U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GLEN E. SHRINER and DEPARTMENT OF THE ARMY, TOOELE ARMY DEPOT, Tooele, UT

Docket No. 00-816; Submitted on the Record;
Issued October 12, 2001

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS, BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs abused its discretion in denying reimbursement for travel expenses for visits to a mineral springs.

On June 19, 1990 appellant, then a 46 -year-old laborer, sustained an employment-related neck strain when he injured his neck while shoveling gravel. He stopped work that day and has not returned. The Office later accepted that he sustained an employment-related exacerbation of cervical spondylosis and he was placed on the periodic rolls. On June 7, 1991 he underwent authorized anterior cervical disc excision at C5-6 and C6-7 and on June 12, 1992 underwent authorized cervical decompression laminectomy at C3-4 with bilateral foraminotomies at C5-6 and C6-7. On July 7, 1994 he began mineral hot springs pool treatment at the Wyoming Hot Springs State Park in Thermopolis, Wyoming, and continued these visits on a regular basis. On August 2, 1994 Dr. John C. Zahniser, a Board-certified neurosurgeon, prescribed "mineral pool treatment two times two weeks for six weeks."

The Office continued to develop the claim and on April 9, 1997 referred appellant, along with a statement of accepted facts, a set of questions and the medical record, to Dr. Robert G. Weiner, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a report dated April 23, 1997, Dr. Praveen Prasad, a Board-certified neurosurgeon, advised that "it seems appropriate to continue the mineral hot springs." In a May 28, 1997 report, Dr. Weiner advised that the hot springs treatment would only result in a temporary, palliative benefit and he did not recommend continued use.

By letter dated July 17, 1997, the Office proposed to terminate payment for round-trip expenses to the hot springs in Thermopolis,[1] based on Dr. Weiner's opinion. In response,[2]

[1] The record indicates that there was no charge for visiting the hot springs.

[2] Appellant initially requested a hearing. By letter dated August 19, 1997, the Office indicated that his case was not in posture for a hearing because the Office had not issued a final decision in his case.

appellant submitted a July 31, 1997 report from his treating Board-certified internist, Dr. Donald A. Gullickson, who advised that appellant was doing "extremely well" and should continue the hot springs treatment. By decision dated September 5, 1997, the Office finalized the termination of travel expenses, finding that Dr. Gullickson's report did not establish that the hot springs treatment was "necessary, appropriate and reasonable treatment" that was "likely to cure, give lasting relief, reduce the degree of or the period of disability, or aid in lessening the amount of compensation paid."

On September 9, 1997 appellant requested a hearing. By decision dated February 5, 1998, an Office hearing representative remanded the case to the Office, finding a conflict in the medical evidence between the opinions of Dr. Weiner, who provided a second opinion evaluation for the Office and Dr. Prasad, appellant's treating neurosurgeon. Authorization for travel expenses was reinstated.

Upon remand, the Office initially referred appellant to Dr. Stephen Dinenberg, an orthopedic surgeon, who provided a report dated May 5, 1998 in which he advised that, while there was nothing harmful about the hot springs treatment, it "was not medically advisable, necessary or appropriate in light of the long drive to and from" the state park.[3] Upon discovery that Dr. Dinenberg was not Board-certified, the Office referred appellant to Dr. Jeffrey Hrutkay, a Board-certified orthopedic surgeon, for an independent medical evaluation.[4]

In a report dated August 14, 1998, Dr. Hrutkay noted that he had examined appellant on July 31, 1998 and reported the history of injury and that appellant was driving to the hot springs, which had a round-trip commute of 134 miles. He diagnosed cervical spondylosis with upper extremity radiculitis, status post anterior cervical discectomy, C5-6, C6-7 and laminectomy with bilateral foraminotomies at C3-4, C4-5 and C5-6. In answer to specific questions, he stated that the use of the hot springs "appears to be providing symptomatic relief" for appellant, continuing:

> "There is no truly objective medical evidence that the hot springs provide a unique medical benefit for this individual's cervical condition other than [his] statement that he does achieve good symptomatic relief from these hot springs. [Appellant] has been able to decrease the amount of ibuprofen as a result of utilizing the hot springs. He has required no supervised physical therapy since beginning treatment at the hot springs.
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> "As with all treatment that is directed at pain, it is very difficult to measure any objective medical benefit for the individual other than the individual's report of pain relief. [Appellant] has stated to me that he has tried other modalities such as a hot tub, moist heating pad and hot baths, that they do not provide nearly the amount of symptomatic relief as the hot springs which allow him to submerge fully in the water and perform exercises and stretching. He relates that there are no other hot springs which are closer to him as far as travel. He further relates

[3] The record indicates that the round-trip was approximately 134 miles.

[4] Both Dr. Dinenberg and Dr. Hrutkay were furnished with a statement of accepted facts, a set of questions and the medical record.

> that he has tried similar exercise and stretching in a regular swimming pool and this only makes his symptoms worse."

Dr. Hrutkay advised that appellant should continue on ibuprofen as needed and his home exercise program. He saw no need for supervised physical therapy. Dr. Hrutkay concluded:

> "Symptomatically, the treatment that appears to be most beneficial for this individual is at the hot springs. However, as mentioned above, this is based strictly upon [his] report of subjective symptomatic relief from attending the hot springs. It does not appear that any treatment to include surgery would have lasting benefit for [his] condition."

