

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

W.J., Appellant

and

**FEDERAL JUDICIARY, U.S. PROBATION
OFFICE, Tampa, FL, Employer**

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**Docket No. 10-1944
Issued: June 1, 2011**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 21, 2010 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs' decision dated January 27, 2010. Pursuant to the Federal Employees' Compensation Act¹ and 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 the Office abused its discretion by denying appellant's request for reimbursement of travel expenses.

FACTUAL HISTORY

On June 16, 2008 appellant, a 47-year-old probation officer, injured his ribs, his right shoulder, his back and his neck when the vehicle he was driving was struck by another vehicle. He filed a claim for benefits on June 19, 2008, which the Office accepted for fracture of the right

¹ 5 U.S.C. § 8101 *et seq.*

humerus. Appellant underwent open reduction/internal fixation surgery on July 11, 2008; the procedure was performed by Dr. Mark E. Farmer, a Board-certified orthopedic surgeon. He has not returned to work since his June 16, 2008 injury.

By letter dated August 28, 2008, appellant advised the Office that he had moved from Kingsland, Georgia, to Macon, Georgia. He requested authorization for physical therapy treatment at a facility in Macon, Georgia. In addition appellant continued to seek follow-up treatment from Dr. Farmer, whose office was located in Fort Myers, Florida. He stated that the round trip distance from his home in Macon, Georgia to Dr. Farmer's office was approximately 740 miles.

In an inter-Office memorandum dated October 29, 2008, the Office noted that appellant had appeared at the district Office on October 28, 2008 requesting reimbursement for mileage, hotel accommodations and meals for trips to Dr. Farmer's office on July 6, 10, 20 and August 25, 2008. It agreed to reimburse him for these trips but advised appellant that when he completed his postoperative treatment he needed to obtain the services of a physician within his commuting area. Appellant told the Office that he understood and would comply.

In an October 27, 2008 x-ray report, received by the Office on November 4, 2008, it was indicated that appellant's right shoulder/greater tuberosity fracture had healed and was in good position. The report stated that he presented a satisfactory, healed postoperative appearance.

In an October 27, 2008 report, Dr. Farmer stated that appellant was progressing well, despite some lingering pain and stiffness, limited range of motion and occasional popping in the shoulder. He restricted appellant from work activity for three months and recommended six weeks of continuing physical therapy.

By letter dated December 12, 2008, the Office advised the claimant that it had assigned a registered nurse to assist in his recovery and in locating a qualified physician within the Macon commuting area. It asked appellant to contact Dr. Farmer regarding a referral to a qualified physician in the Macon area. The Office asked that the claimant fully cooperate so that the excessive travel reimbursements and accommodations could be discontinued and that he provide the name, specialty and telephone number of the selected physician within 30 days.

In a January 7, 2009 progress report, appellant's field nurse identified three orthopedic surgeons in the Macon area who were qualified to treat his postsurgical right shoulder condition. He stated that he sent the names and contact information for these physicians to appellant; however, appellant asserted that he was more comfortable being treated by Dr. Farmer.

By telephone call dated February 4, 2009, appellant advised the Office that he had not selected a doctor in Macon because he felt more comfortable with Dr. Farmer; he noted that he had performed the shoulder surgery and had been treating him since that time. He asserted that he wished to continue to be treated by Dr. Farmer regardless of whether the Office reimbursed him for the travel. The Office advised appellant that his travel to Dr. Farmer's office, which exceeded 500 miles, was not reasonable given that there were qualified doctors in Macon, his commuting area. It stated that the applicable regulations indicated that, generally, 25 miles from the place of injury, the employing establishment, or the employee's home, was a reasonable

distance to travel.² The Office advised appellant to provide any written comments within 30 days.

By letter to the Office dated February 26, 2009, appellant informed it that he continued to be treated by Dr. Farmer because of his reputation, his prior treatment of his wife and son, and the fact that Dr. Farmer had performed the June 2008 shoulder surgery and treated him subsequently. He asserted that, although he had consulted several other physicians in the Jacksonville, Florida area, he did not receive the proper treatment for his right shoulder condition until he began treatment with Dr. Farmer. Appellant also stated that Dr. Farmer had indicated that he might require additional shoulder surgery in light of a recent test which showed a bone spur and possible rotator cuff tear in his right shoulder.

