United States Department of Labor
Employees' Compensation Appeals Board

T.K., Appellant	)	
and	)	**Docket No. 09-1729**
	)	**Issued: May 10, 2010**
DEPARTMENT OF THE ARMY, 51st SIGNAL BATTALION ARMY, Seoul, South Korea, Employer	)	

Appearances:
Hee-Ja Kim, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 18, 2009 appellant filed a timely appeal from the April 15, 2009 merit decision of the Office of Workers' Compensation Programs concerning his entitlement to an attendant's allowance. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant is entitled to an attendant's allowance in connection with his work-related injuries.

FACTUAL HISTORY

The Office accepted that on September 4, 1968 appellant, then a 33-year-old foreign national, working for the employing establishment as an automobile mechanic, sustained multiple injuries, including pelvic, sacrum and coccyx fractures and paraplegia, when a truck he was repairing rolled over and crushed him. Appellant was hospitalized immediately after the accident and underwent more than a dozen authorized surgeries. He received continuous

medical care as an in-house patient at the Seoul Red Cross Hospital until late 1976. The Office paid him compensation for total disability and extensive medical care, including the costs of extended hospitalization.[1]

After his release from the hospital in 1976, appellant received an attendant's allowance necessitated by the fact that his work-related injuries rendered him incapable of caring for himself.[2] Due to a worsening of his work-related condition, he was readmitted as an in-house patient at the Seoul Red Cross Hospital in February 2005. It appears that appellant continued to receive payments for an attendant's allowance.

In a March 31, 2008 report, Dr. Sang Yeol Suh, an attending internist, detailed appellant's numerous medical conditions and indicated that he continued to have residuals of the September 4, 1968 work injury. Dr. Suh advised that appellant was admitted to the Seoul Red Cross Hospital on February 14, 2005 with mental changes due to metabolic encephalopathy. Appellant apparently suffered aspiration pneumonia and he had difficulty swallowing which led to the need for tube feeding. Dr. Suh also listed a history of diabetes mellitus which was diagnosed in 1972 and noted that due to his severe medical condition appellant had received in-patient care for nearly 35 months. Appellant was still in need of hospital care due to the risk of complications related to diabetes and other conditions, his use of a Levin tube for a liquid diet, checking of his blood sugar four times a day due to frequent hypoglycemic attacks and checking of his vital signs three times a day. Dr. Suh concluded that appellant's chronic conditions necessitated continued live-in hospital care.

In a March 10, 2009 notice, the Office advised appellant that it proposed to terminate his attendant's allowance. It noted that the March 31, 2008 report of Dr. Suh established that he was currently in need of in-house hospital care for the last three years at the Seoul Red Cross Hospital. The Office indicated that on October 28, 1978 appellant was advised that the attendant's allowance would cease if he returned to the hospital. It stated that it had paid bills from the Seoul Red Cross Hospital for his in-house treatment and care and noted, "Therefore, the weight of the medical evidence in your file demonstrates that you no longer have any entitlement to an attendant's allowance for the residuals of the September 4, 1968 injury because your care is provided in-house by the Seoul Red Cross Hospital." The Office provided appellant 30 days to submit evidence and argument contesting the proposed termination.

In a March 25, 2009 letter, the Director of the Seoul Red Cross Hospital requested payment from the Office for unspecified charges. In an April 15, 2009 decision, the Office terminated appellant's attendant's allowance effective April 12, 2009. It found that evidence "sufficient to alter the recommendation to terminate your compensation for wage loss has not been received."

[1] Appellant received disability compensation under the Special Schedule for Korean Labor Law.

[2] It is not entirely clear from the record how consistently appellant received Office payments which could be characterized as attendant's allowances. The record makes reference in some documents to payments for "domiciliary care" which included "room, board and practical nursing services." The record contains an October 28, 1976 document completed by "Ed Ducey, Deputy Commissioner" which indicates that appellant understood that his attendant's allowance would end if he returned to the hospital.

