

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

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M.J., Appellant )

and )

U.S. HOUSE OF REPRESENTATIVES, )  
CONGRESSIONAL OFFICE, )  
Lakewood, OH, Employer )

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**Docket No. 11-1488  
Issued: January 19, 2012**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On June 8, 2011 appellant filed a timely appeal from the May 17, 2011 merit decision of the Office of Workers' Compensation Programs, (OWCP) which denied payment of a medical bill. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) 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 OWCP properly denied payment of a \$243.25 medical bill.

**FACTUAL HISTORY**

On February 17, 2009 appellant, a 57-year-old congressional staffer/caseworker, filed a claim for workers' compensation benefits alleging that she sustained a traumatic left elbow injury in the performance of duty on February 2, 2009 when she slipped and fell in the icy

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

parking lot. A passerby found her lying on the ground. Appellant told the witness she had fallen in the lot. The employing establishment's district director advised that appellant was in the performance of duty. He did not controvert continuation of pay and certified that the information provided by appellant was true to the best of his knowledge.

A 911 call was placed and an ambulance took appellant to the Lakewood Hospital Emergency Department. She gave the following history: "I stepped out of car onto ice outside of car causing fall." X-rays demonstrated a left radial neck fracture with a little bit of impaction but no significant displacement. As the alignment was satisfactory, appellant was placed in a long-arm plaster cast. After three weeks the cast was taken off and physical therapy was prescribed for local modalities and range of motion. Appellant was to continue with a sling.

Appellant telephoned OWCP on February 26, 2009 to ask about approval for the prescribed physical therapy treatments. OWCP advised her to contact ACS-Central Bill Pay/Medical Authorization, whose office handled medical authorizations and billing. It notified appellant that her injury claim was approved as a short-form closure allowing up to \$1,500.00 in medical bill payments.

Appellant began physical therapy the following day. X-rays on March 12, 2009 showed the fracture nicely healed with no displacement. Appellant began treatment for medial epicondylitis not associated with her fracture.

On September 22, 2009 a medical provider, Orthopedic Associates, Inc., requested authorization for procedure code 24650 (treat radius fracture, or closed treatment of radial head or neck fracture without manipulation). The date of service was February 2, 2009. OWCP advised appellant that it was unable to authorize the procedure or treatment because the claim was unadjudicated and a development letter was forthcoming. It advised the provider that further development of the medical evidence was needed before the request could be approved or denied. OWCP issued letters to appellant and the employing establishment asking for additional information about the February 2, 2009 incident.

In a decision dated October 26, 2009, OWCP denied appellant's claim for workers' compensation benefits. It found that the claimed incident occurred, but there was no medical evidence providing a diagnosis that could be connected to the event. OWCP explained that the initial medical evidence did not connect the diagnosis of radial neck fracture to the incident that occurred on February 2, 2009. It added that none of the statements and reports it had received established that the incident caused a personal injury. OWCP informed appellant that her claim was denied, medical treatment was not authorized and prior authorization, if any, was terminated.

On March 15, 2011 OWCP received correspondence indicating that a collection agency had contacted appellant for the collection of \$243.25 related to a billing by Orthopedic Associates, Inc. for the injury sustained on February 2, 2009.

In a decision dated May 17, 2011, OWCP advised as follows: "We have recently received correspondence relating to unpaid bills. As you know, your claim has been denied."

On appeal, appellant argued that the bill for \$243.25 was for treatment of the left elbow injury she suffered in the parking lot at work on February 2, 2009.