By decision dated March 24, 2009, the Office denied authorization for reimbursement for transportation costs and expenses for travel to Dr. Farmer's office in Fort Myers, Florida, effective January 13, 2009. It stated that appellant failed to submit any evidence that there were not qualified physicians in his area who could provide treatment for his accepted right shoulder condition.

On March 30, 2009 Dr. Farmer requested authorization for additional right shoulder surgery. In a March 30, 2009 report, he explained that appellant was an appropriate candidate for surgery because nonoperative options had been exhausted. The procedure was performed to ameliorate the conditions of capsular release adhesions, subacromial decompression and removing hardware.

By letter dated April 6, 2009, appellant requested an oral hearing, which was held on November 18, 2009. At the hearing he reiterated that he had been dissatisfied with the physicians who treated his shoulder prior to Dr. Farmer, with whom he felt comfortable. Appellant indicated that he continued to seek treatment from Dr. Farmer, regardless of whether or not he was reimbursed for travel expenses, because he had rendered a significant improvement in his shoulder condition, because he was a shoulder specialist, and because appellant continued to experience problems with his shoulder; he noted that Dr. Farmer had scheduled him for additional surgery. He admitted that he had not attempted to find an appropriate specialist within 25 miles of his residence because of his preference for Dr. Farmer. Appellant's wife stated at the hearing that she was unable to locate a shoulder specialist in Macon. She asserted that she called the offices of physicians recommended by the Office but was informed that they were hand and spine specialists, not shoulder specialists. Appellant's wife further asserted that she had also sustained a shoulder injury and had experienced similar difficulty finding a shoulder specialist in Macon.

By decision dated January 27, 2010, an Office hearing representative affirmed the March 24, 2009 decision. She noted that Dr. Farmer had requested additional right shoulder surgery on March 30, 2009. The hearing representative found, however, that the issues of authorization of medical treatment and reimbursement of travel expense for medical treatment were separate and distinct. She stated that the Office could authorize medical treatment but

² The Board notes that the applicable regulations in effect at the time, 20 C.F.R. § 10.402, has been replaced by 20 C.F.R. § 10.315.

determine that the travel expense incurred for such authorized treatment was unnecessary or unreasonable.

The hearing representative found that the Office properly determined that appellant's continuing travel to Dr. Farmer's office in Fort Myers was not reasonable given the fact that there were qualified physicians available to treat him in the Macon, Georgia, area. She stated that there was no evidence establishing that this travel was reasonable and necessary in order to obtain medical treatment, as there was no indication that competent and appropriate medical care was not available within the commuting area of appellant's Macon, Georgia, residence. The hearing representative therefore found that the expenses appellant incurred for travel on or after February 4, 2009, between his home in Georgia and Dr. Farmer's office in Fort Meyers, Florida, were personal and that the Office did not abuse its discretion in denying reimbursement of further travel expenses for visits to Dr. Farmer effective February 4, 2009.

LEGAL PRECEDENT

Section 8103 of the Act³ 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 Office considers likely to cure, give relief, reduce the degree of the period of disability or aid in lessening the amount of monthly compensation.

Section 10.315 of Title 20 of the Code of Federal Regulations provide, 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.”⁴

The Board has previously explained that the Office may authorize medical treatment but determine that the travel expense incurred for such authorized treatment was unnecessary or unreasonable.⁵

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.⁶ The

³ 5 U.S.C. § 8103; *see Thomas W. Stevens*, 50 ECAB 288 (1999).

⁴ 20 C.F.R. § 10.315.

⁵ *W.M.*, 59 ECAB 132 (2007).

⁶ *See William B. Webb*, 56 ECAB 156 (2004); *Lecil E. Stevens*, 49 ECAB 673 (1998).

