United States Department of Labor
Employees' Compensation Appeals Board

J.W., Appellant	)	
and	)	**Docket No. 07-33**
	)	**Issued: August 14, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Paducah, KY, Employer	)	

Appearances:
Jeffrey P. Zeelander, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 2, 2006 appellant timely appealed the Office of Workers' Compensation Programs' September 14, 2006 merit decision in which an Office hearing representative affirmed the denial of her claim.[1] Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether the Office abused its discretion by denying appellant's request for reimbursement of travel expenses on December 8, 2005; and (2) whether appellant has met her burden of proof to establish entitlement to eight hours of wage-loss compensation on December 7, 2005.

[1] The record additionally contains Office decisions dated July 24, 2006 regarding a schedule award and a July 14, 2006 loss in wage-earning capacity decision. Since appellant has not appealed those decisions, the Board will not address those decisions on appeal.

FACTUAL HISTORY

On September 9, 2004 appellant, then a 44-year-old letter carrier, filed a traumatic injury claim for an August 3, 2004 incident whereby she sustained an injury to her left foot when she rolled her left foot on the curb while stepping into the street. The Office accepted the claim for left plantar fasciitis and paid her appropriate compensation benefits. On February 23, 2005 the Office assigned appellant's case to a rehabilitation field nurse. On April 6, 2005 appellant's local attending physician in Paducah, Kentucky, Dr. Burton N. Stodghill, an orthopedic surgeon, requested a second opinion from a specialist regarding appellant's condition. On April 22, 2005 the Office's field nurse authorized appellant's appointment with Dr. Mark E. Petrik, a Board-certified orthopedic surgeon, to whom Dr. Stodghill referred appellant. Dr. Petrik was located in Louisville, Kentucky, approximately 220 miles away from appellant's residence. On May 24, 2005 he recommended that appellant undergo a plantar fascia release, which the Office authorized on June 10, 2005. On June 17, 2005 appellant underwent a left plantar fasciotomy, which Dr. Petrik performed. She returned to modified duties in July 2005.[2] Appellant continued to see Dr. Petrik for follow-up medical care, for which the Office paid wage-loss benefits.[3]

On December 12, 2005 appellant filed a claim for compensation Form CA-7 for the period December 7 and 8, 2005, for a total of 16 hours.[4] A chart note and a duty status medical report dated December 8, 2005 were received from Dr. Petrik.

In a letter dated December 16, 2005, the Office notified appellant of the factual and medical evidence necessary to support her claim for wage-loss compensation. On December 27, 2005 she contacted the Office and explained that both her local attending physician and the field nurse had referred her to Dr. Petrik who performed the authorized left foot surgery. Appellant indicated that she saw Dr. Petrik for follow-up medical care and that his office was approximately 220 miles away, an approximate four-hour drive one way. She stated that her scheduled medical appointment was December 8, 2005 and explained, because of the travel time involved it was necessary for her to take off the day before an appointment. The Office subsequently paid appellant eight hours of compensation for December 8, 2005.

In a January 25, 2006 letter, the Office advised appellant that her distance to travel from her commuting area in Paducah, Kentucky, to her surgeon's office in Louisville, Kentucky, over 200 miles away, did not fall within the intent of the regulation at 20 C.F.R. § 10.315. The Office explained that, generally 25 miles from the place of injury, the work site or the employee's home was considered to be a reasonable distance to travel to a physician. In addition, appellant was advised that wage loss on dates taken off work preceding scheduled appointment dates was not compensable in the absence of medical evidence certifying disability and/or the attendance of an

[2] On July 14, 2006 the Office issued a loss of wage-earning capacity decision, which found that appellant had no loss of wages in her modified city letter carrier position which was effective August 1, 2005. Appellant has not appealed this decision. *See supra* note 1.

[3] The record reflects that the Office previously had paid for one and two days of wage-loss compensation.

[4] Appellant also claimed a schedule award. On July 24, 2006 the Office awarded her a schedule award for an 18 percent impairment of the left lower extremity. As previously noted, appellant has not appealed this decision. *See supra* note 1.

injury-related medical appointment on each date claimed. She was allowed 30 days to submit evidence to support her claim for compensation for December 7, 2005 and to provide additional evidence regarding her traveling over 200 miles for medical treatment.

