

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JAMES R. BELL and DEPARTMENT OF THE NAVY,  
LONG BEACH NAVAL SHIPYARD, Long Beach, Calif.

*Docket No. 95-2786; Submitted on the Record;  
Issued August 20, 1998*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request to pay for electricity and water for an authorized whirlpool spa.

On April 23, 1975 appellant sustained an injury while in the performance of duty. His claim was accepted by the Office for a permanent aggravation of degenerative disc disease of the lumbar spine. Based on the recommendation of appellant's attending physician, Dr. Louis Vazquez, a Board-certified orthopedic surgeon, the Office authorized \$2,900.00 for the purchase of a Jacuzzi whirlpool spa for appellant's home. By letter dated July 11, 1994, appellant's attorney requested that appellant be reimbursed for operating expenses of approximately \$702.00 per year for electricity and \$200.00 per year for water changes and cleaning.<sup>1</sup>

By decision dated July 27, 1994, the Office denied appellant's request for payment of the costs to operate the spa. The Office found that such costs were not provided for under section 8103(a) of the Federal Employees' Compensation Act.<sup>2</sup> The Office noted, however, that any necessary work on or replacement parts needed for the spa due to normal operation would be authorized.

By letter dated March 3, 1995, appellant, through counsel, requested reconsideration of the July 27, 1994 decision. Appellant contended that the statutory provision of section 8103(a) contained mandatory language pertaining to reimbursement of expenses incidental to treatment

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<sup>1</sup> The record reflects that appellant contacted Southern California Edison and inquired about estimates to operate the spa. Based on estimates provided, appellant noted that he calculated an average monthly electric bill of \$58.50 per month. An October 6, 1993 letter from Southern California Edison noted that there was no way in which to provide an exact energy consumption for the Jacuzzi, as factors which affected the heating element included ambient temperature, insulation level, accuracy of thermostat controls, hours of use and the condition of equipment.

<sup>2</sup> 5 U.S.C. § 8103(a).

and for appliances and supplies prescribed or recommended by a qualified physician. Appellant argued that there was no justification for the Office to approve payment for some operating expenses and not others, noting that the Federal Procedure Manual relating to payment of incidental expenses provided that “incidental expenses shall be paid to the extent that they are necessary and reasonable.”<sup>3</sup>

By decision dated May 22, 1995, the Office denied modification of the July 27, 1994 decision.

The Board finds that the Office did not abuse its discretion in denying appellant’s request for reimbursement of electricity and water expenses incurred in the operation of his authorized whirlpool spa.

Section 8103(a) of the Act provides in pertinent part:

“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 or period of disability, or aid in lessening the amount of monthly compensation.”

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“The employee may initially select a physician to provide medical services, appliances, and supplies in accordance with such regulations and instructions as the Secretary considers necessary, and may be furnished necessary and reasonable transportation and expenses incident to the securing of such services, appliances and supplies.”

In interpreting section 8103, the Board has long recognized that the Office, acting as the delegated representative of the Secretary of Labor, has broad discretion in approving services provided under the Act.<sup>4</sup> The Office has the general objective of ensuring that an employee recovers from his injury to the fullest extent possible in the shortest amount of time. The Office therefore has broad administrative discretion in choosing means to achieve this goal. The only limitation on the Office’s authority is that of reasonableness.<sup>5</sup> 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 established facts.<sup>6</sup> Abuse

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<sup>3</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Services and Supplies*, Chapter 3.400.10(d) (April 1992).

<sup>4</sup> *Patsy R. Tatum*, 44 ECAB 490, 496 (1993); *Daniel Wietchy*, 34 ECAB 670 (1983); *Catherine M. Flueren*, 32 ECAB 1563 (1981).

<sup>5</sup> *Joe E. Williams*, 36 ECAB 494 (1985).

<sup>6</sup> *Rosa Lee Jones*, 36 ECAB 679 (1985).

of discretion is not established by a showing merely that the evidence could be construed so as to produce a contrary factual conclusion.<sup>7</sup>

Pursuant to this delegation of statutory authority, the Office has promulgated regulations implementing this section of the Act. Section 10.401(a) of the pertinent federal regulation, states:

“A claimant shall be entitled to receive all medical services, appliances or supplies which are prescribed or recommended by a duly qualified physician *and which the Office considers necessary* for treatment of a job-related injury, whether or not the claimant is disabled.... A claimant shall also be entitled to reimbursement of reasonable and necessary expenses, including transportation incident to obtaining authorized medical services, appliances or supplies.”<sup>8</sup> (Emphasis added.)

