U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RONALD A. GILLIS and DEPARTMENT OF AGRICULTURE, FOREST SERVICE, WILLOWA-WHITMAN NATIONAL FOREST, Baker, OR

Docket No. 00-2617; Submitted on the Record;
Issued March 11, 2002

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether the Office of Workers' Compensation Programs properly terminated appellant's compensation; (2) whether the Office properly denied appellant's requests for reimbursement for travel to obtain repairs of his electric wheelchair; (3) whether the Office properly denied appellant's request for a van equipped with a powered wheelchair ramp; and (4) whether the Office properly determined that appellant was entitled to $2,700.00 in attendant's allowance for the period from April 1993 through December 1993.

On March 31, 1993 appellant, then a 40-year-old computer assistant, while attending a training seminar, was reaching up in a bathtub in his hotel room to aim the showerhead when he fell, injuring his left wrist.[1] The Office accepted appellant's claim for a sprain of the left wrist. He received continuation of pay from April 22 through June 9, 1993. The Office approved buy back of leave for the period June 10 through July 28, 1993. The Office paid temporary total disability compensation for the period July 29 through December 17, 1993.

On November 17, 1993 appellant filed a claim for de Quervain's synovitis, overuse syndrome, left cubital tunnel syndrome, left carpal tunnel syndrome and left metacarpal joint pain. He stated that he developed pain while inputting data until he noticed that the pain was not going away in between typing sessions. Appellant noted that he first related his condition to his employment on March 11, 1993. In a separate letter, he also indicated that he had to crawl into the bathroom at the employing establishment because his wheelchair would not fit through the bathroom door. The Office accepted appellant's claim for left de Quervain's syndrome.

[1] On May 16, 1975 while working in private industry, appellant fell into a wood chipper and sustained bilateral traumatic amputations of his legs, above the knee.

Appellant returned to work on January 10, 1994. He stopped working on April 12, 1994.[2] The Office began payment of temporary total disability compensation.

In a June 21, 1995 decision, the Office terminated appellant's compensation on the grounds that the accepted employment-related conditions had ceased. He requested reconsideration. In an October 5, 1995 decision, the Office vacated its June 21, 1995 decision and reinstated appellant's compensation on the grounds that the medical evidence of record did show that appellant still had residuals of the employment injuries, which were disabling.

In a February 19, 1998 decision, the Office terminated appellant's compensation on the grounds that appellant had no residuals from the employment-related injuries. The Office also denied appellants claim for travel expenses incurred in seeking repair of his wheelchair, denied his request for a van and found he was entitled to an attendant's allowance for the period April 1993 to December 1993.

Appellant requested a hearing before an Office hearing representative, which was conducted on March 31, 1999. In an August 11, 1999 decision, the Office hearing representive affirmed the February 19, 1998 decision to terminate appellant's compensation. She also found that appellant was not entitled to reimbursement for travel expenses because no receipts had been submitted for the repairs involved in the case. The hearing representative further found that appellant was not entitled to medical benefits for purchase of a specially equipped van because the need for the van arose from his injury in private employment. She also held that the payment of an attendant's allowance at $5.00 an hour for two hours a day from April to December 1993 was appropriate because appellant had not submitted a daily record of individual tasks that had been performed.

The Board finds that the Office properly terminated appellant's compensation.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.[3]

The Office based its decision to terminate appellant's compensation on the October 28, 1996 report of Dr. George W. Bagby, a Board-certified orthopedic surgeon. He reported that Tinel's testing of the median nerve at the wrist was negative as was Tinel's testing of the ulnar nerve at the elbow. Dr. Bagby noted that appellant had tenderness over the radial styloid of the left wrist. He stated that the Finkelstein's sign was negative, which meant that sharp flexion passively of the thumb did not recreate appellant's pain. He found no enlargement of the thumb carpal-metacarpal joints. Dr. Bagby concluded that appellant sustained an injury to the left hand and elbow in the March 31, 1993 employment injury which resolved without objective findings.

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[2] On February 16, 1994 appellant filed a claim for left shoulder pain, which he related to work. He stopped working on January 31, 1994 and returned to work on February 7, 1994.

[3] *Jason C. Armstrong*, 40 ECAB 907 (1989).

He stated that appellant's condition was fixed and stable with no objective evidence relating his condition to the employment injury.

