’s claims for travel reimbursement for medical appointments which exceeded 100 miles round-trip.⁵ Fifteen of the claims were not payable as they lacked either medical provider documentation or a medical provider’s billing to support that an appointment was actually attended and which corresponded to the claimed date of travel. Twenty-five of the claims were not payable pursuant to 20 C.F.R. § 10.315 as they were not “reasonable” travel expenses under 20 C.F.R. § 10.315. OWCP found that, under 20 C.F.R. § 10.315(b), appellant lives in a remote area of Big Bear City, California; but, once off the mountain road, the provision which states that “an employee who lives in a remote geographical area with limited local medical services,” no longer applied. It found that there were two basic ways to come off the mountain from Big Bear City and the “shortest route” must be used in considering “reasonableness” under 20 C.F.R. § 10.315(a). OWCP found that once appellant was off the mountain, that there was an “availability of services” in the appropriate specialty closer than he was presently driving. It further found that he had not shown adequate proof that he must take the longer route for medical reasons or that his present physicians on the West Coast could only provide his care for his work-related conditions.

⁵ A chronological recitation of appellant’s claims for travel reimbursement can be found in OWCP’s June 26, 2013 decision. Where there was no medical documentation in the file of a medical visit on the same date of travel or no billing from the provider for that claimed date, then the issue of the 100-mile limitation and its exceptions was not reached. The dates of travel which were not payable due to no provider billing were claimed visits on October 14, 2011, December 19, 2011 through December 18, 2012, January 1 through December 31, 2012, February 16 and 21, April 11, June 12 and October 24, 2012, February 8 and 27, March 20, May 23, and June 3 and 20, 2013.

OWCP provided appellant a list of physicians within the 50-mile radius in various specialists appropriate to appellant's accepted medical conditions.

On July 17, 2013 appellant requested an oral hearing before an OWCP hearing representative. A telephonic hearing was held on January 17, 2014. Appellant testified regarding his medical conditions and how it affected his ability to travel. He advised that there were no suitable appropriate specialists within the allowed radius. Appellant explained that he lived high up in the mountains to alleviate the symptoms of his respiratory conditions and traveled longer routes to avoid commercial traffic and freeway as the gas and diesel fumes aggravate his reactive airway disease. He advised that his physicians supported his need to avoid commercial traffic. Appellant also asserted that the physicians listed in OWCP's decision as being in the 50-mile radius of his residence did not necessarily accept OWCP patients and that OWCP had not verified that they in fact accepted OWCP patients. He stated that several of the physicians he contacted advised they did not accept workers' compensation patients.

By decision dated April 29, 2014, an OWCP hearing representative affirmed the prior decision.

LEGAL PRECEDENT

Section 8103 of FECA 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. 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.⁶

OWCP regulations provide that 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 a reasonable distance to travel is, OWCP will consider the availability of services, the employee's condition and the means of transportation. Effective August 29, 2011, the most recent regulations provide that a round-trip distance of up to 100 miles is considered a reasonable distance to travel.⁷ If round-trip travel of more than 100 miles is contemplated, or air transportation or overnight accommodations will be needed, the employee must submit a written request to OWCP for prior authorization with information describing the circumstances and necessity for such travel expenses. Requests for travel expenses that are often approved include those resulting from referrals to a specialist for further medical treatment, and those involving air transportation of an employee who lives in a remote geographic area with limited local medical services.⁸

⁶ 5 U.S.C. § 8103(a).

⁷ 20 C.F.R. § 10.315(a).

⁸ *Id.* at § 10.315(b).

Under FECA Bulletin No. 14-02, issued January 29, 2014, OWCP addressed the manner in which travel procedure codes will be processed and paid by the Central Bill Processing (CBP) system when submitted for authorized examinations/treatments. Effective January 17, 2013 whenever a request for travel reimbursement involved more than 100 miles per day of mileage reimbursement, the reimbursement request is suspended and the request referred for claims examiner review. Under Part A(2), “in limited circumstances it may be necessary for a claimant to travel more than 100 miles on a regular basis, such as to be seen by his/her treating physician or therapist if the claimant lives in a remote area. Upon receipt of notification from CBP in these instances, the claims examiner should provide a range for this ongoing authorization, including both total miles and period that the authorization covers. This range should be calibrated to the claimant’s treatment location and can extend up to 900 miles and up to six (6) months in length, using Procedure Code A0080.

