U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES R. BELL and DEPARTMENT OF THE NAVY,
LONG BEACH NAVAL SHIPYARD, Long Beach, CA

Docket No. 99-2133; Submitted on the Record;
Issued July 2, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request to pay for electricity and water for an authorized whirlpool spa; and (2) whether the Office, by decision dated June 8, 1999, properly refused to reopen appellant's case for further review of the merits of his claim.

This case has previously been on appeal before the Board. By decision dated August 20, 1998,[1] the Board found that the Office did not abuse its discretion in denying appellant's request to pay for electricity and water for an authorized whirlpool spa. The Board stated, "although appellant's argument that a whirlpool spa is inoperable without water or electricity is compelling, the statute clearly does not address nor contemplate payment of the utility expenses of injured claimants. For this reason, the payment of such costs as 'reasonable and necessary' for treatment of a job-related injury remains in the discretion of the Office."

By letter dated October 17, 1998, appellant requested reconsideration of the Office's decisions denying payment for electricity and water, stating that he had "installed separate metering for both the water and power with separate billing accounts with nothing on the meters but the spa." Appellant maintained that the water and electricity were not only necessary and reasonable, they were essential for the operation of the whirlpool span in order for it to give any relief. By decision dated November 12, 1998, the Office refused to modify its prior decisions, finding, "the Board could have followed through on their comment that the claimant's argument was compelling and ordered the Office to pay the utility bills, but did not. The argument which has been presented by the claimant in his request for reconsideration, is the same one which he has made since his initial request for payment of the expenses for water and electricity. I am, therefore, relying on that decision and the precedent set by the Board to refrain from second guessing the prior sets of adjudicating officers."

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[1] 49 ECAB 642.

By letter dated November 4, 1998, appellant submitted copies of receipts and permits, plus photographs, showing the installation of separate electricity and water meters for his whirlpool spa. This letter was marked as received by the Office on November 20, 1998. By letter dated November 20, 1998, appellant requested reconsideration of the Office's decisions denying payment of electricity and water expenses for his whirlpool spa, contending that the Office's most recent decision did not determine whether these expenses were necessary and reasonable. By decision dated April 29, 1999, the Office refused to modify its prior decisions. The Office found that it was "clearly true" that water and power were necessary for the operation of the spa, but found that "there is simply no way for the Office to guarantee that no person other than the claimant uses the spa for any reason other than his therapy. In point of fact, there is no way to guarantee that the claimant only uses the spa for his therapy. Hence, in this reimbursement situation, the Office would be paying for nonclaimant and claimant recreational spa use." The Office decision also stated:

> "In the present claim, the therapy device (*i.e.*, the spa) which the Office did purchase for the claimant is accompanied by incidental expenses which the claimant -- and not the Office -- must bear. The cost of operating the device would normally be borne by the owning physician or physical therapist and thus be included in the billed amount paid by the Office, must be borne by the claimant. The cost cannot automatically be transferred to the Office if it is not sufficiently specific to the device alone and to the claimant's use of it. Thus, even though the Office does pay for TENS [transcutaneous electrical nerve stimulator] unit batteries (which are specific to the device and are not likely to be of use in any device other than the TENS unit), it does not pay for gasoline used to power modified vehicles. As the expenses cannot be established to be only used for the claimant's treatment (even with the meters), it is not *reasonable* for the Office to bear these expenses."

By letter dated May 10, 1999, appellant requested reconsideration of the Office's decisions denying payment of electricity and water expenses for the whirlpool spa. Appellant stated that no person other than himself used the spa and that he used it only for his therapy and contended that he should not have to "copay" the expenses incidental to the use of the whirlpool spa supplied by the Office. Appellant submitted copies of paid electricity and water bills and stated that these showed that the average monthly cost of operating the whirlpool spa was $43.60. By decision dated June 8, 1999, the Office found: "The evidence submitted in support of the request for review is found to be of an immaterial, repetitious and cumulative nature and is not sufficient to warrant review of the prior decision."

The Board finds that the Office did not abuse its discretion in denying appellant's request for reimbursement of electricity and water expenses incurred in the operation of his authorized whirlpool spa.

As found in the Board's decision on appellant's prior appeal, the standard for the Office to apply in determining whether "incidental" expenses, such as the electricity and water for the authorized whirlpool spa in the present case is whether such expenses are necessary and reasonable. Regarding appellant's electricity and water expenses for operation of the authorized

whirlpool spa, the Board stated, "the payment of such costs as 'reasonable and necessary' for treatment of a job-related injury remains in the discretion of the Office."

In its most recent decision on the merits of appellant's claim, issued on April 29, 1999 the Office finally acknowledged that it is "clearly true" that water and power are necessary for the operation of the authorized whirlpool spa. The Office found that the expenses for these utilities were not reasonable on the basis that persons other than appellant could use the whirlpool spa and appellant could use it recreationally in addition to therapeutically.

The Board has recognized that the Office has broad discretion in approving services provided under section 8103 of the Federal Employees' Compensation Act,[2] with the only limitation on the Office's authority being that of reasonableness.[3] The Board finds that it was not unreasonable for the Office to deny appellant's request for pay for electricity and water for his authorized whirlpool spa. Although the Board on the prior appeal noted that appellant had not fully documented the costs of electricity and water, this was not the grounds on which the Board affirmed the Office's decision denying payment of these expenses. The Board found, "While the facts in this case are such that a contrary factual conclusion might be reached, that alone does not establish that the Office abused its discretion." This finding remains unchanged by the evidence appellant submitted subsequent to the prior appeal.

The Board further finds that the Office, by its June 8, 1999 decision, properly refused to reopen appellant's case for further review of the merits of his claim.

Section 8128(a) of the Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

> "The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --
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> (1) end, decrease, or increase the compensation awarded; or
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> (2) award compensation previously refused or discontinued."[4]

Under 20 C.F.R. § 10.606(b)(2), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law, by advancing a relevant legal argument not previously considered by the Office, or by submitting relevant and pertinent new evidence not previously considered by the Office. Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements the Office will deny the application for review without reviewing the

[2] 5 U.S.C. § 8103(a). This section provides that the Office shall furnish medical services, appliances and supplies to injured employees and that such employees "may be furnished necessary and reasonable transportation and expenses incident to the securing of such services, appliances and supplies."

[3] *Joe E. Williams*, 36 ECAB 494 (1985).

[4] 5 U.S.C. § 8128(a).

merits of the claim. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[5]

Appellant's May 10, 1999 request for reconsideration does not show that the Office erroneously applied or interpreted a specific point of law, nor does it advance a relevant legal argument not previously considered by the Office. Given the Office's refusal to pay such bills, appellant's submission of paid electricity and water bills does not constitute relevant and pertinent new evidence not previously considered by the Office.

The June 8 and April 29, 1999 and November 12, 1998 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
July 2, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Member

[5] *Eugene F. Butler*, 36 ECAB 393 (1984).