

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN YERA and DEPARTMENT OF THE TREASURY,
EXECUTIVE MANAGEMENT SERVICE, New York, NY

*Docket No. 00-2476; Submitted on the Record;
Issued June 18, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs abused its discretion in denying proposed modifications to appellant's home.

This is the second appeal in this case. Previously, the Board affirmed the decision of the Office, dated June 16, 1995 and reissued on July 13, 1995, which found that appellant was entitled to no more than 100 percent impairment of each leg and 100 percent impairment of his penis, for which he received a schedule award.¹ The facts and the circumstances of the case up to that point are set forth in the Board's prior decision and are incorporated herein by reference. However, as those cases do not relate to the issue at hand, the pertinent facts, as applicable to the present issue will be highlighted.

On June 25, 1991 appellant, then a 36-year-old special agent, was shot in the arm and in his back, during an undercover narcotics operation. He was hospitalized for approximately one month, at which time he was diagnosed with a spinal cord injury, which caused paraplegia from the waist down, resulting in neurogenic bladder and bowel dysfunction.²

The Office accepted appellant's claim for a gun shot wound and paraplegia and paid him appropriate compensation benefits, including wage-loss compensation through the periodic rolls system and the payment of medical expenses. Appellant was treated at a rehabilitation facility for approximately three months and upon discharge on October 24, 1991 he was provided with nursing services to assist in the purchase of necessary medical equipment and to facilitate necessary modifications where appellant resided. Review of the record reflects that as appellant's landlord did not feel that he could make the necessary modifications on their leased

¹ Docket No. 95-2771 (issued December 19, 1996).

² While hospitalized, appellant underwent two separate surgeries for the removal of the bullet in the back, a laminectomy at T11-12 and the placement of a filter to prevent against pulmonary embolism.

property, therefore, he and his wife resided for approximately one year at the Embassy Suites Hotel, until October 1992, when they leased another property. In January 1994, the Office paid appellant \$181,000.00 towards the purchase of an existing home in New Jersey and, in April 1994, paid \$37,000.00 for necessary modifications.³

Appellant eventually returned to work on April 30, 1993 in a special agent position. After three months in the special agent position, the Office determined that the position, which had no loss of wages, fairly and reasonably represented his wage-earning capacity.

Appellant worked in the special agent position until November 16, 1998, when he transferred from New York to a new duty assignment in Washington, D.C. He had responded to an in-house announcement from the U.S. Custom Service, Office of Investigations, seeking criminal investigators, technical enforcement officers and intelligence research specialists for a lateral reassignment to the Customs Cybersmuggling Investigation Center in Sterling, Virginia and was selected for the position.

By letter dated September 10, 1998, appellant, through his attorney, advised the Office of his upcoming reassignment to Washington, D.C., and inquired as to his eligibility for payment of modification of a home due to his reassignment of duty. He also inquired as to instructions regarding the sale of his New Jersey home, which the Office had purchased and modified to accompany appellant's disabilities as a result of his accepted work injuries.⁴

In a letter dated September 28, 1998, appellant's attorney notified the Office that his transfer to Washington, D.C., would be effective December 1, 1998.

In a letter dated November 10, 1998, appellant's attorney advised that his modified home in New Jersey was under contract and scheduled to close on November 29, 1998. The attorney noted that the closing was being handled by the Customs Service, an agency within the employing establishment. The attorney further stated that appellant and his wife had located temporary housing in Virginia while another modified home was being built. The attorney further asked the Office to respond to his previous letters that had addressed Office procedures regarding housing modifications.

In a November 13, 1998 memorandum to the file, an Office claims examiner noted communicating with the director of the Office and advised that the Office did not have to purchase appellant's old house in New Jersey or contribute to the purchase of his new house in his new location.

In a letter dated December 14, 1999, the Office advised appellant's attorney that it was seeking information from appellant's former employing establishment and the new employing establishment in order to make a determination as to whether his move was undertaken for a

³ In a November 1, 1991 letter from appellant's attorney, it appears that he and his wife purchased a home in the amount of \$235,000.00 and they mortgaged the amount of \$54,000.00. The Office paid the remainder \$181,000.00.

⁴ In January 1994, the Office paid appellant \$181,000.00 towards the purchase of an existing home and in April 1994, it paid \$37,000.00 for necessary modifications.

reason related to the claim. The Office advised that payment for modification of a different house by the Government is only authorized under very limited circumstances. The Office advised that appellant's request for modification of a different house would be decided based upon the employing establishments' response.

