United States Department of Labor
Employees' Compensation Appeals Board

THOR CHRISTENSEN, Appellant	)	
and	)	**Docket No. 05-1296**
	)	**Issued: March 14, 2006**
DEPARTMENT OF THE AIR FORCE, GRISSOM AIR FORCE BASE, Kokomo, IN, Employer	)	

Appearances:
Thor Christensen, 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 May 31, 2005 appellant filed a timely appeal of a September 10, 2004 merit decision of the Office of Workers' Compensation Programs that denied reimbursement of the cost of an automatic transmission for a newly purchased vehicle and a March 10, 2005 nonmerit decision. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case and to review the nonmerit decision.

ISSUES

The issues are: (1) whether the Office properly denied reimbursement of the cost of an automatic transmission for a newly purchased vehicle; and (2) whether the Office properly refused to reopen appellant's case for further review of the merits of his claim.

FACTUAL HISTORY

On January 15, 1982 appellant, then a 32-year-old equipment operator, filed a claim for compensation for a traumatic injury to his back sustained on January 14, 1982 by lifting and

carrying plow shoes. On August 16, 1982 he filed a claim for an injury to his back and head sustained that date when he fell backwards off a chair. The Office accepted that he sustained a permanent aggravation of his preexisting discogenic disease, chronic arachnoiditis with scarring in the lumbar spine area, lumbosacral instability and spinal stenosis. The Office paid compensation for temporary total disability beginning October 1, 1982. Pursuant to a decision dated March 1, 1993, compensation was paid for loss of wage-earning capacity beginning that date.

By letter dated January 9, 1997, appellant requested reimbursement of the additional cost he incurred in purchasing a motor vehicle with an automatic transmission because he felt he could no longer drive a standard shift vehicle due to increased back and leg pain. In a March 14, 1997 letter, his attending Board-certified physiatrist, Dr. Nancy A. Bagley, stated that, due to the persistent mechanical derangement in his back and his pain complaints, appellant needed to avoid manual transmissions, as they increased the stress through his lower extremities. She stated that an automatic transmission for his car was medically necessary to reduce the pain from shifting and working his left and right leg. Based on this report and a sales receipt showing that the 1993 Jeep Grand Cherokee he purchased on May 28, 1996 had a book value of $450.00 more with an automatic transmission, the Office reimbursed appellant $450.00.

The Office again reimbursed appellant $450.00 on his purchase of a 1996 Jeep Grand Cherokee on October 29, 1999. This was based on a sales receipt stating that the book value of a 1996 Jeep Grand Cherokee with an automatic transmission was $450.00 greater than one with a standard transmission, and on a January 13, 2000 report from Dr. Bagley that repeated the statements in her March 14, 1997 report.

By letter dated January 3, 2003, appellant advised the Office that he had replaced his vehicle with one of the same type, and that the difference for the required automatic transmission was $575.00, for which he requested reimbursement.[1] On May 7, 2004 he submitted vehicle specifications for a 2003 Jeep Grand Cherokee, which indicated that an automatic transmission was a standard feature, and a December 30, 2002 note from the service manager at a Jeep dealership that stated "[a]utomatic [t]ransmission add $575.00 '03 Grand Cherokee."

By decision dated September 10, 2004, the Office denied reimbursement of the cost of an automatic transmission for appellant's 2003 Jeep Grand Cherokee on the basis that this was a standard feature and an additional cost of $575.00 was not incurred.

Appellant requested reconsideration in a December 6, 2004 letter, stating that the Office had previously reimbursed under the "exact same scenario," and that the amount requested was the cost as stated by the dealer. By decision dated March 10, 2005, the Office found his request insufficient to warrant review of its prior decision.

[1] He did not submit a new medical report on the necessity of an automatic transmission, but referred to Dr. Bagley's January 13, 2000 report.

LEGAL PRECEDENT -- ISSUE 1

Section 8103(a) of the Federal Employees' Compensation Act states 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 the period of disability, or aid in lessening the amount of the monthly compensation."[2] In the case of *William S. Arthur*, the Board denied a request for reimbursement of $93.00 a month for use of a Jacuzzi, swimming pool, steam room and sauna at the employee's apartment complex, on the basis that he had "not incurred any specific, identifiable medical expense," as there was "no separate cost or charge for using these facilities beyond the rent payment."[3]

ANALYSIS -- ISSUE 1

The situation in the present case is analogous to the one addressed by the Board in *William S. Arthur*.[4] Here, as there, appellant sustained no "specific, identifiable medical expense," as there was "no separate cost" of the item for which he claimed reimbursement. This is established by the vehicle specifications showing that an automatic transmission was standard equipment on the vehicle appellant purchased. He incurred no additional cost by buying the vehicle equipped with the automatic transmission recommended by his physician. For this reason, he is not entitled to reimbursement.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of the Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

> "The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --
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> (1) end, decrease, or increase the compensation awarded; or
>
> (2) award compensation previously refused or discontinued."

Under 20 C.F.R. § 10.606(b)(2), a claimant may obtain 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. Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of

[2] 5 U.S.C. § 8103(a).

[3] *William S. Arthur*, 35 ECAB 914, 922 (1984).

[4] *Id*.

these three requirements the Office will deny the application for review without reviewing the merits of the claim.

ANALYSIS -- ISSUE 2

Appellant did not submit any pertinent new or relevant evidence with his December 6, 2004 request for reconsideration. As the Board has affirmed the Office's finding that no medical expense was incurred, appellant also did not show that the Office erroneously applied or interpreted a specific point of law. Any legal argument advanced in the December 6, 2004 request for reconsideration was previously considered by the Office and thus is not a basis to reopen the case for merit review. Appellant has not met any of the three requirements of 20 C.F.R. § 10.606(b)(2).

CONCLUSION

The Office properly denied reimbursement of the cost of an automatic transmission for a newly purchased vehicle and properly refused to reopen appellant's case for further review of the merits of his claim.

ORDER

IT IS HEREBY ORDERED THAT the March 10, 2005 and September 10, 2004 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 14, 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