In an August 22, 1998 report, Dr. Mark C. Clawson, a Board-certified orthopedic surgeon, indicated that appellant had a new injury after he struck a deer with his van and had difficulty getting out of the van. He commented that appellant had a pulling accident to his left middle and ring fingers. Dr. Clawson diagnosed flexor tendon strain of the left middle and ring fingers. In an April 6, 1999 note, he commented that, to his recollection, his prior notes, particularly the August 22, 1998 note, were accurate. Dr. Clawson noted that he had diagnosed subluxation of the left thumb from x-rays but stated that the subluxation was only an early radiographic indication of degenerative change. He reported that appellant did not have joint crepitus in the hand with a grind maneuver. Dr. Clawson did not relate appellant's left thumb condition to the employment injury. His reports, therefore, are not sufficient to contradict Dr. Bagby's report.

In an April 7, 1999 report, Dr. Edward H. Newcombe, an internist, related Dr. Clawson's finding that x-rays showed only a thumb metacarpal subluxation on the trapezium without significant joint space narrowing. Dr. Newcombe noted that appellant had injured his thumb apparently on March 31, 1993 when he fell and landed on his left wrist with his left thumb retroflexed. He indicated that appellant stated his condition had been aggravated any time he used a manual wheelchair. Dr. Newcombe, however, did not give his own medical opinion on whether appellant's current condition was related to the March 31, 1993 employment injury or whether appellant remained disabled due to this injury. His report, therefore, does not have sufficient probative weight to contradict Dr. Bagby's report.

At the hearing, Dr. Leaun Alfred Fuchs, a chiropractor, stated that appellant sustained a subluxation of the thumb in the March 31, 1993 employment injury and remained disabled due to the injury. Section 8101(2) of the Federal Employees' Compensation Act recognizes a chiropractor as a physician "only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by [x]-ray to exist...."[4] Since Dr. Fuchs was discussing a subluxation of the thumb, not the spine, he cannot be considered a physician under the Act and his testimony cannot be considered medical evidence. The weight of the medical evidence of record, therefore, rests with Dr. Bagby's report and shows that the effects of the accepted employment-related conditions had ceased.

The Board finds, however, that the Office improperly denied appellant's request for reimbursement for travel for repairs to his wheelchair.

Section 8103(a) of the Act states:

> "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

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[4] 5 U.S.C. § 8101(2); *see Marjorie S. Geer*, 39 ECAB 1099, 1101-02 (1988).

likely to cure, give relief, reduce the degree or period of disability, or aid in lessening the amount of monthly compensation."[5]

In interpreting section 8103, the Board has long recognized that the Office, acting as the delegated representative of the Secretary of Labor, has broad discretion in approving services under the Act.[6] The Office has the general objective of ensuring that an employee recovers from his injury to the fullest extent possible in the shortest period of time. The Office, therefore, has broad administrative discretion in choosing means to achieve this objective.

Appellant was found to need an electric wheelchair because the injury to his left hand made it difficult for him to use a manual wheelchair and, therefore, made it difficult for him to work. The Office authorized the leasing of a wheelchair by appellant. The Office hearing representative stated that, while the company that repaired appellant's wheelchair confirmed that he had brought the wheelchair in for repairs on several occasions in the summer and fall of 1994, it did not have records or receipts to confirm the dates that appellant brought the wheelchair in for repairs. However, in a January 11, 1996 memorandum, an Office claims examiner related that a company official stated that the repairs to the wheelchair were done without charge in the hopes of selling appellant a wheelchair. Parts for repair were taken off the shelf. Therefore, no records were kept by the company for repairs to appellant's wheelchair. A company official stated that appellant had crushed the joystick that controlled the wheelchair, gotten water in the electronics box, had a brake box that needed to be replaced and shattered the rear wheel of a replacement wheelchair. Appellant, in his request for travel reimbursements, noted the dates he took the electric wheelchair for repair and the reasons for repair, which corresponded to the statement by the company official. The Office, therefore, improperly denied appellant's claim for reimbursement for travel to seek repair of his wheelchair on the basis of inadequate records. Appellant's claims for reimbursement are the only records available to determine the dates and the need for the travel. The case must, therefore, be remanded for consideration of whether it would be appropriate under section 8103 to reimburse appellant for travel to obtain repairs for the electric wheelchair that was authorized and leased at the expense of the Office.

