

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

M.S., Appellant)

and)

DEPARTMENT OF TRANSPORTATION,)
FEDERAL AVIATION ADMINISTRATION,)
Jamaica, NY, Employer)

**Docket No. 12-1037
Issued: September 10, 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
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 17, 2012 appellant filed a timely appeal from merit decisions of the Office of Workers' Compensation Programs (OWCP) dated December 5, 2011 and March 15, 2012 denying his claim for reimbursement for 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.²

ISSUES

The issues are: (1) whether OWCP properly denied appellant's request for reimbursement of travel expenses; and (2) whether it properly denied his requests for subpoenas.

¹ 5 U.S.C. § 8101 *et seq.*

² Appellant requested an oral argument. The Clerk of the Board mailed a letter to appellant to confirm a continuing desire for an oral argument in Washington, DC. By letter dated May 26, 2012, appellant indicated that he would not be able to appear in person for an oral argument. Thus, the Board has decided the appeal on the record.

FACTUAL HISTORY

Appellant, then a 42-year-old air traffic controller, alleged that he sustained an emotional condition on August 24, 1976 while investigating an airplane crash. OWCP accepted his November 1976 occupational disease claim for acute chronic depressive reaction and chronic anxiety with neurosis.³ Appellant retired on disability in 1976.

OWCP paid appropriate wage-loss and medical benefits. By letter dated September 29, 2011, appellant informed OWCP that he had been treated by Andrea Malow, a social worker, for the previous 10 years and that he would be submitting a printout of his visits in order to receive reimbursement for his travel expenses for the last three years.

By decision dated December 5, 2011, OWCP denied appellant's claim for reimbursement of travel expenses incurred to and from meetings with the social worker on the grounds that she was not a medical professional and visits with Ms. Malow had not been previously approved.

On December 30, 2011 appellant requested a review of the written record.

In a letter dated January 10, 2012, appellant stated that he desired an oral hearing to contest the findings on his medical and physical condition. In a February 2, 2012 letter, OWCP informed him that an oral hearing could not be approved because he had previously requested a review of the written record.

By decision dated March 15, 2012, OWCP's hearing representative affirmed the December 5, 2011 decision. He found that appellant had not requested the services through proper channels and that there was no evidence that appellant had been referred to Ms. Malow for the treatment of an accepted condition.

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 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.⁴ In interpreting this section of FECA, the Board has recognized that OWCP has broad discretion in approving services provided under section 8103, with the only limitation on OWCP's authority being that of reasonableness.⁵ Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to

³ Appellant filed three traumatic injury claims: December 4, 1965 (File No. xxxxxx414); April 4, 1971 (File No. xxxxxx103); and May 6, 1975 (File No. xxxxxx530). These claims were administratively combined with the instant case, with File No. xxxxxx677 serving as the master file. The case was modified to accept the conditions of dysthymic disorder, bulimianervosa, obesity, left hip and thigh contusion, osteoarthritis and left medial meniscus tear.

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

⁵ *Joseph P. Hofmann*, 57 ECAB 456 (2006); *James R. Bell*, 52 ECAB 414 (2001).

both logic and probable deductions from established facts. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.⁶ In order to be entitled to reimbursement for medical expenses, a claimant must establish that the expenditures were incurred for treatment of the effects of an employment-related injury.⁷

The employee may initially select a physician to provide medical services, appliances and supplies, in accordance with such regulations and instructions as OWCP considers necessary, and may be furnished necessary and reasonable transportation and expenses incident to the securing of such services, appliances and supplies.⁸

The employee is entitled to reimbursement of reasonable and necessary expenses, including transportation needed to obtain authorized medical services, appliances or supplies.⁹ 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.¹⁰ It may authorize medical treatment but determine that the travel expense incurred for such authorized treatment was unnecessary or unreasonable.¹¹

OWCP procedures describe the circumstances under which various types of services may be authorized.¹² In addition to treatment in a physician's office, OWCP may authorize nursing services; physical therapy; occupational and speech therapy; lip reading services; pain clinics; palliative treatment; acupuncture; chymopapaine treatment; hernia treatment; substance abuse treatment and dental services. It may also authorize nonmedical services, when recommended by a physician as likely to cure or give relief, including health club membership, seeing eye and hearing dogs and a move to a different locality.¹³

ANALYSIS

The Board finds that OWCP properly denied appellant's claim for reimbursement of travel expenses to and from his appointments with his social worker.

Appellant has requested reimbursement for expenses related to his transportation to and from visits with his social worker. As noted, OWCP has discretion to reimburse a claimant for

⁶ *Claudia L. Yantis*, 48 ECAB 495 (1997).

⁷ *Cathy B. Mullin*, 51 ECAB 331 (2000).

⁸ 5 U.S.C. § 8103(a).

⁹ 20 C.F.R. § 10.315.

¹⁰ *A.O.*, Docket No. 08-580 (issued January 28, 2009) (travel from Florida to New York to obtain medical treatment).

¹¹ *Dr. Mira R. Adams*, 48 ECAB 504 (1997).

¹² Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Services and Supplies*, Chapter 3.400.5.8 (April 1992).

¹³ *Id.*

transportation related to authorized medical expenses.¹⁴ A social worker is not a physician as defined by FECA.¹⁵ Travel to and from the social workers' office would therefore not be travel related to an authorized medical expense.

Furthermore, there is no evidence that appellant's visits with the social worker were authorized as nonmedical care. OWCP's procedures specify nonmedical services which may be approved. The exhaustive list of nonmedical services covered does not include those of a social worker.¹⁶ Therefore, appellant is not entitled to reimbursement for the claimed travel-related expenses as an authorized medical or nonmedical expense.

On appeal, appellant contends that it is unreasonable for OWCP to deny reimbursement for travel expenses related to visits to a social worker. For reasons stated, the Board finds that he is not entitled to reimbursement for the claimed travel-related expenses.

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.

¹⁴ See *supra* note 9 and accompanying text.

¹⁵ A social worker is not a physician under FECA. 5 U.S.C. § 8101(2). See *George H. Clark*, 56 ECAB 162 (2004); *Earnest St. Pierre*, 51 ECAB 623, 626 (2000) (reports of a social worker do not constitute competent medical evidence as a social worker is not a physician as defined by 5 U.S.C. § 8101(2), which provides that a physician includes, surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by state law).

¹⁶ See *supra* note 11 and accompanying text.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated March 15, 2012 and December 5, 2011 are affirmed.

Issued: September 10, 2012
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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