U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GREG BROWN and U.S. POSTAL SERVICE,
POST OFFICE, Raleigh, N.C.

Docket No. 97-1355; Submitted on the Record;
Issued April 13, 1999

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion by denying appellant's request for a new vehicle.

The Board has duly reviewed the case on appeal and finds that the Office did not abuse its discretion by denying appellant's request for a new vehicle.

Appellant filed a claim alleging on March 1, 1994 he injured his back in the performance of duty. The Office accepted appellant's claim for lumbar strain and herniated disc L4-5. The Office also granted appellant schedule awards for 12 percent permanent impairment of his left lower extremity. On November 6, 1995 appellant requested funds to purchase a motor vehicle with an automatic transmission. By decision dated March 12, 1996, the Office denied appellant's request for a new vehicle. Appellant requested reconsideration on August 21, 1996. By decision dated February 13, 1997, the Office denied modification of its March 12, 1996 decision.

Section 8103 of the Federal Employees' Compensation Act[1] provides that the Office shall provide a claimant with the services, appliances and supplies prescribed or recommended by a qualified physician which are likely to cure, give relief, reduce the degree or period of disability, or aid in lessening the amount of monthly compensation. In interpreting section 8103, the Board has recognized that the Office has broad discretion in approving services provided under the Act. 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

[1] 5 U.S.C. §§ 8101-8193, 8103.

administrative discretion in choosing means to achieve this goal. The only limitation on the Office's authority is that of reasonableness.[2]

The Federal (FECA) Procedural Manual provides:

> "3. *Eligibility.* To be eligible for housing or vehicle modifications, the claimant must be severely restricted in terms of mobility and independence in normal living functions, on a permanent basis due to the work-related injury. Examples are impairments which require the use of a prosthesis, wheelchair, leg braces, crutches, canes and self-help devices. Such medical conditions include quadriplegia, paraplegia, total loss of use of limbs, blindness and profound deafness bilaterally."[3]

In support of his request for a vehicle with an automatic transmission, appellant submitted reports from his attending physician, Dr. Lloyd Hey, an orthopedic surgeon. In a report dated October 27, 1995, Dr. Hey noted appellant's difficulty in driving his vehicle which contained a standard transmission. He stated that appellant's left foot weakness made it impossible for appellant to drive a manual transmission. On November 20, 1995 Dr. Hey stated appellant had a severe inability to drive a manual transmission. In a report dated December 12, 1995, he stated that the herniated disc made it difficult for appellant to drive a manual transmission.

In a report dated May 16, 1996, Dr. Hey noted that he had received a letter regarding appellant's desire to drive a car with an automatic transmission. He stated:

> "[B]ased on the rules and regulations sent from the federal procedure manual, chapter 2.1800, section 3; eligibility is really limited to those with claimants who have severe restrictions in terms of mobility and independence and normal living functions on a permanent basis due to work-related injury. Examples [when the] impairment requires the use of prosthesis, wheelchair, leg braces, crutches, canes and self-help devices. Such medical conditions include quadriplegia, paraplegia, total loss of limbs, blindness and profound deafness bilaterally. [Appellant] clearly does not have any of these impairments at this time. Therefore, I cannot recommend that he gets a vehicle based on this regulation."

In a report dated July 11, 1996, Dr. T. Craig Derian, a Board-certified orthopedic surgeon, noted examining appellant and stated:

> "At this time I believe that it is appropriate for [appellant] to have specific accommodation to allow him to operate a motor vehicle and to avoid aggravating his underlying condition. I am specifically suggesting that the patient be provided with a seating configuration that would be advantageous to his back condition as well as the use of an automatic transmission with an automobile to accommodate

[2] *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

[3] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Housing and Vehicle Modifications*, Chapter 2.1800.3 (September 1994).

the need to adjust the seat appropriately to recline when necessary which may or may not include lumbar adjustment."

Dr. Eric C. Westman, a Board-certified internist, completed a report on July 11, 1996, in which he stated:

> "[Appellant's] back condition is sufficiently severe to require the use of a cane, so according the Federal Procedure Manual Chapter 2[.]1800(3) that you have supplied to me, he qualifies for vehicle modifications. Because of this back condition he should use his left leg as little as possible for nonessential tasks, including driving a car with manual transmission. I recommend that he drive a vehicle with automatic transmission."

Dr. Westman also included a prescription dated June 24, 1996 indicating that appellant should use a walking cane for back and leg pain.

The Board finds that the Office's denial of appellant's request for a vehicle was not unreasonable. Although appellant submitted medical evidence suggesting that he would benefit from a vehicle with an automatic transmission and adjustable seat, appellant's attending physician, Dr. Hey, conceded that appellant's physical impairments did not rise to the level of those delineated in the procedure manual. Furthermore, the Board notes that, although Dr. Westman provided appellant with a cane to reduce leg and back pain, he is not appellant's attending physician and did not offer any diagnosis, physical findings or medical rationale in support of the need for such an appliance. Such an explanation is necessary given the evaluation by appellant's attending physician only a month earlier which did not support such a prescription and clearly indicated that appellant's level of disability did not arise to that listed in the procedure manual.

As the Office did not act unreasonably in denying appellant's claim, the Board affirms the Office's decision.

The decisions of the Office of Workers' Compensation Programs dated February 13, 1997 and March 12, 1996 are hereby affirmed.

Dated, Washington, D.C.
April 13, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member