U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ELAINE C. GOLDBERG and DEPARTMENT OF THE ARMY, TRIPLER ARMY MEDICAL CENTER, Honolulu, HI

Docket No. 01-935; Submitted on the Record;
Issued March 28, 2003

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
DAVID S. GERSON

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for payment of an attendant's allowance and the attendant's expenses for travel and meals.

On April 17, 1997 appellant, a 48-year-old diagnostic radiologic technologist, injured her left shoulder while moving diagnostic equipment. She filed a claim for benefits on April 25, 1997, which the Office accepted for left shoulder strain on February 2, 1998. The Office approved authorization for impingement syndrome surgery, which was performed by Dr. Richard P. Martin, a Board-certified orthopedic surgeon, on February 2, 1998.

In a report dated October 26, 1999, Dr. Gary Y. Okamura, a physician, released appellant to return to full work, including overhead work.

On approximately October 27, 1999 appellant telephoned the Office and requested the appropriate forms for requesting reimbursement for assistance expenses during the period in which she was recovering from her February 1998 surgery.[1]

By letters dated October 27, 1999, the Office requested additional information from appellant and Dr. Martin regarding her request for reimbursement for an attendant's allowance and the attendant's expenses for travel and meals, for the period following her February 1998 surgery. The Office enclosed a Form EN1090 reimbursement questionnaire with these letters.

In her completed response to the questionnaire, dated November 2, 1999, appellant stated that the attendant was her sister-in-law, whose assistance was required at her home from

---

[1] The only documentation pertaining to this request consists of an undated Office memorandum of a telephone call from appellant. The Office submitted letters to her and Dr. Martin, dated October 27, 1999, which requested factual and medical evidence in support of this request and enclosed the Form EN1090 reimbursement questionnaire.

February 2 through 18, 1998, for 24 hours a day, 7 days a week. Appellant claimed travel costs in the amount of $1,200.00, which she had already paid to her sister-in-law. She indicated that because Dr. Martin recommended use of a sling for her arm while she was out of her house, the attendant was needed to drive her to various appointments, pick up her prescriptions, assist her with home exercises/physical therapy and ice her shoulder. Appellant stated that her sister-in-law also took out her trash, carried in grocery bags from the supermarket and performed any other daily tasks and household chores, which she was physically unable to perform.

In addition, appellant alleged that Dr. Martin, her treating physician, made numerous errors and misstatements in completing her questionnaire and was recalcitrant and uncooperative when she asked him to promptly correct these errors.

In his November 8, 1999 completed response to the Office's attendant allowance questionnaire, Dr. Martin stated that appellant was able to travel, walk and to feed, dress and bathe herself without assistance. He also indicated that appellant could get out of bed, get outdoors and exercise without assistance. Dr. Martin also made a handwritten notation, which stated that "No attendant necessary now.… Surgery was in [February] 1998. At that time, no attendant was necessary either. Most patients who get this surgery did not require attendants."

By decision dated January 25, 2000, the Office denied appellant's request for reimbursement for the services of an attendant from February 2 through 18, 1998, finding that she did not require such services.

In a letter received by the Office on February 5, 2000, appellant requested an oral hearing, which was held on September 20, 2000. She testified at the hearing that it was questionable as to whether Dr. Martin actually performed the February 1998 surgery and reiterated that he made numerous mistakes in completing the attendant reimbursement questionnaire which she had been attempting to correct. Appellant testified that Dr. Martin's documentation of her postoperative care contained inaccurate dates and incomplete records and had been corrected, as noted in her February 7, 2000 letter. She also testified regarding her attendant and the duties she performed discussing her inability to perform any tasks due to her condition, the surgery and problems she encountered as a result of improper treatment obtained while at the hospital.

By letter dated September 21, 2000, appellant alleged that the Office had delayed in providing her with expense forms, so that she was unable to obtain the receipts regarding her attendant's expenses.

Appellant submitted a September 12, 2000 report from Dr. Craig R. Bottoni, a Board-certified general surgeon, a September 13, 2000 Form EN1090 from Dr. Robert S. Koerner, a specialist in internal medicine, and an August 4, 2000 report from Dr. Okamura. In his September 12, 2000 report, Dr. Bottoni stated:

> "[Appellant] had an arthroscopic subacromial decompression on her left dominant shoulder [on February 2, 1998]. [She] lives alone and required assistance during her postoperative period (approximately two weeks). During this time, she was

not able to drive and was required to return to [her] orthopedic clinic for post-surgical evaluations and physical therapy."

In the Form EN1090, Dr. Koerner advised that appellant was in need of assistance during her two weeks of total disability while recuperating from her February 1998 surgery, from February 2 through 18, 1998. He noted that she was on narcotics during this period, so it was not advisable for her to drive. Dr. Koerner stated that "[I]t was appropriate that [appellant] have an attendant for [her] [two-]week recuperation."

