

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

D.F., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Chattanooga, TN, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 14-1841
Issued: July 20, 2015**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On August 18, 2014 appellant filed a timely appeal from April 29 and August 8, 2014 merit decisions of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (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 exercised its discretion in denying appellant's requests for travel reimbursement.

On appeal, appellant asserts that OWCP was irrational and erroneous in denying his reasonable and necessary travel expenses including meal and hotel expenses from March 10 to 12, 2014, for reasonable and necessary examination and surgery performed by Dr. Paul V.

¹ An oral argument scheduled for June 18, 2015 was cancelled at appellant's request.

² 5 U.S.C. §§ 8101-8193.

Spiegl, a Board-certified orthopedic surgeon. He maintains that a physician was not available within 100 miles and that he was given verbal authorization by an OWCP claims examiner, Joe Bushnell, who is no longer affiliated with this case.

FACTUAL HISTORY

This case has previously been before the Board.³ In an August 26, 2014 decision, under OWCP file number xxxxxx460, the Board found that OWCP met its burden of proof to terminate appellant's wage-loss compensation on July 16, 2012 for a July 22, 2011 right ankle injury and that appellant did not establish continuing disability from July 16, 2012 to March 2013. The Board further found that a conflict in medical evidence has been created regarding OWCP's termination of medical benefits.⁴ The law and facts of the previous Board decision are incorporated herein by reference.

Under file number xxxxxx460, Dr. Paul L. Kingloff, an attending Board-certified orthopedic surgeon, referred appellant to Dr. Spiegl, a foot and ankle specialist, for treatment.

While the above-mentioned case was on appeal to the Board, on April 9, 2013 appellant reinjured his right ankle when he stepped from his postal vehicle. He stopped work that day. This new injury was developed as OWCP file number xxxxxx308. The claim was accepted for right ankle sprain, right tibialis tendinitis, right exostosis, right bunion, resolving right idiopathic scoliosis, and acquired right equinovarus deformity. Appellant received compensation and was placed on the periodic compensation rolls.

On April 17, 2013 Dr. Kingloff again referred appellant to Dr. Spiegl. In an April 30, 2013 report, Dr. Spiegl reported that appellant had two work-related right ankle injuries, on July 22, 2011 and April 9, 2013. He provided physical examination findings, reviewed x-rays, and diagnosed tibialis tendinitis. Dr. Spiegl advised that appellant could only do sedentary work, and recommended a magnetic resonance imaging (MRI) scan study. On July 8, 2013 he determined that appellant could only be on his feet for 15 minutes each hour, was unable to climb, and could not drive. Dr. Spiegl continued to see appellant, and on August 6, 2013 noted MRI scan findings including a tibialis tendon tear. He recommended reconstructive surgery. The surgery was authorized by OWCP on November 25, 2013. Dr. Spiegl continued to treat appellant, and on February 26, 2014 conducted a presurgery history and physical.

Appellant submitted a medical travel refund request for February 26, 2014 for travel between his home in Cleveland, Tennessee, and Dr. Spiegl's office in Atlanta, Georgia, for a total of 267 round-trip miles. By letter dated March 14, 2014, OWCP authorized 267 units of reimbursement.

On March 11, 2014 Dr. Spiegl performed extensive reconstructive surgery on appellant's right ankle and foot. He saw appellant in follow up on March 12, 2014.

³ The instant claim was adjudicated under file number xxxxxx308. That case was combined with file number xxxxxx460 on November 4, 2014.

⁴ Docket No. 14-30 (issued August 26, 2014).

On March 17, 2014 appellant submitted a travel refund request for March 10 to 12, 2014. This included 270 miles traveled between his home and Dr. Spiegl's office, a total of \$688.76 for two nights lodging, \$109.35 for meals, and \$16.00 for tolls/parking. On March 31, 2014 OWCP authorized a total of 270 units of reimbursement for March 10, 2014.

Appellant submitted a travel refund request for March 20, 2014 for 270 miles traveled round trip, \$45.22 for meals, and \$6.00 for tolls/parking. He submitted another travel refund request for March 27 and 28, 2014 for 270 miles traveled between his home and Dr. Spiegl's office, 12 miles traveled for two trips to a pharmacy, \$36.09 for meals, and \$6.00 for tolls/parking. On April 2, 2014 appellant claimed expenses for April 1 and 2, 2014 of 270 miles round-trip travel between his home and Dr. Spiegl's office, 12 miles traveled for two trips to a pharmacy, \$36.53 for meals, and \$6.00 for tolls/parking. The record at that time confirmed that he had been seen by Dr. Spiegl on March 20 and April 1, 2014.

