

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NOWLING D. WARD and DEPARTMENT OF THE AIR FORCE,
TYNDALL AIR FORCE BASE, Panama City, FL

*Docket No. 98-430; Submitted on the Record;
Issued July 26, 1999*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant is entitled to an attendant's allowance.

On October 14, 1955 appellant, then a 38-year-old firefighter, sustained an injury while in the performance of his duties. He was engaged in anchoring a T-33 training fuselage when he bent down and pulled a wire. A "catch" occurred in his back and he was unable to straighten up or bend down for a few seconds. The Office of Workers' Compensation Programs accepted his claim for the conditions of acute lumbosacral strain, herniated disc and neurotic disorder and paid compensation for temporary total disability on the periodic rolls.

In 1996 appellant, who was then about 79 years of age, advised the Office that he could not see well enough to feed or cook for himself or to have a car to get food. He stated that he needed an attendant for at least five hours a day but that he did not have the ability to pay for one, which would cost at least \$400.00 a month.¹

On January 14, 1997 the Office wrote to appellant and to his attending physician, Dr. Liston S. Jones, and advised that additional information was needed to determine whether appellant's disability entitled him to a monthly payment for the services of an attendant.

Appellant replied that he needed someone to look after him because he was blind in one eye and could not get out of bed very often. He stated that he needed someone to give him medicine, as he could not see well enough to do that himself. He also stated that he needed someone about six hours a day to cook his meals and to clean the house.

Dr. Jones replied that he had most recently examined appellant on January 21, 1997. He indicated that appellant was able to feed, dress and get out of bed by himself but that he needed assistance to travel, walk, bathe and to get out doors. Dr. Jones added that appellant was not at

¹ The record indicates that appellant had previously inquired about obtaining the services of an attendant.

all able to exercise. He identified appellant's low back pain, blindness and chronic obstructive pulmonary disease as factors pertinent to appellant's need for an attendant.

An Office medical adviser reviewed the matter and found that appellant was partially impaired and was capable of caring for himself. He added that appellant's current disability was based on his noninjury-related impairment.

In a decision dated July 14, 1997, the Office denied authorization for an attendant's allowance. The Office found that it would sponsor an attendant allowance if such services were required constantly due to a disability resulting from the work injury.

The Board finds that this case is not in posture for a determination of whether appellant is entitled to an attendant's allowance. Further development of the medical evidence is warranted.

The Federal Employees' Compensation Act provides for an attendant's allowance under 5 U.S.C. § 8111(a), which states:

"The Secretary of Labor may pay an employee who has been awarded compensation an additional sum of not more than \$1,500.00 a month, as the Secretary considers necessary, when the Secretary finds that the service of an attendant is necessary constantly because the employee is totally blind, or has lost the use of both hands or both feet, or is paralyzed and unable to walk, or because of other disability resulting from the injury making him so helpless as to require constant attendance."

Although appellant stated that he needed someone to cook his meals and clean the house, the attendant's allowance is not intended to pay an attendant for performance of domestic and housekeeping chores such as cooking and cleaning. It is intended to pay an attendant for assisting a claimant in his personal needs such as dressing, bathing or using the toilet.² In this regard, appellant's attending physician, Dr. Jones, reported that appellant needed assistance in bathing, walking, getting out of doors and traveling. He also reported that appellant was completely unable to exercise. Dr. Jones identified low back pain as one of the facts pertinent to appellant's need for an attendant. This evidence supports that appellant requires assistance in his personal needs as a result, in part, of the disability resulting from his accepted low back injury.³

For this reason, the Board will set aside the Office's July 14, 1997 decision and remand the case for a supplemental report from Dr. Jones clarifying the extent to which appellant requires assistance in his personal needs as a result of his accepted employment injury. After

² *Allison Maxine McCauley*, 27 ECAB 128 (1975).

³ The Board has held that a claimant is not required to need around-the-clock care. He need only have a continually recurring need for assistance in personal matters. *Erlin J. Belue*, 13 ECAB 88 (1961). The Office may pay up to \$1,500.00 a month for full-time services, but it is not required to pay the maximum amount if not found necessary. It need only pay as much as it finds under the particular facts of a case necessary and reasonable for an attendant's services. *George L. Littleton*, 33 ECAB 904 (1982).

such further development of the medical evidence as may be necessary, the Office shall issue an appropriate final decision on appellant's entitlement to an attendant's allowance.

The July 14, 1997 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Dated, Washington, D.C.
July 26, 1999

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member