### **LEGAL PRECEDENT**

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 that the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of any disability or aid in lessening the amount of any monthly compensation.<sup>2</sup> OWCP must therefore exercise discretion in determining whether the particular service, appliance or supply is likely to effect the purposes specified in FECA.<sup>3</sup> The only limitation on OWCP's authority is that of reasonableness.<sup>4</sup>

When an employee sustains a work-related traumatic injury that requires medical examination, medical treatment, or both, the employing establishment shall authorize such examination and/or treatment by issuing a Form CA-16.<sup>5</sup> Form CA-16 limits to 60 days OWCP's contractual obligation to pay for medical services.<sup>6</sup>

If the employer doubts that the injury occurred or that, it was work related, he or she should authorize medical care by completing Form CA-16 and checking block 6B on the form. If the medical and factual evidence sent to OWCP shows that the condition treated is not work related, OWCP will notify the employee, the employer and the physician or hospital that OWCP will not authorize payment for any further treatment.<sup>7</sup> In cases involving emergencies or unusual circumstances, OWCP may approve payment for medical expenses incurred even if Form CA-16 has not been issued and the claim is subsequently denied. Payment in situations meeting these criteria must be determined on a case-by-case basis.<sup>8</sup>

If a case is denied, authorization for treatment must be revoked even though 60 days has not elapsed. If the case is denied after the end of the 60-day period, the physician will be informed that the injury is not compensable and that bills will be paid only for services rendered prior to the end of that period.<sup>9</sup>

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<sup>2</sup> 5 U.S.C. § 8103(a).

<sup>3</sup> See *Marjorie S. Geer*, 39 ECAB 1099 (1988) (OWCP has broad discretionary authority in the administration of FECA and must exercise that discretion to achieve the objectives of section 8103).

<sup>4</sup> *Daniel J. Perea*, 42 ECAB 214 (1990).

<sup>5</sup> 20 C.F.R. § 10.300(a); see 5 U.S.C. § 8103.

<sup>6</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Authorizing Examination and Treatment*, Chapter 3.300.3.a(1) (October 1990).

<sup>7</sup> 20 C.F.R. § 10.302.

<sup>8</sup> Federal (FECA) Procedure Manual, see *supra* note 6, Chapter 3.300.3.a(3) (October 1990); *Thomas W. Keene*, 42 ECAB 623 (1991); *Val D. Wynn*, 40 ECAB 666 (1989).

<sup>9</sup> *Id.*, Chapter 3.300.3(a)(2).

No bill will be paid for expenses incurred if the bill is submitted more than one year beyond the end of the calendar year in which the expense was incurred or the service or supply was provided, or more than one year beyond the end of the calendar year in which the claim was first accepted as compensable by OWCP, whichever is later.<sup>10</sup>

OWCP's decision shall contain findings of fact and a statement of reasons.<sup>11</sup>

### ANALYSIS

OWCP's May 17, 2011 decision stated only as follows: "We have recently received correspondence relating to unpaid bills. As you know, your claim has been denied." As the legal precedent makes clear, however, the denial of a claim is not always a sufficient basis for denying the payment of a medical expense.

OWCP notified appellant on February 26, 2009 that it had accepted her claim under its short-form closure policy, thereby entitling her to up to \$1,500.00 in medical bill payments. Its May 17, 2011 decision did not address the acceptance or explain whether it was denying the payment of a bill because appellant had already reached the \$1,500.00 limit.

There is no evidence that the employing establishment issued a Form CA-16 authorizing the medical service for which appellant now seeks payment. Nonetheless, OWCP has discretion to approve such medical service in the event of emergency or unusual circumstances. In its May 17, 2011 decision, however, OWCP failed to consider whether emergency or unusual circumstances were present such that payment for the medical service would be appropriate.<sup>12</sup> Neither, did it indicate that it was denying payment because the bill was submitted in an untimely fashion. Indeed, OWCP's decision was so bare that it did not identify the bill, the amount or the medical service provided.

The Board finds that OWCP's May 17, 2011 decision did not contain adequate findings of fact and a statement of reasons sufficient to justify the denial of the requested payment.<sup>13</sup> The Board will set aside that decision and remand the case for proper adjudication and an appropriate final decision.

### CONCLUSION

The Board finds that this case is not in posture for decision. Further action is warranted.

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<sup>10</sup> 20 C.F.R. § 10.803.

<sup>11</sup> *Id.* at § 10.126.

<sup>12</sup> *D.P.*, Docket No. 11-50 (issued October 26, 2011).

<sup>13</sup> *See* 20 C.F.R. § 10.126 regarding the requirements of a final OWCP decision.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 17, 2011 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Issued: January 19, 2012  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

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

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