Appellant telephoned OWCP on April 7, 2014 regarding his travel reimbursement and was informed that OWCP does not pay for lodging and meals.

On April 9, 2014 OWCP authorized 276 units of reimbursement for March 27, 2014.

In correspondence dated April 14, 2014 addressed to Mr. Bushnell, appellant maintained that he spoke on the telephone with Mr. Bushnell on December 19, 2013, and that Mr. Bushnell had given him authorization for lodging and meal expenses, to include the day before and day after surgery.

On April 10, 2014 appellant claimed expenses for April 10, 2014 of 270 miles round-trip travel between his home and Dr. Spiegl's office, 6 miles traveled for a trip to a pharmacy, \$35.72 for meals, and \$6.00 for tolls/parking.

Appellant continued to telephone and correspond with OWCP regarding his reimbursement requests. In an April 11, 2014 letter, OWCP noted his travel reimbursement requests and informed him of the provisions of 20 C.F.R. § 10.315 which gives OWCP the discretion to determine if requested reimbursements are reasonable and necessary. It further noted that, generally, a 100-mile round trip was considered to be a reasonable distance, and that there was no reimbursement for meals or lodging when travel was for fewer than 500 miles round trip, and that lodging must receive prior authorization. OWCP informed appellant that the mere fact that OWCP had previously authorized and paid for medical treatment did not establish that it would pay reimbursement for travel greater than 100 miles or for meals and lodging. Appellant was given 30 days to submit medical documentation explaining why he had to travel so far outside his commuting area for treatment for the accepted conditions.

Appellant submitted treatment notes from Dr. Spiegl dated April 1, 2014. On April 14, 2014 he requested that the Acting Director of OWCP intervene and see that his travel reimbursement requests were paid in full. Appellant again maintained that on December 19, 2013 Mr. Bushnell had authorized expenses by telephone. He noted that the record did not

contain documentation of the telephone call, as required by OWCP procedures.⁵ On April 22, 2014 Dr. Spiegl advised that it was medically necessary for appellant to return on March 12, 2014, the day after his surgery, to assess the surgical incisions and to prevent infection.

On April 24, 2014 OWCP authorized 276 units of reimbursement for April 10, 2014. Appellant continued to telephone and write OWCP, complaining that he was incorrectly reimbursed.

By decision dated April 29, 2014, OWCP advised appellant that for him to be entitled for travel expenses from his home to Dr. Spiegl's office, in excess of 100 miles round trip, the evidence must establish that such travel was reasonable and necessary for treatment of the accepted conditions. It concluded that the medical evidence did not meet this burden. Appellant was informed that continued treatment with Dr. Spiegl would be authorized, but that travel would only be reimbursed for 100 miles round trip. Reimbursement for lodging, meals, and supplies/appliances was denied.

Appellant submitted a travel reimbursement request for treatment by Dr. Spiegl on May 6, 2014.

On May 9, 2014 appellant requested reconsideration of the April 29, 2014 decision. He asserted that, by allowing continued treatment by Dr. Spiegl, it was reasonable for OWCP to reimburse him for the entire 270-mile round trip. Appellant continued to assert that Mr. Bushnell had given prior authorization for overnight stays prior to and the evening of the March 11, 2014 surgery, and continued to dispute the denials of authorization. He submitted travel reimbursement requests for treatment by Dr. Spiegl on May 22, June 5 and 24 and July 11, 2014

In a merit decision dated August 8, 2014, OWCP denied modification of the prior decision. It reiterated that appellant could continue treatment with Dr. Spiegl, but that mileage in excess of 100 miles, lodging, and meals would not be reimbursed.

LEGAL PRECEDENT

Section 8103(a) of FECA provides for the furnishing of services, appliances, and supplies prescribed or recommended by a qualified physician which OWCP, under authority delegated by the Secretary, considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of monthly compensation.⁶ In interpreting section 8103(a), the Board has recognized that OWCP has broad discretion in approving services provided under FECA to ensure that an employee recovers from his or her injury to the fullest extent possible in

⁵ There is no record in either case records reflecting that appellant called OWCP on December 19, 2013. There are telephone memoranda between appellant and Mr. Bushnell on December 19 and 20, 2013 that appear to be about prescriptions for foot inserts and orthotics.