In his August 4, 2000 report, Dr. Okamura stated findings and opinions regarding the current condition of appellant's work-related shoulder injury, but did not render an opinion regarding whether she required the services of an attendant following her February 1998 surgery.

By decision dated November 20, 2000, an Office hearing representative affirmed the Office's January 25, 2000 decision.

The Board finds that the evidence establishes that the effects of appellant's April 17, 1997 injury did not render her so helpless as to require constant attendance within the meaning of section 8111(a)[2] of the Federal Employees' Compensation Act. This section provides:

> "(a) The Secretary of Labor may pay an employee who has been awarded compensation an additional sum of not more than $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 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 she is in need of constant care.[3]

Appellant is not required to need around-the-clock care. She only has to have a continually recurring need for assistance in personal matters. The attendant's allowance, however, is not intended to pay an attendant for performance of domestic and housekeeping chores such as cooking, cleaning, doing the laundry or providing transportation services. It is intended to pay an attendant for assisting a claimant in her personal needs such as dressing, bathing or using the toilet.[4] Additionally, a claimant bears the burden of proof in establishing by competent medical evidence that she requires attendant care within the meaning of the Act.[5] An attendant's allowance is not granted simply upon request of a disabled employee or upon request

[2] 5 U.S.C. § 8111(a).

[3] *Grant S. Pfeiffer*, 42 ECAB 647, 652 (1991); *Bonnie M. Schreiber*, 46 ECAB 989 (1995).

[4] *Id.*

[5] *See Cynthia S. Snipes (Edward S. Snipes)*, 33 ECAB 379, 383 (1981).

of her physicians. The need for attendant care must be established by rationalized medical opinion evidence.

In this case, appellant underwent left shoulder surgery in February 1998. Her sister-in-law traveled from Florida to help her with her day-to-day activities. Appellant requested that the Office reimburse her for her sister-in-law's expenses, which purportedly amounted to $1,200.00 and for which she reimbursed her sister-in-law. However, the evidence provided by her indicates that her sister-in-law did not fulfill the statutory requirements of an attendant subsequent to appellant's surgery. Appellant's sister-in-law performed domestic and housekeeping chores such as cooking, cleaning, doing the laundry or providing transportation services, which are generally excepted by Board precedent.[6] She submitted no evidence indicating that her sister-in-law was assisting her in maintaining her daily existence' *i.e.*, helping her walk, eat meals, bathe and dress.

In addition, appellant has failed to provide medical evidence sufficient to support the necessity of a personal attendant. In his completed questionnaire response dated February 8, 1999, appellant's surgeon and treating physician, Dr. Martin, advised that appellant was able to travel, walk and to feed, dress and bathe herself without assistance and she could get out of bed, get outdoors and exercise without assistance. He also stated explicitly that an attendant was not necessary following appellant's February 1998 surgery and indicated that most patients who undergo that type of surgery did not require the services of an attendant. Based on this evidence, the Office did not abuse its discretion in denying appellant reimbursement for a personal attendant for payment of an attendant's allowance and the attendant's expenses for travel and meals in its January 25, 2000 decision.

Following the January 25, 2000 decision, appellant submitted reports from Drs. Bottoni and Koerner, which indicated that she required assistance from an attendant during her postoperative, recuperative period from February 2 through 18, 1998 and that she was unable to drive to medical appointments. However, these summary reports did not contain a medical opinion sufficiently explaining or supporting the conclusion that appellant was unable to care for herself.

Accordingly, the medical evidence establishes that appellant's employment-related left shoulder condition has not resulted in any serious orthopedic disability, making her so helpless as to require the services of an attendant. Appellant produced no evidence that her disability prevented her from performing essential life functions such as bathing, eating or dressing. While she was being cared for by her sister-in-law, she did not allege that she required her sister-in-law's help in caring for herself. Further, there is no medical documentation that appellant needed such help because of her disability. Her letters and hearing testimony did not adequately address whether her work-related disabilities created the necessity for a personal attendant. Although appellant's sister-in-law might have performed certain domestic chores including preparing meals, providing transportation and picking up groceries, such services are not compensable as services of an attendant under the Act.[7] Accordingly, the Office affirms the

[6] *See Grant S. Pfeiffer, supra* note 3.

[7] *James B. Throneberry*, 36 ECAB 548 (1985).

November 20, 2000 decision of the Office hearing representative affirming the January 25, 2000 Office decision.

The decision of the Office of Workers' Compensation Programs dated November 20, 2000 is hereby affirmed.

Dated, Washington, DC
March 28, 2003

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member