

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**M.K., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Chamblee, GA, Employer**

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**Docket No. 09-546  
Issued: September 11, 2009**

*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  
COLLEEN DUFFY KIKO, Judge

**JURISDICTION**

On December 19, 2008 appellant filed a timely appeal from the October 2, 2008 merit decision of the Office of Workers' Compensation Programs, which denied reimbursement for a lodging expense. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case.

**ISSUE**

The issue is whether the Office abused its discretion in denying reimbursement for a \$166.00 lodging expense incidental to securing medical care in Oklahoma.

**FACTUAL HISTORY**

On July 30, 2005 appellant, then a 47-year-old letter carrier, sustained an injury in the performance of duty: "Due to wet surface on metal step-up in the LLV I slip and twisted my right hip and then attempted to grab something, pulled my right shoulder." The Office accepted his claim for sprain/strain shoulder/arm, right and sprain/strain hip/thigh, right. It later accepted

degeneration of lumbosacral intervertebral disc, lumbar postlaminectomy syndrome and congenital spondylolisthesis.

On June 5, 2008 appellant, a resident of Atlanta, Georgia, saw Dr. John W. Ellis, a Board-certified family physician, at his clinic in Oklahoma City, Oklahoma. Dr. Ellis related appellant's history and current complaints. He reviewed medical records and noted the following: "ACS Web Bill Processing Portal OWCP #062146628 authorizing today's examination and reports." Dr. Ellis described his findings, offered his diagnoses and opinion on causal relationship and provided his calculation of appellant's permanent physical impairment. He advised appellant that the Office authorized this examination; therefore, he could request travel reimbursement. Dr. Ellis instructed appellant to attach his receipts and an enclosed Ellis Clinic ACS Web Bill Processing Portal authorization to a Form OWCP-957 Medical Travel Refund Request and send it to the Office.

The record shows that on June 5, 2008 the Office received a medical authorization request for "office/outpatient visit, new" and for "special reports or forms."

During a telephone conversation on July 18, 2008, the Office informed appellant that it did not authorize him "to go all the way to Oklahoma" to see a doctor, so he would not receive travel time to go there. Appellant called on July 28, 2008 to advise that he was approved to fly to Oklahoma for a medical appointment and that he was paid for his air and taxicab fare but not for his hotel. The Office again informed him "he was not authorized to travel to Oklahoma by this office." It added that he should not have been paid what he did get paid. Appellant called again on July 29, 2008 about his hotel lodging.

In a decision dated October 2, 2008, the Office denied reimbursement for a \$166.00 lodging expense incurred during appellant's travel to Oklahoma to visit a physician. It noted that appellant had no prior authorization from the claims examiner, that the distance traveled was considerable, that he had a treating physician in Atlanta as well as other competent medical professionals with whom he could treat, that the Office did not authorize the appointment and that the examination was conducted outside the reasonable 50-mile radius from his work, home or place of injury. Considering the availability of services, appellant's condition and the means of transportation, the Office found that the expenses related to his travel to Oklahoma were not authorized and therefore not payable.

### **LEGAL PRECEDENT**

Medical expenses, along with transportation and other expenses incidental to securing medical care, are covered by section 8103 of the Federal Employees' Compensation Act. This section provides that 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 of the period of any disability, or aid in lessening the amount of any monthly compensation. These services, appliances and supplies shall be furnished by or on the order of the United States medical officers and hospital, or at the employee's option, by or on the order of physicians and hospitals designated or approved by the Secretary. The employee may be

furnished necessary and reasonable transportation and expenses incident to the securing of such services, appliances and supplies.<sup>1</sup>

The Office must exercise discretion in determining whether the particular service, appliance or supply is likely to affect the purposes specified in the Act.<sup>2</sup> The only limitation on the Office's authority is that of reasonableness.<sup>3</sup>

Authorization by the Office for medical examination or treatment constitutes a contractual agreement to pay for the services.<sup>4</sup>

### ANALYSIS

Appellant argues on appeal that Dr. Ellis' nurse set up and received approval for his travel to Oklahoma. "That's the only reason why I went to see Dr. Ellis." He notes that he was reimbursed for his airfare and taxicab fare, and that Dr. Ellis was paid.

The Board has carefully reviewed the case record and can find no authorization for appellant to see Dr. Ellis in Oklahoma. Appellant insists that Dr. Ellis had the Office's approval. Further, Dr. Ellis' June 5, 2008 report and correspondence indicate that he had Office authorization for the examination, but the only thing the record contains is a June 5, 2008 request for authorization, not the authorization itself.<sup>5</sup> If appellant is correct that the Office gave prior approval for Dr. Ellis' examination, he should produce that authorization and submit it to the Office. Such an authorization would constitute a contractual agreement to pay for the services and would require the Office to reconsider reimbursing appellant for the lodging expense incidental to securing those services.

The Office exercised its discretion under section 8103 of the Act by considering several factors. In addition to the absence of an actual authorization, it considered the distance traveled from Atlanta to Oklahoma City, a distance the Office rightly described as considerable. The Office considered that appellant had a treating physician in Atlanta, as well as other competent medical professionals with whom he could treat, so the medical services he received were readily available locally. Further, it appeared that appellant's condition did not necessitate travel greater than 25 miles from his work, home or place of injury in Georgia, much less travel to Oklahoma.

The Office has broad discretion under section 8123, and the only limitation is that of reasonableness. The Board finds that the Office gave due regard to relevant factors and

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<sup>1</sup> 5 U.S.C. § 8103(a).

<sup>2</sup> See *Marjorie S. Geer*, 39 ECAB 1099 (1988) (the Office has broad discretionary authority in the administration of the Act and must exercise that discretion to achieve the objectives of section 8103).

<sup>3</sup> *Daniel J. Perea*, 42 ECAB 214 (1990).

<sup>4</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Authorizing Examination and Treatment*, Chapter 3.300.2.b (September 1996).

<sup>5</sup> See *id.* at Chapter 3.300.2.c (authorization is required to be documented or confirmed in writing).

reasonably exercised its discretion under the circumstances. It is no answer that the Office paid Dr. Ellis for the examination. Whether the Office considered the examination itself to be a reasonable examination is a far different question than whether it was reasonable for appellant to travel from Atlanta to Oklahoma City to obtain such an examination. It may not make sense to appellant that the Office denied reimbursement for lodging while paying for his air and taxicab fare. However, it is the Office's position, as evidenced by the July 28, 2008 telephone contact, that appellant should have received no payment at all for travel expenses. It may be that appellant was able to obtain some reimbursement, but that does not mean the Office is required to compound a mistake to pay for other expenses incidental to an unnecessary and unreasonable trip to Oklahoma. That is no evidence the Office abused its discretion in denying reimbursement for the lodging expense. Accordingly, the Board will affirm the Office's October 2, 2008 decision.

**CONCLUSION**

The Board finds that the Office properly exercised its discretion in denying reimbursement for a \$166.00 lodging expense incidental to securing medical care in Oklahoma.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 2, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 11, 2009  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board