

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM G. ROYSTEN and DEPARTMENT OF THE NAVY,
CONSOLIDATION CIVILIAN PERSONNEL OFFICE, Honolulu, HI

*Docket No. 98-260; Submitted on the Record;
Issued January 6, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant is entitled to reimbursement for travel expenses including but not limited to airfare, car rental, food, expenses of examination and tests, surgery and post surgical rehabilitation to a medical appointment in Seattle, Washington.

The Office of Workers' Compensation Programs accepted appellant's claim for a lumbosacral sprain disc syndrome and a herniated nucleus pulposis. Appellant received compensation for total disability from July 2, 1988 to September 16, 1995, compensation for a 16 percent schedule award for loss of use of his right leg from September 17, 1995 to August 4, 1996 and for temporary total disability since August 1996. He stopped working on July 14, 1990. In July 1997 appellant, who lives in Honolulu, Hawaii, went to Seattle, Washington, to seek medical treatment from Dr. Michael S. Grady, a Board-certified neurological surgeon, without obtaining prior approval from the Office.

Medical records dated October 1 and November 19, 1996 and January 13, March 27 and April 28, 1997 document that Dr. Kenneth K. Nakano, a Board-certified psychiatrist and neurologist and appellant's treating physician, was treating appellant for his chronic pain syndrome and low back pain by prescribing medicine and reviewing diet, exercise and pain management with him. In his April 28, 1997 report, Dr. Nakano additionally noted that he referred appellant to two neurosurgeons in Washington.

By letter dated September 9, 1997, appellant's attorney, John M. Conte, informed the Office that appellant was in Seattle, Washington, awaiting authorization from the Office to proceed with diagnostic testing at the Harborview Medical Center Complex Spine Clinic. Mr. Conte stated that appellant had been in Seattle for three weeks, at his own expense, while trying to obtain a definitive diagnosis and prognosis of his condition. He stated that appellant was ready to proceed with surgery if the doctors who were examining him recommended it. Mr. Conte enclosed three letters dated June 25, July 25 and August 21, 1997, one from Dr. Grady, one from William Wallace, a State Farm Insurance representative and one from

Mr. Conte and Mr. Wallace, documenting appellant's efforts to obtain adequate medical care to improve his back condition.

In the June 25, 1997 letter to Dr. H. Richard Winn, a Board-certified neurosurgeon, at the Harborview Medical Center in Seattle, Washington, Mr. Conte and Mr. Wallace stated that appellant was seeking treatment from him because he, Dr. Winn, was highly recommended by several of their contacts and associates in the fields of medical and vocational rehabilitation and they had heard that he was accepting new referrals. They stated that appellant had complied with all suggested therapeutic intervention but had not responded satisfactorily to that mode of care. Further, they noted that over the past two years appellant noted a marked deterioration in his condition resulting in chronic, intense back pain with pain radiating into the left lower extremity. They stated that this had resulted in marked atrophy of the muscles in his limb and his need to use a crutch for ambulation over long distances.

Mr. Conte and Mr. Wallace stated that "it was critical at this time" for appellant to be evaluated by a well-qualified surgeon and that Dr. Nakano agreed with their referral of appellant to him. They noted that so far the Office had not responded to their request for the treatment but even so, they wished to proceed with the referral and examination.

By letter dated July 25, 1997, addressed to the Office, Mr. Wallace stated that appellant's records were reviewed by the team of Dr. Winn. He stated that the team determined that appellant was "a good candidate for admission to their program for an evaluation." Mr. Wallace stated that appellant would be admitted to the Complex Spine Clinic under the direction of Dr. Grady for the initial examination during the first week of August 1997. He noted that appellant had completed his travel arrangements to keep his appointment and stated that appellant would expect timely and complete reimbursement for all reasonable and necessary expenses associated with this examination and travel.

In his report dated August 21, 1997, addressed to Dr. Nakano, Dr. Grady examined appellant and diagnosed left L5 radiculopathy and recommended that new magnetic resonance imaging scans and a left leg electromyogram be performed on appellant. He stated that they would consider the appropriateness of surgery pending the test results.

Mr. Conte issued follow-up letters to the Office dated September 10, September 16 and September 19, 1997, noting that appellant was in Seattle still awaiting authorization from the Office to proceed with testing and possible corrective surgery.

By decision dated September 23, 1997, the Office denied appellant's claim, stating that the Office did not schedule or approve the medical evaluation in Seattle, Washington and there were competent medical specialists in Honolulu, Hawaii who were capable of rendering an opinion on the nature and extent of residuals remaining from the May 12, 1988 employment injury.

Under section 8103 of the Federal Employees' Compensation Act, the Office has the authority to provide medical services, appliances and supplies to an employee injured while in the performance of duty which the Office considers likely to cure, give relief, reduce the degree

or period of disability or aid in lessening the amount of monthly compensation.¹ In interpreting section 8103, the Board had recognized that the Office has broad discretion in approving services provided under the Act.² The Office has the general objective of ensuring that an employee recovers from his or her injury to the fullest extent possible in the shortest amount of time. The Office therefore had broad administrative discretion in choosing means to achieve this goal.³ The only limitation on the Office's authority is that of reasonableness.⁴ As the only limitation on the Office's authority is reasonableness, 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 known facts.⁵

In the present case, appellant, who lives in Honolulu, sought medical treatment from Drs. Grady and Winn in Seattle, Washington, without prior Office approval and sought reimbursement for his travel expenses, room and board during his stay in Seattle and all medical expenses related to his treatment. Appellant has not submitted medical evidence to show that it was necessary or reasonable for him to go to Seattle, Washington to obtain medical treatment. While Mr. Conte stated that appellant's treating physician, Dr. Nakamo agreed with the referral, and Mr. Conte indicated that appellant sought treatment from Dr. Winn because he was a "top qualified" surgeon and further, the medical records indicated that appellant required ongoing treatment for his chronic back pain syndrome, appellant did not show that he had to go to Seattle, Washington to obtain this treatment or to obtain particular medical treatment from Drs. Grady and Winn. He therefore is not entitled to reimbursement for medical expenses or any other expenses related to his trip to Seattle, Washington for medical treatment related to the May 12, 1988 employment injury.

¹ 5 U.S.C. § 8103.

² *Janice Kirby*, 47 ECAB 220, 225 (1995); *Daniel J. Perea*, 42 ECAB 214 (1990).

³ *Janice Kirby*, *supra* note 2; see *M. Lou Reisch*, 34 ECAB 1001 (1983).

⁴ *Joe F. Williamson*, 36 ECAB 494 (1985).

⁵ *Janice Kirby*, *supra* note 2.

The decision of the Office of Workers' Compensation Programs dated September 23, 1997 is hereby affirmed.

Dated, Washington, D.C.
January 6, 2000

George E. Rivers
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member