U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM F. GAY and U.S. POSTAL SERVICE,
POST OFFICE, Fort Worth, Tex.

Docket No. 96-625; Submitted on the Record;
Issued March 8, 1999

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issues are: (1) whether appellant has established that he sustained a left knee injury, obesity, or hypertension as a consequence of his accepted employment injuries; (2) whether the Office of Workers' Compensation Programs properly determined that appellant's attendant allowance should be $465.00 every four weeks; and (3) whether the Office properly denied requested modifications to appellant's motor vehicle.

In the present case, appellant filed a claim alleging that he sustained an ankle injury in the performance of duty on May 3, 1983.[1] The Office accepted a right ankle sprain and a torn ligament and later accepted a lumbosacral strain, right knee aggravation and right carpal tunnel syndrome as consequential injuries. The record indicates that appellant worked intermittently in a light-duty position and by letter dated January 17, 1992, the employing establishment indicated that appellant's employment had been terminated. Appellant continues to receive compensation for total disability.

On November 27, 1995 the Office issued three separate decisions. With regard to additional employment-related conditions, the Office determined that appellant had not established obesity, a left knee condition, or hypertension as consequential injuries. With regard to attendant's allowance, the Office determined that $465.00 every four weeks was appropriate for services rendered by appellant's spouse. The Office also denied requested modifications to appellant's van.

The Board has reviewed the record and finds that appellant has not established obesity, hypertension, or a left knee condition as consequential injuries.

[1] There is a prior appeal in this case regarding the denial of medical benefits for a weight loss program. By decision dated July 14, 1987 (Docket No. 87-269), the Board affirmed an Office decision dated October 23, 1986, denying authorization for a weight loss program.

It is an accepted principle of workers' compensation law and the Board has so recognized, that when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an intervening cause which is attributable to the employee's own intentional conduct.[2] An employee has the burden of establishing that any specific condition for which compensation is claimed is causally related to the employment injury.[3]

In the present case, an attending physician, Dr. Jeffrey T. DeHaan, an orthopedic surgeon, indicated in a January 28, 1993 report, that appellant had morbid obesity. Dr. DeHaan noted that at the time of his injury, appellant weighed 330 pounds and "with his limited activity resulting primarily from his ankle problem but contributed by both his right knee and back problems, he has gained almost 70 additional pounds." Although Dr. DeHaan noted weight gain, he clearly indicated that obesity existed at the time of injury and he did not provide a reasoned opinion that the diagnosed condition of obesity was causally related to the employment injuries. With regard to hypertension, a Dr. F.M.M. Charters stated in a January 2, 1992 report, that, according to appellant's history, he had chronic pain from his employment injuries, which had contributed to hypertension. Dr. Charters did not provide additional medical history or provide sufficient medical reasoning to establish the condition of hypertension as employment related.

In his January 28, 1993 report, Dr. DeHaan stated that as a result of compensating for impairments to the right ankle and knee, appellant was aggravating the left knee as well. Dr. DeHaan also noted in a September 28, 1994 report, that appellant's left knee had been aggravated by a limp resulting from his employment injuries. Dr. DeHaan did not, however, provide a clear diagnosis for the left knee nor a sufficiently reasoned opinion on causal relationship with the employment injuries.

The record also contains a memorandum dated June 5, 1995 from an Office medical adviser, who noted that appellant had obesity and right knee problems prior to the work injury. The medical adviser opined that he could not relate the progression of hypertension or diabetes to the employment injuries.

The Board accordingly finds that appellant has not met his burden of proof in establishing obesity, hypertension, or a left knee condition as consequential injuries in this case.

The Board further finds that the Office properly authorized an attendant's allowance of $465.00 every four weeks.

The Federal Employees' Compensation Act provides for an attendant's allowance under section 8111(a), which provides that the Office may pay an employee who has been awarded compensation an additional sum of not more than $1,500.00 a month when the Office finds "that the service of an attendant is necessary constantly because the employee is totally blind, or has

[2] *Robert W. Meeson*, 44 ECAB 834 (1993); A. Larson, *The Law of Workmen's Compensation* § 13.00.

[3] *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

lost the use of both hands or both feet, or is paralyzed and unable to walk, or because of other disability resulting from injury making him so helpless as to require constant attendance."[4]

Although the Office may pay up to $1,500.00 per month for full-time services, it is not required to pay the maximum amount. The Office need only pay as much as it finds under the particular facts of a case necessary and reasonable for an attendant's services.[5] The Office's procedures indicate that the amount payable in a given case should be determined on the basis of such items as canceled checks, written statements as to salary received, or other pertinent financial information.[6] In this case, the attendant's services have been performed by appellant's wife and the record indicates that appellant's wife quit her job to perform attendant services. The Office based its payment in this case on the wife's salary at the time she stopped working.[7] Appellant has not submitted any probative financial information on the issue presented to establish entitlement to a greater allowance. Accordingly, the Board finds that the payment of $465.00 every four weeks was reasonable under the circumstances.

The Board further finds that the Office properly denied authorization for proposed modifications to appellant's motor vehicle.

In this case, the Office authorized and paid for a Ford E150 van with specific modifications such as a wheelchair lift. Appellant sought authorization for replacement of the front seats, on the grounds that the seats were unsafe. The Office is not, however, obligated to repair and maintain the entire vehicle even if the Office paid for the vehicle. Office procedures state that "equipment required for the injury will be repaired and maintained at OWCP expense. Other parts of the vehicle will be repaired, maintained and replaced at the owners expense even if OWCP paid for the vehicle."[8] There is no indication that the front seats were specific equipment required for the employment injury. Appellant is, therefore, obligated to repair and maintain this portion of the vehicle.

[4] 5 U.S.C. § 8111(a).

[5] *Grant S. Pfeiffer*, 42 ECAB 647 (1991).

[6] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Periodic Review of Disability Cases*, Chapter 2.812.8(d) (July 1993).

[7] The record indicates that appellant's wife was paid $6,041.00 annually.

[8] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Housing and Vehicle Modifications*, Chapter 2.1800.5(a)(9) (September 1994).

The decisions of the Office of Workers' Compensation Programs dated November 27, 1995 are affirmed.

Dated, Washington, D.C.
March 8, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member