U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MYRNA BICKNELL and U.S. POSTAL SERVICE,
MIWUK VILLAGE POST OFFICE, Wiwuk Village, Calif.

Docket No. 96-1517; Submitted on the Record;
Issued December 23, 1998

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly found that appellant's travel for medical treatment did not constitute necessary and reasonable transportation expenses under 5 U.S.C. § 8103(a).

The Board has duly reviewed the case record in this appeal and finds that the Office properly found that appellant's travel for medical treatment did not constitute necessary and reasonable transportation expenses under 5 U.S.C. § 8103(a).

On December 9, 1993 appellant, then a postmaster, filed a traumatic injury claim (Form CA-1) assigned number A13-1033104 alleging that on December 7, 1993 she bruised her right shoulder and felt pain in her neck and arm area when she fell from a ladder. Appellant stopped work on December 7, 1993.[1]

The Office accepted appellant's claim for right shoulder sprain.

During a telephone conversation with the Office on November 8, 1994, appellant stated that she should be entitled to compensation for a minimum of eight to nine hours for medical appointments because Dr. Santiago Carin, a general practitioner and her treating physician, was located over 200 miles round trip from her home in Sonora, California.

By letter dated November 14, 1994, the Office advised appellant that pursuant to section 8103 of the Federal Employees' Compensation Act, she could be reimbursed for reasonable

[1] Subsequently, on February 16, 1995 appellant filed a claim for an occupational disease (Form CA-2) assigned number A13-1074196 alleging that she sustained an emotional condition caused by factors of her federal employment. In addition, on May 4, 1995 appellant filed a Form CA-2 assigned number A13-1081478 alleging that she sustained an emotional condition caused by factors of her federal employment. The Office consolidated this claim into appellant's claim assigned number A13-1074196 because it was a duplicate claim. The Office consolidated appellant's claim assigned number A13-1074196 into her claim assigned number A13-1033104.

travel to a physician located within 25 miles of her home or place of employment. The Office further advised appellant that Dr. Carin's office was more than 25 miles one way from her home and job, therefore, treatment rendered by him could not be considered to be within a reasonable distance. The Office then advised appellant that unless she could provide sufficient reason why treatment should continue with Dr. Carin, treatment from Dr. Carin would no longer be authorized. The Office also advised appellant that if she could not provide a sufficient basis for continuing treatment with Dr. Carin, then she could exercise her option to select a treating physician closer to her home.

In a December 19, 1994 letter to the Office, appellant's representative contended that section 8103(a) of the Act did not provide that appellant could not receive medical treatment from a physician who was more than 25 miles from her home. Appellant's representative stated that the Office had sent appellant to Dr. Clarence Leary, a Board-certified orthopedic surgeon and second opinion physician, who was located over 65 miles from appellant's home. Appellant's representative further stated that appellant was willing to pay her own travel expenses beyond the area that was determined to be reasonable. Appellant's representative then stated that appellant maintained a good relationship with Dr. Carin and that she was responding favorably to his treatment.

By letter dated January 11, 1995, the Office advised appellant that it had authorized only four hours, rather than the eight hours she requested for a doctor's visit. In a January 20, 1995 response letter, appellant objected to the Office's decision. Appellant stated that it took her eight hours, and even nine hours on a few occasions, to drive to Dr. Carin's office and to be examined by him.

In a February 16, 1995 letter, the Office advised appellant's representative that the basis for its decision to use a 25 mile radius for appellant's travel for medical treatment was section 10.402(c) of the federal regulations, which provided that generally 25 miles from the place of injury, the employing establishment or the claimant's home was considered to be a reasonable distance to travel, but that other pertinent factors must also be taken into consideration. The Office further advised appellant's representative that the other pertinent factor in appellant's case was the fact that she resided in a remote and rural area. The Office also advised appellant's representative that where medical care was not available within the proscribed distance, claimants were allowed greater latitude, whereby, they could go to the closest medical facility which offered a physician in the requisite specialty. Additionally, the Office advised appellant's representative that the cities of Modesto, Stockton and Sacramento all offered orthopedic specialists and were closer to appellant's home in Sonora, California. The Office then advised appellant's representative to have appellant select a physician in one of these areas and explained how appointments are made for second opinion examinations.

In a February 24, 1995 letter, appellant's representative further contended that section 10.402(c) was not applicable to appellant's claim because it referred to initial treatment authorized by the employing establishment. Appellant's representative stated that appellant did not wish to change her physician and that she planned to continue treatment from Dr. Carin. Appellant's representative also stated that appellant was willing to pay her own travel expenses

beyond 25 miles. Appellant's representative then requested that the Office issue a formal decision regarding this issue.