In a February 25, 2006 letter, appellant indicated that she had a left ruptured plantar fascia, which was why she could not be seen locally. She argued that her travel of more than 200 miles each way should be authorized as the Office had authorized Dr. Petrik's treatment and the field nurse had agreed with her local physician's referral to Dr. Petrik.[5]

By decision dated March 31, 2006, the Office denied appellant's claim for wage loss on December 7, 2005 and her request for travel reimbursement on December 8, 2005.[6] The Office denied travel reimbursement for December 8, 2005 on the grounds that evidence sufficient to establish the lack of adequate specialist closer to appellant's commuting area was not provided. It denied wage loss on December 7, 2005, the day preceding the scheduled appointment on December 8, 2005, due to lack of medical evidence certifying disability and/or attendance of an appointment for treatment for the work-related condition.

On April 14, 2006 appellant, through her attorney, requested an oral hearing before an Office hearing representative, which she subsequently changed to a request for a review of the written record. In a March 28, 2006 letter, she stated that Dr. Stodghill had advised that there was no local physician who could follow up on Dr. Petrik's surgery.

In a March 10, 2006 report, Dr. Stodghill stated that appellant was referred to Dr. Petrik, a foot and ankle surgeon, when she continued to have significant pain and a tear of her plantar fascia was noted on a magnetic resonance imaging (MRI) scan. He indicated that Dr. Petrik had performed surgery on appellant and was in charge of her continued care. No other medical reports were of record.

By decision dated September 14, 2006, the Office hearing representative affirmed the Office's March 31, 2006 decision.

LEGAL PRECEDENT -- ISSUE 1

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."[7]

[5] The Office responded to appellant's concerns in a letter dated March 16, 2006.

[6] As previously noted, the Office paid eight hours wage-loss compensation for December 8, 2005.

[7] 5 U.S.C. § 8103.

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 [f]ederal employees to claim travel expenses should be used to seek reimbursement under this section."[8]

As the only limitation on the Office's authority is reasonableness, 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 known facts.[9] The Board has long held that, in interpreting relevant sections of the Act, the Office has broad discretion in approving services provided under the Act.[10]

ANALYSIS -- ISSUE 1

This is a situation in which the transportation/travel expenses incurred on December 8, 2005 are being made in connection with medical treatment for travel to or from a hospital or physician's office.[11] Appellant secured medical treatment from Dr. Petrik on December 8, 2005, for which the Office paid eight hours of wage loss.[12] However, the Office denied her claim for a reimbursement of travel expenses as it found that the distance of over 200 miles from her residence to her physician's office was unreasonable.

While the Office authorized medical treatment from Dr. Petrik and previously paid her expenses incurred in the course of securing medical services or supplies from Dr. Petrik, the issues of authorization of medical treatment and reimbursement of travel expense for medical treatment are separate and distinct. The Office may authorize medical treatment but determine that the travel expense incurred for such authorized treatment was unnecessary or unreasonable.[13]

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[8] 20 C.F.R. § 10.315.

[9] *See Lecil E. Stevens*, 49 ECAB 673 (1998).

[10] *See Wanda L. Campbell*, 44 ECAB 633 (1993).

[11] 5 U.S.C. § 8103. *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Services and Supplies*, Chapter 3.400.10 (April 1992).

[12] It is noted that, while the Office's procedural manual provides that no more than four hours of compensation should be allowed for routine medical appointments, longer periods of time may be allowed when required by the nature of the medical procedure and/or the need to travel a substantial distance to obtain the medical care. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Administrative Matters*, Chapter 3.900.8 (June 1999).

[13] *See Dr. Mira R. Adams*, 48 ECAB 504 (1997).

As previously noted, Dr. Petrik's office is over 200 miles away, an approximate four-hour drive one way. The record supports that Dr. Petrik was appellant's surgeon and he was needed for follow-up appointments postsurgery. As well, while Dr. Stodghill referred appellant to Dr. Petrik, which the field nurse had authorized, there is no evidence that Dr. Stodghill had ever advised that appellant could only be seen by Dr. Petrik. The Office would only be required to reimburse appellant for travel between her home and medical appointments at a "reasonable distance" as provided in section 10.315, delineated above. The regulation declares that this "generally" is considered to be 25 miles from the place of injury, the work site or the employee's home.[14] The fact that the Office, in its January 25, 2006 letter, requested appellant to submit evidence supporting the need to seek medical treatment so far away from her residence and that she may not have provided a satisfactory response does not relieve the Office from making a finding with explanation as to why the distance was not reasonable.