Board has long held that the Office has broad discretion in approving services provided under the Act.⁷

ANALYSIS

The Office accepted that appellant sustained a fracture of the right humerus and authorized open reduction/internal fixation surgery on his right shoulder on July 11, 2008. Appellant subsequently moved to Macon, Georgia, but continued to receive treatment for his right shoulder from Dr. Farmer. The Office informed appellant on October 29, 2008 that it would no longer reimburse him for traveling to Dr. Farmer's office in Fort Myers, Florida after he completed his postoperative treatment and advised him that he needed to obtain the services of a physician within his commuting area.⁸ On January 7, 2009 the nurse assisting appellant informed him that she had identified three orthopedic surgeons in the Macon area who were qualified to treat his postsurgical right shoulder condition. Appellant, however, advised the nurse and the Office that he had not selected a new attending physician in Macon because he felt more comfortable having his right shoulder condition treated by Dr. Farmer. He stated that he wished to continue to be treated by Dr. Farmer regardless of whether or not the Office reimbursed him for travel expenses. The Office advised appellant on February 4, 2009 that his travel to Dr. Farmer's office was not reasonable given that there were qualified doctors in Macon, his current commuting area, and allowed him 30 days to submit written comments before formally disallowing any additional reimbursement for travel to Dr. Farmer's office in Fort Myers. Appellant informed the Office on February 26, 2009 that, although he had consulted several other physicians in the Macon, Georgia area, only Dr. Farmer had provided him with the proper treatment for his right shoulder condition. The issues of authorization of medical treatment and payment of reasonable travel expense have been determined by the Board to be separate and distinct issues. Appellant's continued wish to treat with Dr. Farmer, does not establish that unreasonable travel expense must be authorized.

The Board notes that appellant is entitled to reimbursement for reasonable and necessary travel expenses as provided under section 10.315. The regulations provide, however, that a reasonable distance to travel is generally 25 miles from the place of injury, the work site or the employee's home. In determining what constitutes a reasonable travel distance, the Office must consider the availability of medical services in appellant's area, his condition and the means of transportation.⁹ It found that he did not reasonably need to seek medical treatment in Fort Myers, Florida, given the number of available specialists for his condition who practiced in his commuting area of Macon, Georgia; it noted that appellant's attending nurse had identified three shoulder specialists who worked in the Macon metropolitan area. This is insufficient however, to establish that he is unable to obtain competent and appropriate medical care within his commuting area given the number of available specialists.¹⁰

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

⁸ The Office indicated in its January 27, 2010 decision that appellant was reimbursed for travel expenses through January 12, 2010.

⁹ *W.M.*, *supra* note 5.

¹⁰ See *Julia A. Strickland*, 54 ECAB 649 (2003).

The Office has broad discretion in considering whether to reimburse or authorize travel expenses. 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 deduction from known facts.¹¹ The Board finds that the expenses appellant incurred for travel after March 2009 between his new home in Macon, Georgia and Dr. Farmer's office in Fort Myers, Florida, must be considered personal to appellant and that the Office's denial of appellant's request for reimbursement was reasonable.¹² There was no evidence establishing that this travel was reasonable and necessary in order to obtain medical treatment where there was no indication that competent and appropriate medical care was not available within the commuting area of Macon, Georgia.¹³

The Office properly considered the factors enumerated in section 10.315 and denied appellant's request for authorization for travel expenses to see Dr. Farmer in Fort Myers, Florida. It did not abuse its discretion by denying authorization of travel expenses after February 2009 between Macon, Georgia and Fort Myers, Florida.¹⁴

CONCLUSION

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

¹¹ See *William B. Webb*, *supra* note 6.

¹² *Lecil E. Stevens*, *supra* note 6.

¹³ See *David Spearman*, 49 ECAB 445 (1998).

¹⁴ The Board notes that the Office hearing representative did not address Dr. Farmer's March 30, 2009 request for authorization for additional right shoulder surgery, stating that the issues of reimbursement for medical treatment and travel must be considered separately. This finding was in error. Section 8103 indicates that "the employee may initially select a physician to provide medical services ... in accordance with such regulations and instructions as the Secretary considers necessary, *and may be furnished necessary and reasonable transportation and expenses incident to the securing of such services.*" (Emphasis added.) Thus in the event the Office approves Dr. Farmer's request for surgery, it is required by section 8103 to approve expenses incident to the surgery, including transportation expenses.

ORDER

IT IS HEREBY ORDERED THAT the January 27, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 1, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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