United States Department of Labor
Employees' Compensation Appeals Board

M.B., Appellant	)	
and	)	**Docket No. 06-701**
	)	**Issued: December 4, 2006**
DEPARTMENT OF THE AIR FORCE, KELLY AIR FORCE BASE, TX, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On January 30, 2006 appellant filed a timely appeal from a November 16, 2005 merit decision of the Office of Workers' Compensation Programs denying authorization for the purchase of a van and a January 6, 2006 nonmerit decision denying appellant's request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUES

The issues are: (1) whether the Office abused its discretion in denying appellant's request for the purchase of a van, which was allegedly necessitated by the effects of her January 30, 1987 employment-related injury; and (2) whether the Office properly refused to reopen appellant's case for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On February 3, 1987 appellant, then a 43-year-old procurement clerk, filed a claim for compensation alleging that on January 30, 1987 she injured her left ankle while in the performance of duty. The Office accepted appellant's claim and paid appropriate benefits. This is the third appeal before the Board. By decision dated June 22, 1995, the Board affirmed the denial of appellant's request for reconsideration of a schedule award as untimely and failing to show clear evidence of error.[1] In the second appeal, by decision dated December 9, 1997, the Board affirmed the Office's denial of appellant's request for attendant services.[2]

On September 19, 2005 appellant requested authorization for the purchase of a van, so that she would have transportation necessary to keep medical appointments and to go to the pharmacy, grocery store, bank and post office. She alleged that a van modified for her wheelchair and electric scooter, which were provided by the Office,[3] would afford her the opportunity to live more independently and with a lot less stress about getting to necessary places.

The record contains a proposal for a 2005 Grand Caravan SXT. The total cost for the van, including $2,000.00 for a chair lift, was $26,295.00. A proposal for a 2006 Chevrolet Uplander (including $2,500.00 for a mobility platform unit) was $27,179.98.

Appellant submitted a September 6, 2005 report from Dr. Gladys I. Rodriguez, a treating physician, in support of her purchase of a van. Dr. Rodriguez opined that appellant "need[ed] to have transportation available for her medical appointments and to receive her erythropoietin injections" every four weeks. She stated that appellant had a history of anemia secondary to erythropoietin due to renal insufficiency, as well as diabetes mellitus and chronic osteomyelitis. Dr. Rodriguez indicated that appellant's history of diabetic retinopathy "contribute[d] to her ability to obtain transportation." She noted that she had treated appellant for hematologic complications of her disease and, therefore, "no further information could be provided regarding other medical necessity or ability to drive or other details regarding her physical condition."

An October 6, 2005 statement of accepted facts reflected that the Office accepted appellant's claim for left ankle fracture and authorized surgical reduction and internal fixation of the fracture, with subsequent surgical removal of screws. The claim was expanded to include chronic aggravation of the left lower extremity osteoarthritis; multiple left lower extremity amputations, including removal of fifth, second and first toes; left ankle osteoarthritis; anemia; and esophageal and stomach ulcers.

An October 6, 2005 letter from appellant's rehabilitation counselor noted that the Office had provided her with equipment, including a hover ground power scooter, to be used for long

[1] Docket No. 94-398 (issued June 22, 1995).

[2] Docket No. 97-486 (issued December 9, 1997).

[3] On November 26, 2003 the Office authorized the purchase of a power scooter and on August 24, 2004 it authorized the purchase of a power wheelchair.

distance travel. Appellant also received a power wheelchair that "was selected specifically to be able to get onto a city bus."

The Office referred the case file, together with the statement of accepted facts, to the Office medical adviser for review. In a report dated October 31, 2005, the medical adviser opined that the purchase of a van for the purpose of providing transportation to medical appointments was not reasonable or necessary for the treatment of appellant's condition. Noting that appellant's accepted conditions included unspecified abscesses of the left toe, left wrist sprain, other aplastic anemias, traumatic arthropathy of the left ankle, left shoulder strain and left knee strain, he stated that there was no evidence of appellant's inability to drive an automobile. He further stated that providing a van to facilitate transportation to medical services was not part of medical treatment.

In a November 16, 2005 decision, the Office denied authorization for the purchase of a van on the grounds that the medical evidence failed to establish that the van was medically reasonable and necessary in the treatment of her work-related condition.

On November 19, 2005 appellant filed a request for reconsideration. She alleged that the Office medical adviser had failed to consider all of her accepted conditions. Appellant stated that she had been receiving compensation for 18 years and that her condition was unbearable. She noted extreme difficulty getting to and from necessary medical appointments, in that she did not own an automobile and lived outside the area for public transportation. She alleged that a van that could accommodate her wheelchair and scooter would be the least expensive mode of transportation, given the fact that the round trip cost of a taxi ride to her physician's office was $115.00.

