

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RONALD L. GREEN and U.S. POSTAL SERVICE,
POST OFFICE, Las Vegas, NV

*Docket No. 98-1267; Submitted on the Record;
Issued January 28, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reimbursement for law school expenses.

On November 13, 1991 appellant, then a 38-year-old maintenance control and stock clerk, filed an occupational disease claim, alleging that his emotional condition was employment related. He had stopped work the previous day. On February 10, 1994 the Office accepted that appellant sustained an employment-related dysthemic disorder, and he was placed on the periodic rolls. On January 31, 1997 appellant requested that, pursuant to 5 U.S.C. § 8103, the Office reimburse the costs of his law school education¹ and submitted supporting documentation. By decision dated April 4, 1994, the Office denied appellant's request for reimbursement, finding that, under section 8103, the medical evidence of record did not establish that law school was necessary. Following appellant's request for review of the written record,² in a January 9, 1998 decision, an Office hearing representative affirmed the prior decision, finding that rehabilitation services were provided under section 8104 rather than section 8103. The hearing representative stated that appellant could request that the Office consider reimbursement under the policy and procedures of the Office's vocational rehabilitation program. The instant appeal follows.³

On appeal, appellant contends that, Congressional intent, as expressed in section 8103, is unambiguous regarding coverage for expenses that are "likely to cure, give relief, reduce the degree of the period of disability, or aid in lessening the amount of the monthly compensation."

¹ Appellant sought reimbursement for tuition, books, housing expenses and licensing fees totaling \$47,259.20.

² Appellant initially requested a hearing but withdrew this request.

³ The Board notes that by decision dated February 10, 1998 the Office terminated appellant's compensation benefits on the grounds that he had been reemployed as of December 15, 1997. Appellant has not filed an appeal with the Board regarding that decision.

Therefore, appellant contends that, although his law school expenses were nonmedical in nature, his attendance was relevant to recovery from his psychological disability, as supported by the opinion of his treating licensed clinical psychologist, Sean Zielinski, Ph.D.,⁴ and should be reimbursed by the Office. Lastly, he argues that, if his expenses might be reimbursable under the policy and procedures of the Office's vocational rehabilitation program, he should not be required to submit an additional claim.

The Board finds that the Office did not abuse its discretion in finding that appellant is not entitled to reimbursement for law school expenses under section 8103 of the Federal Employees' Compensation Act.

Section 8103(a) of the Act states in pertinent part:

"The United States shall furnish to an employee who is injured while in the performance of duty the services, 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."⁵

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, has broad administrative discretion in choosing the means to achieve this goal. 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.⁶

Section 10.401 of Title 20 of the Code of Federal Regulations (20 C.F.R. § 10.401) 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

Section 8104 of the Act provides that the Office "may direct a permanently disabled individual whose disability is compensable under this subchapter to undergo vocational rehabilitation" and that the Office "shall provide for furnishing the vocational rehabilitation

⁴ Dr. Zielinski advised that appellant should pursue graduate school in an academic discipline of his choosing, preferably in a geographic location other than Las Vegas.

⁵ 5 U.S.C. § 8103(a).

⁶ See *James A. Sellers*, 43 ECAB 924 (1992).

⁷ 20 C.F.R. § 10.401.

services.”⁸ As with section 8103, under section 8104 the Office has discretionary authority with respect to vocational rehabilitation and the Board has held that an Office decision involving the exercise of this discretion will not be disturbed unless it is clearly in error.⁹

Office procedures provide:

“Long-term training, such as college training, should be considered only when the injured worker shows exceptional tenacity and ability, there is great probability of employment with minimal loss of earnings upon successful completion and the injury is sufficiently severe so as to rule out other options.”¹⁰

The record in this case, indicates that appellant attended law school from August 17, 1994 to September 15, 1996 at the California Western School of Law in San Diego. In its April 4, 1994 decision, the Office denied his request for payment of law school expenses under section 8103 on the grounds that the medical evidence did not establish that law school was necessary medical treatment. Following appellant’s request for review by the Branch of Hearings and Review, in a January 9, 1998 decision, the Office hearing representative found that section 8103 “has not reasonably or customarily been interpreted to include rehabilitative services provided under section 8104” and found no evidence to support that appellant’s law school expenses are medical expenses covered by section 8103. The Board agrees with this holding. The Office, therefore, did not abuse its discretion in denying appellant’s request for payment of his law school expenses.¹¹

⁸ 5 U.S.C. § 8104(a).

⁹ *Edward E. Johnson*, 39 ECAB 611 (1988).

¹⁰ See Federal (FECA) Procedure Manual, Part 3 -- Rehabilitation, *Services*, Chapter 3.200.6(a)(3) (December 1997).

¹¹ The Board notes that whether appellant’s law school expenses should be covered under section 8104 is in an interlocutory position as the Office has not issued a final decision regarding this issue.

The decisions of the Office of Workers' Compensation Programs dated January 9, 1998 and April 4, 1997 are hereby affirmed.

Dated, Washington, D.C.
January 28, 2000

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member