

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JULIA A. STRICKLAND and DEPARTMENT OF THE ARMY,
Fort Stewart, GA

*Docket No. 03-888; Submitted on the Record;
Issued June 24, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing authorization for appellant, who resides in Savannah, Georgia, to be referred to a physician in Bethesda, Maryland.

On May 21, 2001 appellant, then a 49-year-old dental hygienist, filed a claim alleging that she developed thoracic outlet syndrome due to repetitive motion required by her employment duties. Appellant's claim was accepted for thoracic outlet syndrome and headaches and appropriate benefits were paid.

Accompanying appellant's claim were medical records from Dr. J. Michael Hemphill, a Board-certified neurologist, dated April 16 to September 11, 2001; medical reports from Dr. Oscar Soto, a Board-certified internist, dated August 13 to November 27, 2001; and reports from Dr. Gifford W. Lorenz, a Board-certified internist, dated May 31 to September 6, 2001.

In a report dated April 24, 2003, Dr. Hemphill, appellant's treating neurologist, diagnosed appellant with thoracic outlet syndrome, myofascial scalene, shoulder girdle pain and a history of chronic daily headaches. He advised that appellant did not have any significant change in her symptoms but continued to have pain in her neck and shoulder girdle and that she had not been helped by her last trigger point injections or by physical therapy. Dr. Hemphill recommended that appellant be evaluated by Dr. Robert Gerwin, a Board-certified neurologist, whose practice was located in Bethesda, Maryland, for management of her trigger points.

In a letter dated August 15, 2002, the Office referred appellant's case to the Office medical adviser for a determination as to whether appellant could be treated by any Board-certified neurologist in her commuting area or if her accepted condition warranted the requested consultation with Dr. Gerwin in Bethesda, Maryland.

Appellant submitted a report from Dr. Soto dated July 29, 2002 who diagnosed appellant with Buerger's disease; Raynaud's disease; right-sided thoracic outlet syndrome; and polycystic

kidney disease. He noted that appellant's thoracic outlet syndrome symptoms were unchanged. Dr. Soto noted that appellant had full range of motion throughout all her extremities except for her right shoulder which was limited secondary to pain from her right thoracic outlet syndrome.

In a report dated August 20, 2002, the Office medical adviser indicated that he did not see the need for consultation with Dr. Gerwin in Bethesda, Maryland. He noted that appellant's accepted condition of thoracic outlet syndrome and headaches often did not respond well to treatment. The medical adviser further noted that despite appellant's chronic pain she had full range of motion and normal neurological function. The Office medical adviser concluded that appellant was already being treated by physicians in Savannah and Atlanta and believed these physicians could continue to assist in the management of appellant's not uncommon problems.

By decision dated September 5, 2002, the Office denied authorization for appellant to be referred to Dr. Gerwin in Bethesda, Maryland. The Office indicated that appellant's treating physician, Dr. Hemphill, could refer appellant to another neurologist in her commuting area for treatment.

The Board finds that the Office did not abuse its discretion by refusing authorization for appellant to be referred for treatment by Dr. Gerwin, in Bethesda, Maryland.

Section 8103 of the Federal Employees' Compensation Act provides, in part:

“(a) 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 the period of disability, or aid in lessening the amount of the monthly compensation.”¹

The Office has the general objective of ensuring that an employee recovers from an injury to the fullest extent possible in the shortest amount of time. The Office therefore has broad administrative discretion in choosing the means to achieve this goal.² 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 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.⁴

¹ 5 U.S.C. § 8103.

² *Pearlie M. Brown*, 40 ECAB 1090 (1989).

³ *Daniel J. Perea*, 42 ECAB 214 (1990); see *Pearlie M. Brown*, *supra* note 2.

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

Section 10.315 of Title 20 of the Code of Federal Regulations provides, in relevant part:

“The employee is entitled to reimbursement of reasonable and necessary expenses, including transportation needed to obtain authorized medical services, appliances or supplies. To determine what is a reasonable distance to travel, [the Office] will consider the availability of services, the employee’s condition, and the means of transportation. Generally, 25 miles from the place of injury, the work site, or the employee’s home, is considered a reasonable distance to travel. The standard form designated for Federal employees to claim travel expenses should be used to seek reimbursement under this section.”⁵

In the present case, there is no evidence of record establishing that appellant’s travel to Bethesda, Maryland, from Savannah, Georgia, is reasonable or necessary in order to obtain medical treatment for her accepted condition. There is no indication that competent and appropriate medical care is not available within appellant’s commuting area.⁶

In a report of April 24, 2002, Dr. Hemphill diagnosed thoracic outlet syndrome, myofascial scalene, shoulder girdle pain and a history of chronic daily headaches. He noted that appellant did not have any significant change in her symptoms and continued to have pain in her neck and shoulder girdle. Dr. Hemphill noted that appellant was not helped by her last trigger point injections or by physical therapy. He recommended that appellant be evaluated by Dr. Gerwin in Maryland for management of her trigger points. Appellant also submitted a report from Dr. Soto dated July 29, 2002 which noted that appellant’s thoracic outlet syndrome symptoms were unchanged. He noted that appellant had full range of motion throughout all her extremities except for her right shoulder which was limited secondary to pain from her right thoracic outlet syndrome.

The Office medical adviser reviewed the reports of both Dr. Hemphill and Dr. Soto to determine whether appellant should be referred to Dr. Gerwin in Bethesda, Maryland, for treatment of her accepted condition and advised that he did not see the need for consultation with Dr. Gerwin. He noted that appellant’s accepted conditions of thoracic outlet syndrome and headaches often did not respond well to treatment and that despite appellant’s chronic pain she had full range of motion and normal neurological function, as noted in Dr. Hemphill and Dr. Soto’s reports. The Office medical adviser concluded that appellant was already being treated by physicians in Savannah and Atlanta and believed these physicians could continue to provide competent medical treatment and further assist in the management of appellant’s not uncommon health problems.

The Board finds that the Office did not abuse its discretion in this case. Appellant’s only stated reason for her request to change doctors was because her treating physician referred her to

⁵ 20 C.F.R. § 10.315.

⁶ See *Willie E. Lobster*, 32 ECAB 756 (1981) (the Board found that the Office did not abuse its discretion in terminating authorization for treatment by physicians in Minneapolis, Minnesota, after appellant relocated to St. Louis, Missouri, based on the Office’s finding that he could secure competent medical care within his commuting area).

Dr. Gerwin for management of her trigger points. The Board finds that the Office adequately explained its reasons for not approving the change in treatment to Dr. Gerwin in Bethesda, Maryland, stating that the Office medical adviser noted that the treating physicians in Savannah and Atlanta had provided adequate care for appellant and that her condition could be adequately managed by a local specialist.⁷ The treating physicians did not address the necessity for consultation or treatment with Dr. Gerwin or explain why appropriate treatment would not be available within appellant's commuting area. The Office did not abuse its discretion by declining authorization for a referral to Dr. Gerwin in Bethesda, Maryland.

The decision of the Office of Workers' Compensation Programs dated September 5, 2002 is hereby affirmed.

Dated, Washington, DC
June 24, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

⁷ See *Sylvia Roberson*, 31 ECAB 67 (1979).