U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VERONICA FOY and DEPARTMENT OF VETERANS AFFAIRS, ST. ALBANS EXTENDED CARE CENTER, Brooklyn, NY

Docket No. 01-1948; Submitted on the Record;
Issued March 21, 2002

DECISION and ORDER

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

The issues are: (1) whether the Office of Workers' Compensation Programs properly denied appellant's request for reimbursement of kennel fees for the boarding of her two dogs; and (2) whether the Office properly denied appellant's request for a review of the written record as untimely.

On August 2, 2000 appellant, then a 50-year-old hospital administrator, filed a notice of traumatic injury claiming that on that same day she slipped at work and fractured her right foot. The Office accepted appellant's claim for "foot fracture, heel-bone" and paid her appropriate compensation benefits.

In an undated letter received by the Office on August 28, 2000, appellant requested that the Office reimburse her $1,116.00 for the boarding of two of her dogs. She attached a copy of the kennel bill and stated that she had to put her two dogs in the kennel as a direct result of her injury at work. Appellant explained that, due to the cast on her right foot and the walker that she used, and the fact that she lives alone and has no family, she could not care for the two large dogs and had to resort to putting them in a kennel.

Appellant submitted a second letter dated September 11, 2000 requesting that the Office reimburse her for an additional $490.00 since she still had to wear a cast and had to leave her dogs at the kennel for a longer period of time.

By decision dated September 28, 2000, the Office denied appellant's request for reimbursement of the kennel fees stating that the Federal Employees' Compensation Act only reimburses medical expenses pertaining to on-the-job injuries.

By letter dated October 10, 2000, appellant referenced the Office's September 28, 2000 decision denying her reimbursement for the kennel fees and stated that the expenses were directly related to her on-the-job injury. She explained that she would not have incurred these expenses had she not been injured at work. Appellant noted: "While I would like to have a

personal hearing that is not possible due to my injury. Therefore, I am submitting the following in support of my claim." Appellant restated her situation of not being able to take care of her two large dogs and again asked the Office to reimburse her for the kennel expenses.

By letter dated May 18, 2001, the Office advised appellant that it was in the process of scheduling her for an oral hearing.

Appellant responded by letter dated June 21, 2001, stating that she had requested a review of the written record and not an oral hearing. She stated that her October 10, 2000 letter was intended to be a request for a review of the written record and that her personal statement was additional written evidence in support of her request.

By decision dated July 16, 2001, the Office denied appellant's request for a review of the written record as untimely.

The Board finds that the Office properly denied appellant's request for reimbursement of kennel fees for the boarding of her two dogs.

Section 8103(a) of the Act provides 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 period of disability, or aid in lessening the amount of monthly compensation."
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> "The employee may initially select a physician to provide medical services, appliances and supplies in accordance with such regulations and instructions as the Secretary considers necessary, and may be furnished necessary and reasonable transportation and expenses incident to the securing of such services, appliances and supplies."[1]

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 provided under the Act.[2] The Office has the general objective of ensuring that an employee recovers from his 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.[3] Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions

[1] 5 U.S.C. § 8103(a).

[2] *Patsy R. Tatum*, 44 ECAB 490, 496 (1993).

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

taken which are contrary to both logic and probable deductions from established facts.[4] Abuse of discretion is not established by a showing merely that the evidence could be construed so as to produce a contrary factual conclusion.[5]

Pursuant to this delegation of statutory authority, the Office has promulgated regulations implementing this section of the Act. Section 10.310(a) of the pertinent federal regulation, states:

> "The employee is entitled to receive all medical services, appliances or supplies which a qualified physician prescribes or recommends and which [the Office] considers necessary to treat the work-related injury. The employee need not be disabled to receive such treatment. If there is any doubt as to whether a specific service, appliance or supply is necessary to treat the work-related injury, the employee should consult [the Office] prior to obtaining it." [6]

Further, at Chapter 3.400 of its federal procedure manual, the Office has specified various supplies and appliances and the conditions under which they may be authorized,[7] including nonmedical equipment such as waterbeds, saunas and other exercise-related equipment. Incidental expenses, such as child care, pet care and home security may be paid when incurred in the course of securing medical services or supplies. In each case, however, the Office will consider whether the need for such "incidental" expenditures are necessary and reasonable.[8] The procedure manual states:

> *"Timing of Expense*. Incidental expenses are allowable only when incurred in the course of securing medical services and supplies. Therefore, it is necessary to distinguish between expenses connected with securing treatment and those incurred following treatment. Expenses in the latter category, such as housekeeping costs while the claimant convalesces at home, are not payable because they are not required to obtain medical services."[9]

In this case, the Board finds that appellant's incidental expenses for pet care were not incurred in the course of securing medical services or supplies and are thus not reimbursable. As stated above, it is necessary to distinguish between expenses connected with securing treatment and those incurred following treatment. In this case, appellant had already been treated for her right foot fracture and was wearing a cast and walking with a walker, and was unable to take care

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[4] *Rosa Lee Jones*, 36 ECAB 679 (1985).

[5] *Manny Korn*, 1 ECAB 78 (1947).

[6] 20 C.F.R. § 10.310.

[7] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Services and Supplies*, Chapter 3.400.10(d) (April 1992).

[8] *Id*. at Chapter 3.400.10(d) (April 1992). The procedure manual states: "Incidental expenses shall be paid to the extent that they are necessary and reasonable."

[9] *Id*. at Chapter 3.400.10(d)(2).

of her dogs following treatment. She stated in her letters that after two days of trying to take care of herself (hopping on one foot with a walker), it became evident to her that she could not take care of her two large dogs. Appellant stated that she could not walk them, had trouble bending over to feed them, and was afraid that they might knock her over since she was very unsteady in getting around on one foot with her walker. She did not state anywhere in her letters that she had to put her dogs in the kennel because she was going to a medical appointment or to secure medical supplies. Appellant had already been treated by her physician and was given a cast and a walker before she placed her dogs in the kennel. The Board finds that appellant's kennel expenses are not payable because they were not required to obtain medical services.

The Board also finds that the Office properly denied appellant's request for a review of the written record as untimely.

Any claimant dissatisfied with a decision of the Office shall be afforded an opportunity for an oral hearing or, in lieu, thereof, a review of the written record. A request for either an oral hearing or a review of the written record must be submitted, in writing, within 30 days of the date of the decision for which a hearing is sought. A claimant is not entitled to a hearing or a review of the written record if the request is not made within 30 days of the date of the decision for which a hearing is sought.[10]

Appellant's request for a review of the written record was dated June 21, 2001 and received by the Office on August 28, 2001, which is more than 30 days after the Office's September 28, 2000 decision. She contends that her October 10, 2000 letter was a request for a review of the written record. Appellant did not state anywhere in the October 10, 2000 letter, however, that she was requesting a review of the written record. She only stated: "While I would like to have a personal hearing that is not possible due to my injury. Therefore, I am submitting the following in support of my claim." It is unclear from this statement whether appellant is requesting a hearing of any type. Appellant subsequently stated in her June 21, 2000 letter that she was requesting a review of the written record. As her request was dated June 21, 2001 and was more than 30 days after the Office's September 28, 2000 decision, appellant is not entitled to a review of the written record as a matter of right. Accordingly, the Board finds that the Office properly exercised its discretion in denying appellant's untimely request for a review of the written record.

[10] 20 C.F.R. § 10.616(a) (1999).

The July 16, 2001 and September 28, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
March 21, 2002

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member