By decision dated April 19, 1995, the Office found that the travel required to attend medical appointments with Dr. Carin did not constitute necessary and reasonable transportation expenses for medical care pursuant to section 8103(a) of the Act and section 10.402(c) of the federal regulations.[2]

Section 8103 of the Act provides:

> "(a) The United States shall furnish to an employee who is injured while in the performance of duty, the service, 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 the period of disability, or aid in lessening the amount of the monthly compensation."[3]

The Office has the general objective of ensuring that an employee recovers from an injury to the fullest extent possible in the shortest amount of time. The Office therefore has broad administrative discretion in choosing the means to achieve this goal.[4] The only limitation on the Office's authority is that of reasonableness.[5] 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. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.[6]

Section 10.401 of the federal regulations provides, in relevant part:

> "(a) 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 the treatment of a job-related injury.... A claimant shall also be entitled to reimbursement of reasonable and necessary expenses, including transportation."[7]

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[2] By decision dated July 17, 1995, the Office terminated appellant's compensation benefits on the grounds that she failed to accept suitable alternate work. In a July 20, 1995 decision, the Office found the evidence of record insufficient to establish that appellant sustained an emotional condition in the performance of duty. In a February 12, 1998 decision, an Office hearing representative vacated the Office's July 17 and 20, 1995 decisions, and remanded the cases to the Office for further development. Inasmuch as there is no final Office decision before the Board regarding the Office's July 17 and 20, 1995 decisions, the Board does not have jurisdiction to review the hearing representative's February 12, 1998 decision. 20 C.F.R. § 501.2(c).

[3] 5 U.S.C. § 8103(a).

[4] *Pearlie M. Brown,* 40 ECAB 1090 (1989).

[5] *Daniel J. Perea,* 42 ECAB 214 (1990); *Pearlie M. Brown, supra* note 4.

[6] *Rosa Lee Jones,* 36 ECAB 679 (1985).

[7] 20 C.F.R. § 10.401(a).

Section 10.402 provides, in relevant part:

> "(c) In determining the use of medical facilities, consideration must be given to their availability, the employee's condition and the method and means of transportation. Generally, 25 miles from the place of injury, the employing agency, or the employee's home is a reasonable distance to travel, but other pertinent factors must be taken into consideration."[8]

In the present case, there is no evidence of record establishing that appellant's travel to Dr. Carin's offices in Vallejo and Vacaville, California, was reasonable and necessary in order to obtain medical treatment. There is no indication that competent and appropriate medical care is not available within appellant's commuting area.[9] The Office referred appellant along with a statement of accepted facts, a list of specific questions and medical records to Dr. Leary for a second opinion examination. In an October 5, 1994 medical report, Dr. Leary indicated a history of the December 7, 1993 employment injury, appellant's conditions, employment and social life. He further indicated his findings on physical examination and a review of medical records. Dr. Leary opined that appellant had signs and symptoms of mild impingement syndrome of her right shoulder which was directly related to the December 7, 1993 employment injury. He stated that appellant should continue her course of physical therapy for four to six weeks and that there was a very remote possibility of arthroscopic surgery. Dr. Leary further opined that appellant was totally disabled until July 30, 1994, and that her condition was permanent and stationary. He also opined that there was no medical report to support a diagnosis of Barre-Lieow syndrome that was indicated in appellant's records and that appellant did not exhibit any of the symptoms of this "exotic" condition. Dr. Leary concluded "[p]lease let me know if I can be of any further help in this most interesting evaluation."

Dr. Leary conducted a thorough examination of appellant and expressed his willingness to provide "further help" in evaluating appellant. In addition, Dr. Leary did not indicate that appellant could not continue her physical therapy treatment within her commuting area. This clearly shows that the same level of care as provided by Dr. Carin is available in appellant's commuting area. Therefore, the Board finds that the Office did not abuse its discretion in finding that appellant's travel for medical treatment did not constitute necessary and reasonable transportation expenses under section 8103(a) of the Act.

The April 19, 1995 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
December 23, 1998

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[8] 20 C.F.R. § 10.402(c).

[9] *See Willie E. Lobster*, 32 ECAB 756 (1981) (the Board found that the Office did not abuse its discretion in terminating authorization for treatment by physicians in Minneapolis, Minnesota after appellant relocated to St. Louis, Missouri, based on the Office's finding that he could secure competent medical care within his commuting area).

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member