LEGAL PRECEDENT

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."[3] Under the Act, once the Office has accepted a claim it has the burden of justifying termination or modification of compensation benefits.[4] In making a determination regarding entitlement to compensation benefits, the Office is required by statute and regulation to make findings of fact.[5] Office procedure further specifies that a final decision of the Office must include findings of fact and provide clear reasoning which allows the claimant to "understand the precise defect of the claim and the kind of evidence which would tend to overcome it."[6] These requirements are supported by Board precedent.[7]

Under 5 U.S.C. § 8111(a) of the Act, the Office may pay an attendant's allowance when "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 he is in need of constant care. The claimant is not required to need around-the-clock care. He only has 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, or doing the laundry. It is intended to pay an attendant for assisting a claimant in his personal needs such as dressing, bathing or using the toilet.[8]

ANALYSIS

The Office accepted that on September 4, 1968 appellant sustained multiple injuries, including pelvic, sacrum and coccyx fractures and paraplegia and he received continuous medical care as a live-in patient at the Seoul Red Cross Hospital until 1976. After his release

[3] 5 U.S.C. § 8103.

[4] *Charles E. Minniss,* 40 ECAB 708, 716 (1989); *Vivien L. Minor,* 37 ECAB 541, 546 (1986).

[5] 5 U.S.C. § 8124(a) provides: "The [Office] shall determine and make a finding of facts and make an award for or against payment of compensation." 20 C.F.R. § 10.126 provides in pertinent part that the final decision of the Office "shall contain findings of fact and a statement of reasons."

[6] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.4 (July 1997).

[7] *See James D. Boller, Jr.*, 12 ECAB 45, 46 (1960).

[8] *See Grant S. Pfeiffer*, 42 ECAB 647 (1991). Where the evidence of record, including medical opinion evidence from the physician chosen by the claimant to provide treatment, establishes that an attendant's allowance should be terminated, the claimant is to be given pretermination notice and the opportunity to respond. *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Periodic Review of Disability Cases*, Chapter 2.812.9 (June 2003).

from the hospital in 1976, appellant received an attendant's allowance necessitated by the fact that his work-related injuries rendered him incapable of caring for himself. His condition worsened and in February 2005 he was readmitted as an in-house patient at the Seoul Red Cross Hospital. Appellant continued to receive periodic payments for an attendant's allowance.

The Board finds that the Office has not provided adequate facts and findings in connection with its decision determining that appellant was not entitled to an attendant's allowance. Under these circumstances appellant would not understand the precise defects of his claim and how to overcome them.

The Office noted that it had relied on the March 31, 2008 report of Dr. Suh, an attending internist, in determining that appellant was no longer in need of an attendant's allowance. Dr. Suh stated that appellant was still in need of hospital care due to the risk of complications related to diabetes and other conditions, his use of a Levin tube for a liquid diet, checking of his blood sugar four times a day due to frequent hypoglycemic attacks and checking of his vital signs three times a day. The Office did not adequately explain, however, the nature of appellant's receipt of an attendant's allowance and why it was no longer necessary. As noted, an attendant's allowance is paid when a claimant needs constant care to assist in his personal needs such as dressing, bathing or using the toilet. While the record contains indications that the Office made payments to the Seoul Red Cross Hospital, the purposes of these payments are not clear and the Office has not explained whether or not they adequately covered the types of personal needs services that would be performed by an attendant.

For these reasons, the Office's stated justification for finding that appellant is not entitled to an attendant's allowance is insufficient. The case will be remanded to the Office for the provision of additional facts and findings in support of its determination.[9] After such development it deems necessary, the Office shall issue an appropriate decision regarding appellant's entitlement to an attendant's allowance.

CONCLUSION

The Board finds that the case is not in posture for decision regarding whether appellant is entitled to receive an attendant's allowance in connection with his work-related injuries. The case is remanded to the Office for further development.

[9] *See supra* notes 7 and 8.

ORDER

IT IS HEREBY ORDERED THAT the April 15, 2009 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to the Office for further proceedings consistent with this decision of the Board.

Issued: May 10, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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