By letter dated November 9, 1998, the Office again proposed to terminate payment for round-trip expenses to the hot springs in Thermopolis, finding that the weight of the medical evidence established that the hot springs would not "cure, provide lasting relief, reduce the degree of the period of disability, or aid in ... lessening the amount of compensation paid." In response, appellant disagreed with the proposed termination. In a December 10, 1998 decision, the Office finalized the termination. Appellant timely requested a hearing that was held on July 1, 1999. At the hearing he testified that he began using the hot springs in 1994 at the recommendation of Dr. Zahniser. Appellant indicated that he would spend 20 minutes in the pool exercising twice daily with breaks in between and commented that this did him more good than any other treatment. He testified that he still visited the springs as often as he could afford and noted that medication gave him side effects. By decision dated September 24, 1999, an Office hearing representative affirmed the prior decision, finding that Dr. Hrutkay's opinion negated the therapeutic need for hot springs. The instant appeal follows.

The Board finds that the Office abused its discretion in denying payment for appellant's travel expenses.

Section 8103 of the Federal Employees' Compensation Act[5] provides that 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 Office considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation.[6] The language of section 8103 contains the term "shall" in authorizing the furnishing of services, appliances and supplies but this directive is qualified by the phrase "which the Secretary of Labor considers likely to cure, give relief, reduce the degree or period of disability, or aid in lessening the amount of monthly compensation." This phrasing underscores the intent of Congress that discretion be delegated to the Secretary and hence to the Office, in determining whether to grant or reimburse an employee for prescribed services, appliances and supplies under section 8103.[7]

[5] 5 U.S.C. §§ 8101-8193.

[6] 5 U.S.C. § 8103(a).

[7] *James R. Bell*, 49 ECAB 642 (1998).

In interpreting section 8103, the Board has recognized that the Office has broad discretion in approving services provided under the Act. 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 means to achieve this goal. The only limitation on the Office's authority is that of reasonableness.[8] 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 established facts. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.[9]

In order to be entitled to reimbursement for medical expenses, a claimant must establish that the expenditures were incurred for treatment of the effects of an employment-related injury by submitting rationalized medical evidence that supports such a connection and demonstrates that the treatment is necessary and reasonable.[10] The fact that the Office authorized and paid for some medical treatment does not establish that the condition for which appellant received treatment was employment related.[11] Furthermore, the issues of authorization of medical treatment and reimbursement of travel expense for medical treatment are separate and distinct. The Office may authorize medical treatment, but determine that the travel expense incurred for such authorized treatment was unnecessary or unreasonable.[12]

In this case, in order for appellant to prove that the treatments at the mineral hot springs were warranted, he must submit evidence to show that they were necessary for a condition causally related to the employment injury and were medically warranted. Both of these criteria must be met in order for the Office to consider reimbursement for appellant's travel expenses. In situations such as the instant case where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.[13] Here, Dr. Hrutkay, the impartial medical specialist, examined appellant on July 31, 1998 and advised that, symptomatically, the treatment that appeared most beneficial to appellant was at the hot springs. The language of the Act states treatment shall be furnished which the Office considers likely to "cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation."[14] The Board, therefore, finds that, while Dr. Hrutkay's report is generally supportive that the hot springs treatment "gives relief" to appellant, his opinion does not, with specificity, provide an opinion regarding whether these treatments are medically necessary to

[8] *Dr. Mira R. Adams*, 48 ECAB 504 (1997).

[9] *Daniel J. Perea*, 42 ECAB 214 (1990).

[10] *See Debra S. King*, 44 ECAB 203 (1992).

[11] *Dales E. Jones*, 48 ECAB 648 (1997); *James F. Aue*, 25 ECAB 151 (1974).

[12] *Dr. Mira R. Adams*, *supra* note 8.

[13] *See Kathryn Haggerty*, 45 ECAB 383 (1994); *Edward E. Wright*, 43 ECAB 702 (1992).

[14] 5 U.S.C. § 8103(a).

provide relief of appellant's condition. A conflict, therefore, remains regarding whether the hot springs treatments are medically necessary to provide relief or cure of appellant's accepted conditions. The case will, therefore, be remanded for the Office to prepare an updated statement of accepted facts and set of questions. The Office should then obtain a supplemental report from Dr. Hrutkay to address whether the hot springs treatments are medically necessary to provide relief or cure of appellant's accepted conditions.[15] After such development as it deems necessary, the Office shall issue a *de novo* decision.

The decision of the Office of Workers' Compensation Programs dated September 24, 1999 is hereby set aside and the case is remanded to the Office for proceedings consistent with this opinion.

Dated, Washington, DC
October 12, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

[15] The Board notes that when the impartial medical specialist's statement of clarification or elaboration is not forthcoming to the Office, or if the physician is unable to clarify or elaborate on the original report, or if the physician's report is vague, speculative or lacks rationale, the Office must refer the employee to another impartial specialist for a rationalized medical opinion on the issue in question; *see Talmadge Miller*, 47 ECAB 673 (1996).