In interpreting this section, the Board has recognized that OWCP has broad discretion in approving services provided under FECA. The only limitation on OWCP’s authority is that of reasonableness.⁹ OWCP may authorize medical treatment but determine that the travel expense incurred for such authorized treatment was unnecessary or unreasonable.¹⁰

ANALYSIS

Under master claim number xxxxxx323, OWCP accepted the conditions of precipitation of extrinsic asthma and reactive airway disease; aggravation of diabetes mellitus, Type 2; aggravation of hypertension; obstructive sleep apnea; bilateral carpal tunnel syndrome; left ulnar mononeuritis; and bilateral polyneuropathy secondary to diabetes. Appellant filed several applications during the period September 21, 2011 through June 20, 2013 for approval of the reimbursement of travel beyond the allowed 100-mile limitation, which OWCP denied as either not supported by medical evidence or medical billing or for not being “reasonable” travel expenses under 20 C.F.R. § 10.315.¹¹

OWCP regulations provide that an employee is entitled to reimbursement of reasonable and necessary expenses, including transportation needed to obtain authorized medical services, appliances or supplies. The most recent regulations provide that a round-trip distance of up to 100 miles is considered a reasonable distance to travel.¹² If round-trip travel of more than 100 miles is contemplated or air transportation or overnight accommodations will be needed, the employee must submit a written request to OWCP for prior authorization with information describing the circumstances and necessity for such travel expenses.¹³

⁹ *A.O.*, Docket No. 08-580 (issued January 28, 2009); *see also Marjorie S. Geer*, 39 ECAB 1099 (1988) (OWCP has broad discretionary authority in the administration of FECA and must exercise that discretion to achieve the objectives of section 8103).

¹⁰ *W.M.*, 59 ECAB 132 (2007); *Mira R. Adams*, 48 ECAB 504 (1997).

¹¹ Appellant has not disputed the denial of travel expenses which were not supported by the medical or billing evidence.

¹² *See supra* note 5.

¹³ *See supra* note 6.

OWCP found that, under 20 C.F.R. § 10.315(b), the area in which appellant lives, is a remote geographic area with limited local medical services. The evidence reflects that, on the Highway CA-38 side of the mountain at Big Bear City, there are no physicians located either along the way up or down the mountain. There is also no evidence as to the existence of physician offices on the Highway CA-18/CA-330s side. However, once off the mountain roads, appellant arrives in Highland City, California, which is not a remote geographical area.

In determining what constitutes a reasonable travel distance, OWCP must consider the availability of medical services in appellant's area, his condition and the means of transportation.¹⁴ Travel should be taken by the shortest route and if practicable, by public conveyance.¹⁵

OWCP found that there were two basic ways to come off the mountain from Big Bear City to Highland City, California, either "Highway CA-18/CA-330 or CA-38, with the shortest route being Highway CA-18/CA-330. It found that the shortest route was more reasonable in this case as appellant was physically capable of driving shorter distances and that there was an "availability of services" as the same specialists were available in and around the areas between Highland City and Yucaipa, California that he treated with on the West Coast. OWCP also found that it was not practical for appellant to use any type of public conveyance from his home as he lives in a remote area and, once off the mountain, it was more practical for him to continue using his automobile. It noted that his round-trip, up and down the mountain, to the valley was covered within the 100 miles to which he was entitled if he took the shortest route *via* Highway CA-38/CA-330. Appellant however took the longer route as he contended the shorter route was congested and had conditions that exacerbated his accepted medical conditions or prevented easy, timely travel. However, he offered no medical support for the proposition that he could not travel the shorter route due to his medical condition. In effect, appellant appears to subject himself to those very same conditions when he attempts to avoid Highway CA-18/CA-330 and instead travels to his physicians in the West Coast, exceeding the 100-mile round-trip limitation. Furthermore, he offered no sufficient medical or factual justification to explain the long distance travel past the valley point. OWCP noted that, from Highland City, California, he had visited various physicians as far away as Beverly Hills, California (round-trip 159 miles) to as close as Redland, California (round-trip 11.94 miles).¹⁶ While appellant had requested prior authorization for travel reimbursement to his various physicians, he did not explain why travel to those physicians more than 100 miles round-trip was both reasonable and necessary for treatment of his accepted conditions. The record does not establish that he was unable to obtain competent and appropriate medical care closer to the valley.