The Board finds that appellant is not entitled to medical benefits for a new van.

The Office properly terminated appellant's compensation on the grounds that the effects of the employment-related injuries had ceased. His need for a van modified to carry a wheelchair is, therefore, based solely on the effects of his traumatic amputations of the legs, which occurred in private industry. As the need for the van does not arise from an injury covered by the Act, appellant is not entitled to medical benefits under the Act.

The Board finds, however, that the Office improperly found that appellant was entitled to $2,700.00 in attendant's allowance.

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[5] 5 U.S.C. § 8103(a).

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

The Act provides for an attendant's allowance under 5 U.S.C. § 8111(a), which states:

> "The Secretary of Labor may pay an employee who has been awarded compensation an additional sum of not more than $1,500.00 a month, as the Secretary considers necessary, when the Secretary finds that the service of an attendant is necessary constantly because the employee is totally blind, or has lost the use of both hands or both feet, or is paralyzed and is unable to walk, or because of other disability resulting from the injury making him so helpless as to require constant attendance."

Under this provision, the Office may pay an attendant's allowance upon finding that a claimant is so helpless that he is in need of constant care.[7] The claimant is not required to need around-the-clock care. He only has a continually recurring need for assistance in personal matters.[8] The attendant's allowance, however, is not intended to pay an attendant for performance of domestic and housekeeping chores such as cooking, cleaning or doing the laundry. It is intended to pay an attendant for assisting a claimant in his personal needs such as dressing, bathing or using the toilet.[9] The Office may pay up to $1,500.00 a month for full-time services, but it is not required to pay the maximum amount if not found necessary. It need only pay as much as it finds under the particular facts of a case necessary and reasonable for an attendant's services.[10]

In this case, the Office authorized an attendant's allowance of $5.00 an hour for two hours a day for nine months. The Office limited the time frame of the attendant's allowance to the period prior to the time appellant was authorized to lease an electric wheelchair. The Office hearing representative affirmed that authorization on the grounds that appellant had not submitted a daily record of individual tasks that were performed. However, appellant did submit a detailed list of personal services provided by his wife and daughters from April 1993 to December 1995. He noted that he needed assistance for incontinence in his wheelchair, for transfers to and from his wheelchair, bathing, dressing and shaving. Appellant did note that he needed assistance for two hours a day from May 1 to December 25, 1993 for pushing his wheelchair until he received an electric wheelchair. The Office only authorized the attendant's allowance for the latter assistance. The Office, however, did not consider whether appellant's employment-related injuries to his left hand and wrist caused or contributed to the need for assistance in the performance of the other personal tasks, such as bathing, dressing, shaving and transferring to and from his wheelchair. The Office, therefore, erred by not giving full consideration to whether appellant needed an attendant for the hours and the period for which he claimed an attendant's allowance.[11] On remand, the Office must, therefore, review appellant's

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[7] *Lloyd Herbert Grimm*, 29 ECAB 697 (1978).

[8] *Erin J. Belue,* 13 ECAB 88 (1961).

[9] *Grant S. Pfeiffer*, 42 ECAB 647 (1991).

[10] *George L. Littleton*, 33 ECAB 904 (1982).

[11] The regulations of the Office for the Act provide that, after January 4, 1999, direct payments to a claimant for an attendant's allowance will not be made. Instead, the need for an attendant for personal assistance will be paid for under the provisions of section 8103 of the Act.

request for an attendant's allowance to determine whether he is entitled to an additional allowance for personal services for the period from April 1993 to December 1995 due to the effects of his employment-related injuries to his left hand and wrist. However, the Office is not obligated to pay an attendant's allowance for personal services provided solely due to the effects of the traumatic amputations of appellant's legs.

The decision of the Office of Workers' Compensation Programs, dated August 11, 1999, is hereby affirmed insofar as it finds that the Office met its burden in terminating appellant's compensation and properly denied his request for medical benefits to purchase a new van. The decision is set aside and the case remanded for further development of whether appellant is entitled to medical benefits for travel to obtain repairs to his electric wheelchair and whether appellant is entitled to any additional attendant's allowance.

Dated, Washington, DC
March 11, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member