

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

D.C., Appellant)
and) Docket No. 10-698
DEPARTMENT OF THE AIR FORCE,) Issued: November 30, 2010
EDWARDS AIR FORCE BASE, CA, Employer)

)

Appearances:
Appellant, pro se
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 January 11, 2010 appellant filed a timely appeal from an October 28, 2009 decision of the Office of Workers' Compensation Programs regarding reimbursement of medical expenses. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether the Office abused its discretion by denying appellant's claim for travel expenses.

On appeal, appellant asserts his entitlement to automobile rental and gasoline expenses related to attending medical appointments for the accepted injuries or to replace durable equipment provided by the Office.¹

¹ Appellant submitted new evidence accompanying his request for appeal. The Board may not consider new evidence for the first time on appeal that was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c). Such evidence may be submitted to the Office pursuant to a request for reconsideration.

FACTUAL HISTORY

The Office accepted that on October 31, 1975 appellant, then a 22-year-old billeting clerk, sustained displaced fractures of the left femoral neck, tibia, fibula and medial malleolus in a motor vehicle accident. Appellant underwent open plate and screw fixation of his left hip, shin and ankle on October 31, 1975. He required total left hip arthroplasty on March 9, 1976 with a complete revision in 1988. On March 14, 1978 the Office authorized contact lenses as framed glasses caused skin necrosis over a nasal bone fracture sustained in the October 31, 1975 accident.² Following vocational rehabilitation, appellant returned to work in the private sector, retiring in 1997.

Appellant underwent periodic examinations of his left hip and leg from 1991 through 2007. The Office authorized prescribed orthopedic shoes to compensate for a shortened left femur caused by the accepted injuries.

Appellant filed claims for reimbursement for automobile rental fees and gasoline to attend medical appointments as follows: \$48.59 for June 11, 2008 car rental and \$10.20 for gasoline to and from an orthotist appointment; \$48.59 for June 18, 2008 car rental and \$22.44 for gasoline to and from an orthotist appointment; \$48.59 for July 7, 2008 car rental to and from an orthotist appointment; \$53.72 for a November 25, 2008 car rental to attend an appointment with an orthopedic surgeon; \$53.72 for a December 18, 2008 car rental for an 85-mile round trip for a podiatrist appointment; \$53.72 for a January 7, 2009 car rental for an 85-mile round trip to and from an orthotist for fitting of orthopedic shoes approved by the Office; \$37.69 for a January 13, 2009 car rental and \$13.34 for gasoline for a 200-mile round trip to see an optometrist; \$37.79 for a January 26, 2009 car rental and \$13.95 for gasoline for a 200-mile round trip to pick up new glasses and contact lenses and February 2, 2009 for an 11.6-mile round trip in his private car for an orthotist appointment.³

The Office reimbursed appellant \$48.59 for the June 11 and July 7, 2008 car rentals as “nonemergency transport taxi.” In a January 28, 2009 letter, it advised him of the additional information needed to process his remaining requests for reimbursement. The Office asked that appellant explain why he needed to rent a car, list any other means of attending the appointments and provide a medical report explaining why renting the car was medically necessary.

In a February 2, 2009 letter, appellant requested that the Office explain how to obtain authorization to rent a car. He noted that he owned an automobile.

By decision dated March 18, 2009, the Office denied reimbursement of travel expenses. It found that appellant did not explain why he needed to rent a car if he owned an automobile. The Office noted that he could request mileage reimbursement for gasoline costs and automotive wear and tear on dates that the car rental was denied.

² It is unclear from the record if the Office accepted the nasal fracture.

³ Appellant submitted chart notes and prescriptions relating to his left hip, orthopedic shoes, contact lenses and eyeglasses. These reports do not address his means of travel to and from the appointments.

In a March 6, 2009 letter, appellant requested reconsideration. He explained that his car had a faulty manifold gasket and could not be driven long distances. Appellant contended that renting a car was far cheaper than a \$600.00 ambulance ride. He argued that the Office improperly revoked a previous car rental authorization in June 2008.

By decision dated October 28, 2009, the Office denied modification of its prior decision finding that the new evidence did not establish that renting a car was medically necessary. It found that appellant did not advise the Office of the mechanical difficulties with his own car prior to renting a car. The Office found there was no record that the Office authorized a vehicle rental at any time. It explained that the Federal Employees' Compensation Act did not allow for direct reimbursement of gasoline costs but that appellant could claim mileage reimbursement by completing an enclosed claim form.

LEGAL PRECEDENT

Medical expenses, along with transportation and other expenses incidental to securing medical care, are covered by section 8103 of the 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.⁴

The Office must exercise discretion in determining whether the particular service, appliance or supply is likely to affect the purposes specified in the Act.⁵ The only limitation on the Office's authority is that of reasonableness.⁶ The Board has long held that the Office has broad discretion in approving services provided under the Act.⁷

ANALYSIS

Appellant claimed reimbursement of travel expenses for car rental and gasoline costs incurred to attend medical appointments related to accepted injuries or replacement of durable equipment provided by the Office. On appeal, he asserts entitlement to reimbursement for these costs. The Office denied appellant's claims, finding that a rental car was not medically necessary to attend the appointments and that the Act and its regulations did not provide for

⁴ 5 U.S.C. § 8103(a).

⁵ 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).

⁶ *Daniel J. Perea*, 42 ECAB 214 (1990).

⁷ See *Wanda L. Campbell*, 44 ECAB 633 (1993).

direct reimbursement of gasoline costs. The Board notes that the Office did not contest the necessity of the appointments themselves as it advised him that he could claim mileage reimbursement.

The Office exercised its discretion by considering several factors, including that appellant owned a car. Although appellant contended that he could not drive his car to appointments due to mechanical problems, he did not establish that the car was not drivable on the dates in question.

The Office also denied reimbursement as appellant did not obtain prior authorization to rent a car. Appellant argued that the Office issued an authorization but there is none present in the record. Although the Office reimbursed him for car rental expenses to attend the June 11 and July 7, 2008 appointments, this was not related to a general authorization and does not require the Office to pay travel expenses on other dates.

The Office also considered whether appellant established that a rental car was medically necessary. The Board has held that the Office must evaluate whether a specialized transportation is medically necessary for a claimant to attend required appointments.⁸ As appellant did not submit medical evidence explaining that the rental car was a medical necessity, the Office properly denied reimbursement on that basis.

The Board finds that the Office gave due regard to relevant factors and reasonably exercised its discretion under the circumstances. Accordingly, the Board will affirm the Office's October 28, 2009 decision.

CONCLUSION

The Board finds that the Office did not abuse its discretion by denying appellant's claim for travel expenses.

⁸ See *Abbas Hassain*, 32 ECAB 1981 (1981) (where the Board held that the Office properly denied reimbursement of unauthorized ambulance travel where the attending physician found it as not medically necessary). See also *Helen A. Pryor*, 32 ECAB 1313 (1981) (where the Board remanded the case, in part, for the Office to consider whether physician-approved ambulance travel was reimbursable). Cf. *Stanley Michael Black*, (Docket No. 01-1073, issued September 18, 2002) (where the Board held that a claimant with accepted tetraplegia could claim expenses for renting a van to attend authorized medical appointments while the modified van the Office purchased for him was undergoing repairs).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 28, 2009 is affirmed.

Issued: November 30, 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