⁶ 5 U.S.C. § 8103(a).

the shortest amount of time.⁷ OWCP has administrative discretion in choosing the means to achieve this goal and the only limitation on OWCP's authority is that of reasonableness.⁸

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.⁹ To determine a reasonable distance, it will consider the availability of services, the employee's condition, and the means of transportation. Effective August 29, 2011, OWCP regulations provide that a round-trip distance of up to 100 miles is considered a reasonable distance to travel.¹⁰ 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. OWCP will approve the request if it determines that the travel expenses are reasonable and necessary and are incident to obtaining authorized medical services, appliances or supplies.¹¹

Pursuant to FECA Bulletin No. 14-02, issued January 29, 2014, when a claimant submits a travel reimbursement in excess of 100 miles for a single date of service, the bill will automatically be suspended and the Central Bill Processing provider will send notification to OWCP claims examiner.¹² FECA Bulletin No. 14-02 notes that in some limited circumstances it may be necessary for a claimant to travel more than 100 miles on a regular basis, such as when the claimant lives in a remote area.¹³

ANALYSIS

The Board finds that OWCP did not abuse its discretion in denying appellant's requests for travel reimbursement.

On March 17, 2014 appellant submitted a travel refund request for March 10 to 12, 2014. This included 270 miles traveled between his home and Dr. Spiegl's office, \$688.76 for two nights lodging, \$109.35 for meals, and \$16.00 for tolls/parking. On March 31, 2014 OWCP authorized a total of 270 units of service for March 10, 2014. It did not authorize reimbursement for lodging, meals, or tolls/parking. Appellant submitted additional requests for travel expenses including mileage and meal reimbursement.

⁷ *Dale E. Jones*, 48 ECAB 648 (1997).

⁸ *Daniel J. Perea*, 42 ECAB 214 (1990) (Abuse of discretion by OWCP is generally shown through proof of manifest error, clearly unreasonable exercise of judgement, or administrative actions which are contrary to both logic and probable deductions from established facts).

⁹ 20 C.F.R. § 10.315(a).

¹⁰ *Id.*

¹¹ *Id.* at § 10.315(b).

¹² FECA Bulletin No. 14-02 (issued January 29, 2014).

¹³ *Id.*

As noted above, OWCP regulations provide that, generally, a round trip of up to 100 miles is a reasonable distance to travel.¹⁴ There may be circumstances where travel reimbursement of more than 100 miles is appropriate. An example of those circumstances might be an appellant who lives in a remote area with limited medical services and physicians of an appropriate specialty. To establish that a travel reimbursement of more than 100 miles is warranted, OWCP regulations indicate that the claimant must provide information describing the circumstances and necessity for such travel expenses.

In this case, there is no evidence that appellant lived in a remote area with limited access to medical services or providers. He lives in Cleveland, Tennessee, which is near Chattanooga, Tennessee. There is no indication that competent and appropriate medical care was not available within a commuting area of Cleveland, Tennessee. Although OWCP had authorized travel expenses to Dr. Spiegl in the past, this past practice does not establish a right to continuing authorization.¹⁵ As indicated in FECA Bulletin No. 14-02, any travel reimbursement request of more than 100 miles was to be reviewed by an OWCP claims examiner.¹⁶

As to appellant's claims for reimbursement of lodging and meal expenses, although he asserts that he was given authorization over the telephone by an OWCP claims examiner, this is not found in the record.¹⁷ More importantly, as noted above, a written request for prior authorization must be submitted to OWCP describing the circumstances and necessity for such travel expenses.¹⁸

The Board finds that OWCP properly denied the travel reimbursement requests in this case. No probative evidence was presented with respect to the necessity of travel over the 100-mile standard set forth in OWCP regulations or that OWCP abused its discretion in denying reimbursement for lodging and meals. OWCP has administrative discretion with respect to authorization of travel reimbursement.¹⁹ The Board finds that OWCP did not abuse its discretion in denying appellant's travel reimbursement requests.²⁰

CONCLUSION

The Board finds that OWCP did not abuse its discretion in denying appellant's request for travel reimbursement.

¹⁴ 20 C.F.R. § 10.315(a).

¹⁵ See *W.H.*, Docket No. 14-1662 (issued February 3, 2015).

¹⁶ FECA Bulletin No. 14-02, *supra* note 12.

¹⁷ *Supra* note 5.

¹⁸ 20 C.F.R. § 10.315(b).

¹⁹ *Daniel J. Perea*, *supra* note 8.

²⁰ See *V.K.*, Docket No. 12-1103 (issued October 12, 2012).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated August 8 and April 29, 2014 are affirmed.

Issued: July 20, 2015
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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