OWCP has broad discretion in considering whether to reimburse or authorize travel expenses.¹⁷ As the only limitation on its authority is reasonableness, abuse of discretion is

¹⁴ *W.M.*, 59 ECAB 132 (2007).

¹⁵ 20 C.F.R. § 10.315(a).

¹⁶ OWCP utilized www.mapquest.com to calculate the shortest mileage distance from Highland City, California Government Offices, to appellant's residence to calculate the mileage to various locations appellant was seeking mileage reimbursement.

¹⁷ *A.R.*, Docket No. 14-185 (issued August 4, 2014); *M.O.*, Docket No. 13-1822 (issued November 26, 2013).

generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deduction from known facts.¹⁸ OWCP advised appellant that, although it had paid no large reimbursement claims for medical appointments in the Los Angeles area, all future claims would follow the provisions of the 100-mile round-trip limitations set forth by 20 C.F.R. § 10.315. The Board finds that OWCP's denial of his request for reimbursement for another 100 miles of round-trip travel expenses was reasonable and not an abuse of discretion. The expenses appellant incurred for travel between his home in Big Bear City to physicians beyond the 100-mile round-trip limit must be considered personal to him.

On appeal appellant submitted an extensive 52-page brief in which he raised both new arguments and duplicative arguments previously argued before OWCP. He contended on appeal and before OWCP that OWCP failed to comply with its own guidelines; that OWCP did not review all of his evidence and arguments in its entirety; and that OWCP's decision was factually inaccurate and should not have relied upon internet search engines MapQuest and google, due to those sites own disclaimers. Appellant also contended on appeal and before OWCP that he lives in a remote area and that there was a limited availability of physicians within the 100-mile round-trip distance limitation who take FECA patients. He further argued that OWCP's decision was factually inaccurate. Before OWCP, appellant offered no evidence that OWCP's detailed discussion of the geographical area and medical specialists located within a 100-mile round-trip limitation of his home was factually inaccurate. On appeal he offered his own research regarding the availability of medical providers within the 100-mile round-trip distance based on actual study or real time evidence. However, the Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision.¹⁹

Appellant also argues that OWCP failed to comply with its own procedural requirements concerning termination of specific services. He asserted that he expected his travel expenses to be reimbursed for medical appointments which were over the 100-mile round-trip distance limitation as OWCP previously reimbursed him for such trips and he had never received notice from OWCP about an end-date. This argument lacks merit. Appellant was specifically advised in Mr. Tharp's December 19, 2011 letter that his claims which were over the 100-mile round-trip limitation would be paid through October 21, 2011 and that all future claims for travel reimbursement which were over the 100-mile round-trip limitation would follow the provisions of the 100-mile round-trip limitation set forth in 20 C.F.R. § 10.315. Thus, appellant had no expectation after being notified on December 19, 2011 that he would be reimbursed for travel beyond 100 miles round-trip. The Board notes that OWCP did not preclude him from continuing care by medical providers exceeding a 100-mile round-trip radius that OWCP's regulations provide, but noted that his reimbursable travel would be limited to 100 miles round-trip.²⁰

¹⁸ See *William B. Webb*, 56 ECAB 156 (2004).

¹⁹ See 20 C.F.R. § 501.2(c)(1).

²⁰ See *J.J.*, Docket No. 10-1908 (issued June 16, 2011) (the Board found that appellant's contention that he did not feel comfortable with physicians near his home as they were not familiar with his case and would not accept workers' compensation cases was not sufficient to show traveling to another physician was reasonable and necessary); *W.J.*, Docket No. 10-1944 (issued June 1, 2011) (the Board found that appellant's travel between his new home in Macon, Georgia and his physician's office in Fort Myers, Florida must be considered personal to appellant and that OWCP's denial of his request for reimbursement was reasonable).

Appellant also offered no evidence that OWCP's detailed discussion of the geographical area and medical specialists located within a 100-mile round-trip distance from his home was factually inaccurate.

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

CONCLUSION

The Board finds that OWCP did not abuse its discretion by denying appellant's request for reimbursement of travel expenses to see his physicians.

ORDER

IT IS HEREBY ORDERED THAT the April 29, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 3, 2015
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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