In a December 23, 1999 letter, the employing establishment advised that in August 1998, its Office of Investigations posted an in-house announcement, in which they were recruiting candidates for a lateral reassignment to the Customs Cybersmuggling Investigation Center, in Sterling, Virginia. The employing establishment advised that this was not a promotion opportunity and only current GS-13 Criminal Investigations, Technical Enforcement Officers and Intelligence Research Specialists were eligible to apply. The employing establishment stated that appellant responded to the announcement and was selected for the position. The employing establishment paid for appellant's relocation expenses resulting from the move to the Washington, D.C., area.

In a February 2, 2000 letter, the Office requested appellant to provide a written statement of the reasons/circumstances surrounding his move from New Jersey to Virginia. In a statement dated February 18, 2000, appellant explained that he had trained in and learned the field of computer forensics within the Treasury Department. He explained that this specialized skill was needed within his employing establishment due to the increased use of computers and the concomitant increase in computer crimes. Appellant advised that he had mastered a technology, which afforded him the opportunity to become a valuable employee with highly sought-after computer skills, such as investigating crimes on the Internet. He stated that when the U.S. Customs Service, Office of Investigation posted its in-house announcement in August 1998, he felt his skills would be best applied in a position within the specialized unit of the Cybersmuggling Center. Appellant advised that his particular specialty at the CyberSmuggling Center requires him to investigate child pornography on the Internet, a violation of federal law, which the U.S. Customs Service enforces and has made a high priority. He stated that his move to Virginia and to the CyberSmuggling Center was based on his belief that the position would afford him the opportunity to remain competitive in the workplace, despite his physical disability. Appellant further stated that he had notified the Office, in his attorney's letter September 10, 1998, that he had been selected for the position and was being reassigned within the next 30 to 60 days. He noted that in the same letter he had asked the Office to advise him of the steps needed in selling the New Jersey home and in purchasing a new residence. Appellant stated that his attorney had written a series of letters to the Office and they never received any response from the Office other than receiving a notice on November 16, 1998, advising that his case file was being transferred from the New York office to the Washington, D.C. office.

In a May 4, 2000 decision, the Office disallowed appellant's claim for housing modifications. The Office noted that, under section 2.1800.9(b) of the procedure manual,⁵ a subsequent move with a request for further housing modification must be undertaken for a reason related to the claim, which would include more sophisticated medical care and/or to accept reemployment. The Office found the reasons appellant stated for his move were not to obtain more sophisticated medical care and not for reemployment and denied his claim.

The Board finds that the Office did not abuse its discretion in refusing to authorize appellant's request for duplicate modifications to his new residence to accommodate his employment-related condition.

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.⁶ Under section 2.1800.9(b) of the Office's procedures, payment for modification of a different house by the Government may be authorized under very limited circumstances. Any subsequent move must be undertaken for a reason related to the claim and detailed rationale should be provided before the move is to occur. Acceptable reasons include the need to obtain more sophisticated medical care and/or to accept reemployment, but not personal preference for a different locale.⁷ The Board has recognized that the Office has broad discretion in approving services provided under the Act.⁸ 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 the means to achieve this goal.⁹ The only limitation on the Office's authority is that of reasonableness.¹⁰ 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.¹¹

In this case, appellant sustained a paralyzing injury on June 25, 1991 when he was shot in the back while in the performance of his federal job duties. The injury resulted in extensive disability and confinement to a wheelchair. In disallowing appellant's request for modification of a different home, the Office found that appellant's move was the result of a voluntary "reassignment" of his skills to a different agency and not the need to be "reemployed."

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Later Requests for Modifications*, Chapter 2.1800.9(b) (September 1994).

⁶ 5 U.S.C. § 8103.

⁷ See *supra* note 5.

⁸ *Daniel J. Perea*, 42 ECAB 214 (1990).

⁹ See *M. Lou Riesch*, 34 ECAB 1001 (1983).

¹⁰ *Joe E. Williamson*, 36 ECAB 494 (1985).

¹¹ *Daniel J. Perea*, *supra* note 8.

The Board finds that the Office's action in refusing to approve a modification of a different home was reasonable and did not constitute an abuse of discretion. As previously noted, under section 2.1800.9(b), the Office approves second modifications only in limited circumstances: to accept reemployment or for better access to medical treatment. Neither of these parameters applies in this case. Under the facts at hand, appellant voluntarily transferred to Virginia in an effort to utilize his specialized skills in the area of Internet crimes. The Board further finds that the reasons advanced by appellant for accepting the position in Virginia are neither persuasive nor convincing to justify an approval of a modification to a second home. Accordingly, the Office acted within its guidelines and discretion in denying appellant's request for a modification of a different residence.

The decision of the Office of Workers' Compensation Programs dated May 4, 2000 is affirmed.

Dated, Washington, DC
June 18, 2002

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member