The Office's March 31, 2006 decision provides no explanation other than to find that appellant did not submit "evidence sufficient to establish the lack of adequate specialists closer" to her commuting area citing the general 25 mile guideline. The Office's September 14, 2006 decision provides the same reasoning. The regulation, by using both the terms "reasonable distance" and "generally" provide the Office with broad discretion in considering such travel reimbursement claims. That same regulation points out that, in considering whether a distance is reasonable, the Office is to consider factors such as the availability of services and the employee's condition. While the Board is not implying that, benefits should be granted in this travel reimbursement application, the Office has not provided an explanation of the delineated factors in its decisions which the claimant can understand and which the Board can review. The Board cannot substitute its exercise of discretion for that of the Office.

The Board finds that the case is not in posture for decision. The Office did not adequately explain why the distance of travel was not reasonable other than finding that Dr. Petrik's office was more than 25 miles from the place of injury.

LEGAL PRECEDENT -- ISSUE 2

Under the Act, the term disability is defined as the incapacity because of an employment injury to earn the wages the employee was receiving at the time of injury.[15] Whether a particular injury causes an employee to be disabled for work and the duration of that disability are medical issues which must be proved by the weight of substantial and reliable medical evidence.[16]

Appellant has the burden of proving that she is disabled for the period claimed as a result of the employment injury. She has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her claimed disability for eight hours of leave without pay (LWOP) on December 7, 2005 and her accepted left plantar

[14] 20 C.F.R. § 10.315.

[15] *See Robert A. Flint*, 57 ECAB ___ (Docket No. 05-1106, issued February 7, 2006); *Prince E. Wallace*, 52 ECAB 357 (2001).

[16] *See Carol A. Lyles*, 57 ECAB ___ (Docket No. 05-1492, issued December 13, 2005); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

fasciitis.[17] The Board will not require the Office to pay compensation for disability in the absence of medical evidence directly addressing the particular period of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.[18]

Case law makes clear that an employee is entitled to disability compensation for any loss of wages incurred during the time he or she receives authorized treatment and for loss of wages for time spent incidental to such treatment. The rationale for this entitlement is that, during such required examinations and treatment and during the time incidental to undergoing such treatment, an employee did not receive his or her regular pay.[19]

ANALYSIS -- ISSUE 2

Appellant submitted a claim for reimbursement of eight hours LWOP on December 7, 2005. She advised that Dr. Petrik's office was more than 200 miles away from her residence and, because of the travel time involved, it was necessary for her to take the day before a scheduled appointment off.[20]

The Board notes that the record does not contain evidence that appellant was seen by Dr. Petrik on December 7, 2005. There also is no medical evidence indicating that appellant was precluded from making the roundtrip on the actual date of the examination or that she was otherwise disabled due to her employment injury on December 7, 2005. The Office explained to her, in its January 25, 2006 letter, that it could not authorize compensation for dates in which there was no medical evidence certifying disability or attendance to an appointment for treatment of a work-related condition.

Under the factual circumstances of this claim, the basis for payment of travel expenses for appellant's commute to a physician's office on the day prior to a scheduled medical appointment is not readily apparent under the Act. As previously noted, there is no evidence to substantiate that appellant was undergoing medical treatment on December 7, 2005. Rather, she indicated that she took time off the day before her scheduled medical appointment because of the travel time involved. However, there is no medical evidence supporting that additional travel time was needed due to the effects of her employment injury or that a longer period of time should be allowed due to the nature of the medical examination or that the trip in question was such a substantial distance that it could not be traveled in one day. Thus, it cannot be said that appellant's travel expenses were reasonably incidental to her medical treatment the next day. The Office, therefore, properly denied wage-loss compensation on December 7, 2005.

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[17] *Sandra D. Pruitt*, 57 ECAB ___ (Docket No. 05-739, issued October 12, 2005); *Alfredo Rodriguez*, 47 ECAB 437 (1996).

[18] *See Fereidoon Kharabi, supra* note 16.

[19] *Henry Hunt Searles, III*, 46 ECAB 192 (1994).

[20] As noted, the Office paid appropriate compensation for appellant's medical visit to Dr. Petrik on December 8, 2005.

CONCLUSION

The Board finds that the case is not in posture for decision on whether the Office properly denied appellant's request for reimbursement of travel expenses for the December 8, 2006 medical treatment. It further finds that appellant has not met her burden of proof to establish entitlement to wage loss on December 7, 2005.

ORDER

IT IS HEREBY ORDERED THAT the September 14, 2006 decision of the Office of Workers' Compensation Programs' is affirmed in part and set aside in part. The case is remanded to the Office for further action consistent with this decision.

Issued: August 14, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board