Further, at Chapter 3.400 of its Federal Procedure Manual, the Office has specified various supplies and appliances and the conditions under which they may be authorized,<sup>9</sup> including nonmedical equipment such as waterbeds, saunas, and other exercise-related equipment. Incidental expenses, such as child care, pet care and home security may be paid when incurred in the course of securing medical services or supplies. In each case, however, the Office will consider whether the need for such “incidental” expenditures are necessary and reasonable.<sup>10</sup> The procedure manual states:

“*Timing of Expense.* Incidental expenses are allowable only when incurred in the course of securing medical services and supplies. Therefore, it is necessary to distinguish between expenses connected with securing treatment and those incurred following treatment. Expenses in the latter category, such as housekeeping costs while the claimant convalesces at home, are not payable because they are not required to obtain medical services.”<sup>11</sup>

On appeal, it is alleged that the Office erred in its interpretation of the Act and that there was an abuse of discretion in the Office’s refusal to reimburse appellant for electricity and water expenses incurred in the operation of his whirlpool spa while allowing costs for other supplies related to the operation of the spa.

Appellant contends that the language of section 8103 pertaining to the authorization of medical expenses is “mandatory,” and that the Office is bound to reimburse him for the water

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<sup>7</sup> *Manny Korn*, 1 ECAB 78 (1947).

<sup>8</sup> 20 C.F.R. § 10.401(a) (emphasis added).

<sup>9</sup> Federal (FECA) Procedure Manual, *supra* note 3 at Chapter 3.400.3(d).

<sup>10</sup> *Id.* at Chapter 3.400.10(d) (April 1992). The procedure manual states: “Incidental expenses shall be paid to the extent that they are necessary and reasonable.”

<sup>11</sup> *Id.* at Chapter 3.400.10(d)(2).

and electricity which is necessary to operate the spa. The Board notes that the language of section 8103 does contain the term “shall” in authorizing the United States to furnish the services, appliances and supplies prescribed or recommended by a physician. This directive is qualified, however, by the phrase “*which the Secretary of Labor considers likely to cure, give relief, reduce the degree or period of disability, or aid in lessening the amount of monthly compensation.*” This phrasing underscores the intent of Congress that discretion be delegated to the Secretary, and hence to the Office, in determining whether to grant or reimburse an employee for prescribed services, appliances and supplies under section 8103. Although appellant’s argument that a whirlpool spa is inoperable without water or electricity is compelling, the statute clearly does not address nor contemplate payment of the utility expenses of injured claimants. For this reason, the payment of such costs as “reasonable and necessary” for treatment of a job-related injury remains in the discretion of the Office.

Appellant notes that the Office has paid for the purchase of some supplies necessary for the maintenance of the spa. These include such items as chemicals, filters, scum floaters, water test stripes, cleaners, and hoses. He argues that “the refusal of the Office to also pay for electricity and water supplies for the spa is unjustifiable because there is no sound logical basis for this willy-nilly decision making.” None of the cases cited by appellant specifically address the extent to which an employee’s utility costs, such as water or electricity or a portion thereof, have been allowed as an “operating expense” for an appliance approved in the treatment of an employment-related condition. While appellant has estimated that the electricity necessary to operate the spa will average approximately \$58.50 per month, the October 6, 1993 letter of Southern California Edison noted that various factors would influence the heating element and affect ultimate electric consumption. Appellant did not fully document his estimate of 1,000 gallons of water per month or the cost of \$200.00 per year for water. While the facts in this case are such that a contrary factual conclusion might be reached, that alone does not establish that the Office abused its discretion. The Board finds that it was not unreasonable for the Office to deny appellant’s request to pay for electricity and water for his authorized whirlpool spa.

The May 22, 1995 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.  
August 20, 1998

George E. Rivers  
Member

David S. Gerson  
Member

Michael E. Groom  
Alternate Member