

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

V.K., Appellant)	
)	
and)	Docket No. 12-1103
)	Issued: October 12, 2012
U.S. POSTAL SERVICE, POST OFFICE, San Diego, CA, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

JURISDICTION

On April 24, 2012 appellant filed a timely appeal from a March 20, 2012 decision of the Office of Workers' Compensation Programs (OWCP) that denied her claim for reimbursement of travel expenses. Pursuant to the Federal Employees' Compensation Act¹ (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 abused its discretion by denying appellant's request for reimbursement of travel expenses.

On appeal appellant stated that she was referred to Dr. John W. Ellis, Board-certified in family medicine, in Oklahoma City, Oklahoma, by her union and contends that, because the medical visit was approved, her travel expenses should be covered.

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

OWCP accepted that on September 5, 1996 appellant, then a 43-year-old distribution window clerk, sustained a work-related contusion of the elbow and sprains of the shoulder, arm, neck and thoracic region, when she tripped and fell at work. She underwent subacromial decompression with distal clavicle resection of the right shoulder on March 14, 1997 and was placed on the periodic compensation rolls. Appellant returned to part-time limited duty on August 18, 1997 and to full-time modified duty on June 8, 1998. On November 22, 1998 OWCP denied her claim for a May 14, 1998 injury. On May 1, 2000 appellant was granted a schedule award for 30 percent impairment of the right arm. She continued to work modified duty. On March 8, 2007 the employing establishment informed appellant that her rehabilitation job would end effective March 11, 2007. She was returned to the periodic compensation rolls and moved from California to Massachusetts.²

In February 2009, appellant was referred for vocational rehabilitation services. In September 2009, OWCP determined that a conflict in medical evidence had been created between Dr. Gilbert Shapiro, an OWCP referral physician, and Dr. Saechin Kim, an attending physician, regarding appellant's work capacity and referred her to Dr. Elie J. Cohen for an impartial evaluation.³ Appellant retired effective October 31, 2009 and elected FECA benefits. She received retirement incentives totaling \$15,000.00, and her compensation benefits were suspended for a period, and she was returned to the periodic compensation rolls effective December 19, 2010.

A medical authorization record indicates that an outpatient visit, disability examination and special reports were requested for November 15, 2011. On December 9, 2011 appellant filed a schedule award claim and submitted a November 15, 2011 report from Dr. Ellis, whose office is located in Oklahoma City, Oklahoma.⁴

On March 5, 2012 appellant called OWCP questioning why her travel expenses to another state were not authorized since the medical visit had been authorized. By decision dated March 20, 2012, OWCP denied her claim for reimbursement of travel, lodging and meals for the period November 15 and 16, 2011.

LEGAL PRECEDENT

Section 8103 of FECA 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

² In a March 7, 2007 decision, OWCP denied appellant's claim for compensation for the period January 16 to February 2, 2007. On May 29, 2007 it denied her request for reconsideration.

³ All physicians are Board-certified orthopedic surgeons. Dr. Cohen provided a January 14, 2010 report in which the physician advised that appellant could work modified duty for six hours a day, four days a week.

⁴ Dr. Ellis diagnosed traumatic arthritis and tendinitis of the right shoulder; right shoulder rotator cuff tear, status post surgery; right brachial plexus impingement; right thoracic outlet impingement; consequential right carpal tunnel syndrome; consequential tendinitis and traumatic arthritis of the left shoulder. He advised that, in accordance with the sixth edition of the A.M.A., *Guides*, appellant had 18 percent impairment of the right upper extremity due to decreased range of motion.

recommended by a qualified physician, which OWCP considers likely to cure, give relief, reduce the degree of the period of disability or aid in lessening the amount of monthly compensation.⁵

Section 10.315(a) of OWCP regulations provide in pertinent 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, OWCP will consider the availability of services, the employee’s condition and the means of transportation. Generally, a roundtrip distance of up to 100 miles is considered a reasonable distance to travel.”⁶

Section 10.315(b) provides in part:

“For nonemergency medical treatment, if roundtrip travel of more than 100 miles is contemplated, or air transportation or overnight accommodations will be needed, the employee must submit a written request to OWCP for prior authorization with information describing the circumstances and necessity for such travel expenses. OWCP will approve the request if it determines that the expenses are reasonable and necessary, and are incident to obtaining authorized medical services, appliances or supplies. Requests for travel expenses that are often approved include those resulting from referrals to a specialist for further medical treatment, and those involving air transportation of an employee who lives in a remote geographic area with limited local medical services.”⁷

OWCP has broad discretion to authorize necessary and reasonable transportation incident to the securing of services, appliances and supplies recommended for the treatment of accepted medical conditions.⁸ It may authorize medical treatment but determine that the travel expense incurred for such authorized treatment was unnecessary or unreasonable.⁹

ANALYSIS

Appellant explained that she went to see Dr. Ellis in Oklahoma because she was referred to him by her union. There is no evidence of record that she requested preapproval for travel expenses or that OWCP approved or authorized the travel. Appellant did not explain why she did not contact OWCP as to whether travel expenses would be authorized. Dr. Ellis’ practice is located in Oklahoma City, Oklahoma, which is some 1,775 miles away from appellant’s home in Orleans, Massachusetts. Therefore, appellant’s roundtrip visit was 3,550 miles, which far

⁵ 5 U.S.C. § 8103.

⁶ *Id.* at § 10.315(a) (2011).

⁷ *Id.* at § 10.315(b).

⁸ *A.O.*, Docket No. 08-580 (issued January 28, 2009) (travel from Florida to New York to obtain medical treatment).

⁹ *W.M.*, 59 ECAB 132 (2007).

exceeds the 100-mile roundtrip radius that OWCP's regulations provide.¹⁰ The Board finds that this is an unnecessary distance to travel, especially since appellant lives near the Boston metropolitan area which has numerous qualified physicians.

Even if the medical treatment appellant obtained on November 15, 2011 was authorized by OWCP, as noted above OWCP may authorize medical treatment but determine that the travel expense incurred was unnecessary or unreasonable. The Board concludes that OWCP properly denied appellant's request for reimbursement of travel expenses.¹¹

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that OWCP properly denied reimbursement of travel expenses.

ORDER

IT IS HEREBY ORDERED THAT the March 20, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 12, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

¹⁰ *Supra* note 6.

¹¹ *A.O.*, *supra* note 8.