On January 6, 2006 the Office denied appellant's request for reconsideration, finding that she had failed to raise a substantial legal question or to present new and relevant evidence warranting a review of the Office's decision.

LEGAL PRECEDENT -- ISSUE 1

Section 8103(a) of the Federal Employees' Compensation Act provides for furnishing an injured employee the services, appliances and supplies prescribed or recommended by a qualified physician, which the Office, under authority delegated by 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. The Office has great discretion in determining whether a particular type of treatment is likely to cure or give relief.[4]

The Office procedure manual discusses requests for vehicle modification and/or purchase of new vehicles.[5] To be eligible for vehicle modification, a claimant must be severely restricted in terms of mobility and independence, in normal living functions, on a permanent basis, due to

[4] *Thomas Lee Cox*, 54 ECAB 509 (2003); *Stella M. Bohlig*, 53 ECAB 341 (2002).

[5] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Housing and Vehicle Modifications*, Chapter 2.1800 (September 1994).

the work-related injury. Examples are impairments that require the use of a prosthesis, wheelchair, leg braces, crutches, canes and self-help devices.[6] Office procedures provide that modifications must be established as necessary and desirable for increased mobility or independence by a recommendation of a physiatrist or other medical specialist appropriate to the type of injury sustained.[7] Modifications of a claimant's present vehicle must be explored before considering a new purchase.[8] If it is established that a claimant cannot drive his or her present car due to the inability to place a wheelchair in it without assistance or it is not practical to modify the present vehicle, the Office will pay for a suitable car or van (if necessary).[9]

ANALYSIS -- ISSUE 1

Appellant contended that the purchase of a van was medically necessary in order that she could attend medical appointments and engage in normal living functions. The record reflects that appellant is confined to a wheelchair and does not own a vehicle. Accordingly, she would meet the eligibility requirements for vehicle modification under the Office's procedures.[10] The issue becomes whether the purchase of a van is necessary under the circumstances of this case such that the Office abused its discretion by denying the request.

Dr. Rodriguez, an attending physician, supported appellant's request for a van. She stated that appellant "need[ed] to have transportation available for her medical appointments." Dr. Rodriguez stated that appellant had a history of anemia secondary to erythropoietin due to renal insufficiency, as well as diabetes mellitus and chronic osteomyelitis. She indicated that appellant's history of diabetic retinopathy "contribute[d] to her ability to obtain transportation." Section 8103 of the Act entitles a claimant to services, appliances and supplies necessary for treatment of work-related medical conditions. Dr. Rodriguez does not explain why appellant's employment-related accepted conditions required medical treatment which could only be accommodated by purchase of a van. Appellant's renal insufficiency, diabetes mellitus and chronic osteomyelitis are not the accepted conditions in this case.

The Office medical adviser opined that the purchase of a van for the purpose of providing transportation to medical appointments was not reasonable or necessary for the treatment of appellant's accepted conditions. Noting that appellant's accepted conditions included unspecified abscesses of the left toe, left wrist sprain, other aplastic anemias, traumatic arthropathy of the left ankle, left shoulder strain and left knee strain, there was no evidence of appellant's inability to drive an automobile. He further stated that providing a van to facilitate transportation to medical services was not part of medical treatment.

[6] *See id*. at 1800.3.

[7] *See id*. at 1800.5a(1).

[8] *See id*. at 1800.5a(2).

[9] *See id*. at 1800.5a(4).

[10] *See id*. at 1800.3.

An 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.[11] The Office has broad discretion pursuant to 8103 of the Act to determine whether purchase of a van is likely to cure or give relief for the accepted employment-related injury. The evidence does not establish that the Office abused its discretion in this case.[12]

LEGAL PRECEDENT -- ISSUE 2

Under 20 C.F.R. § 10.606(b)(2), a claimant may obtain a review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law, by advancing a relevant legal argument not previously considered by the Office, or by submitting relevant and pertinent new evidence not previously considered by the Office.

ANALYSIS -- ISSUE 2

In support of her request for reconsideration, appellant alleged that she disagreed with the Office medical adviser, that she was in a great deal of pain, and that purchase of a van would be the less expensive for the Office then providing taxi transportation. Appellant did not submit any further medical evidence. The issue is whether the Office abused its discretion by denying appellant purchase of a van. The issue is inherently medical in nature. Appellant's allegations do not attempt to show proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts. The Office therefore properly denied merit review.

CONCLUSION

The Board finds that the Office did not abuse its discretion by denying appellant's request for purchase of a van. The Office also did not abuse its discretion by denying merit review on January 6, 2006.

[11] *Gerald A. Carr*, 55 ECAB 225 (2004).

[12] *Thomas Lee Cox*, 54 ECAB 509 (2003); *Stella M. Bohlig*, 53 ECAB 341 (2002).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated January 6, 2006 and November 16, 2005 are hereby affirmed.

Issued: December 4, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board