

sprain/strain of the supraspinatus of his left shoulder, rotator cuff syndrome and allied disorders of his left shoulder and displacement of lumbar intervertebral disc without myelopathy due to pulling a wire through a conduit.² Appellant began performing limited-duty work for the employer.

Appellant initially received treatment for his work-related conditions from Dr. Fred H. Ross, a Board-certified family practitioner, practicing in Tallahassee, FL. He also underwent physical therapy in Tallahassee which was authorized by OWCP.³

In an October 17, 2007 letter, OWCP advised appellant that he was authorized to change his treating physician to Dr. Shane Shapiro, a Board-certified orthopedic surgeon, practicing at the Mayo Clinic in Jacksonville, FL. It advised him regarding the procedures for obtaining payment for expenses related to visits to Dr. Shapiro. Appellant began to be seen by Dr. Shapiro in early November 2007. The record reveals that OWCP paid appellant for transportation costs and expenses related to his periodic visits to receive medical treatment from Dr. Shapiro in his Jacksonville office of the Mayo Clinic.⁴ OWCP also paid for transportation costs and expenses related to appellant's periodic physical therapy visits to the Brooks Rehabilitation Center in Jacksonville, FL.

In a letter dated January 15, 2013, OWCP advised appellant that it proposed to terminate reimbursement for transportation costs and expenses for travel to the Mayo Clinic and Brooks Rehabilitation Center in Jacksonville effective February 15, 2013. It stated that it had determined that it was not reasonable for appellant to travel over 100 miles one way to get medical treatment as there were qualified physicians and physical therapy facilities in his local commuting area that could treat him for his accepted conditions.⁵ OWCP noted that, under 5 U.S.C. § 8103, 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 or the period of disability, or aid in lessening the amount of the monthly compensation. OWCP stated that, under its regulations at 20 C.F.R. § 10.402,⁶ when determining the use of medical facilities, consideration must be given to the availability, the employee's condition, and the method and means of transportation. Generally, 50 miles from the place of injury, the employing establishment, or the employee's home, is a reasonable distance to travel, but other pertinent factors must also be taken into consideration. OWCP stated, "You will be afforded 30 days from the date of this letter to submit the requested information to establish why this agency should continue to authorize you to travel an excess of 100 miles each way to see a physician. If

² OWCP had previously accepted that appellant sustained neck and right shoulder injuries due to prior work incidents.

³ Appellant also received treatment from Dr. Nicomedo Macri, a Board-certified physical medicine and rehabilitation physician.

⁴ On July 31, 2008 appellant underwent right shoulder surgery, including a proximal humeral arthroplasty, which was authorized by OWCP.

⁵ Appellant's home address was in Monticello, FL.

⁶ It appears that OWCP actually meant to refer to 20 C.F.R. § 10.315.

the information is not received within 30 days from the date of this letter, a decision will be made based upon the evidence in file.”

In a January 21, 2013 report, Dr. Adam J. Wallace, an attending Board-certified pain medicine physician at the Mayo Clinic in Jacksonville, reported his findings on examination. He stated:

“Patient also presents us with a letter from [OWCP] requesting that he no longer stay at the Mayo Clinic for further care as he should be able to find care closer to his home. He is requesting further evaluation and continued workup here at Mayo Clinic. We feel at this time that [appellant’s] best option would be a comprehensive pain rehabilitation program, and it would be most beneficial if the patient would be covered by workers compensation for this program. If he is not to be covered for this program, it would be prudent to have a trial of spinal cord stimulator electrode placement to try to help with the left buttock and lateral leg pain. Again, this would be if workers[‘] compensation would pay for it. After the trial, then we would consider permanent implantation if he does find this to be beneficial trial.”

In a March 1, 2013 decision, OWCP terminated reimbursement for transportation costs and expenses for travel to the Mayo Clinic and Brooks Rehabilitation Center in Jacksonville, FL effective March 1, 2013. It found that the January 21, 2013 report of Dr. Wallace supported its determination.⁷ OWCP stated, “[OWCP] has determine[d] that it is not reasonable for you to travel over 100 miles one way to get medical treatment in Jacksonville, Florida, when there are qualified physicians, pain management treatment and, physical therapy facilities of the appropriate specialty available to you in your commuting area of Monticello, Florida.”

LEGAL PRECEDENT

Under FECA, once OWCP has accepted a claim it has the burden of justifying termination or modification of compensation benefits.⁸

Section 8103(a) of FECA states in pertinent part: “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 or the period of disability, or aid in lessening the amount of the monthly compensation.”⁹ Section 10.315 of OWCP’s regulations provide:

“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,

⁷ OWCP incorrectly referred to this report as being a report of Dr. Osbourne. However, the report was submitted by Dr. Wallace.

⁸ *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

⁹ 5 U.S.C. § 8103.

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. Travel should be undertaken by the shortest route, and if practical, by public conveyance. If the medical evidence shows that the employee is unable to use these means of transportation, OWCP may authorize travel by taxi or special conveyance."¹⁰

ANALYSIS

OWCP accepted that on August 4, 2005 appellant sustained a sprain/strain of the rotator cuff of his right shoulder, sprain/strain of the supraspinatus of his left shoulder, rotator cuff syndrome and allied disorders of his left shoulder and displacement of lumbar intervertebral disc without myelopathy due to pulling a wire through a conduit.¹¹ Appellant began performing limited-duty work for the employer.

The record reveals that OWCP reimbursed appellant for transportation costs and expenses related to his periodic visits to receive medical treatment from Dr. Shapiro, a Board-certified orthopedic surgeon, at the Mayo Clinic in Jacksonville, FL. OWCP also reimbursed transportation costs and expenses related to appellant's periodic physical therapy visits to the Brooks Rehabilitation Center in Jacksonville, FL.

In a March 1, 2013 decision, OWCP terminated reimbursement for transportation costs and expenses for travel to the Mayo Clinic and Brooks Rehabilitation Center in Jacksonville effective March 1, 2013. It stated that it was not reasonable for appellant to travel over 100 miles one way to get medical treatment in Jacksonville when there were qualified physicians, pain management treatment and physical therapy facilities of the appropriate specialty available to him in his commuting area of Monticello, FL.

The Board finds that OWCP did not meet its burden of proof to terminate reimbursement for transportation costs and expenses for travel to the Mayo Clinic and Brooks Rehabilitation Center in Jacksonville, FL.

OWCP based its termination of reimbursement for transportation costs and expenses for travel to the Mayo Clinic and Brooks Rehabilitation Center in Jacksonville on its determination that other appropriate physicians, pain management treatment and physical therapy facilities of the appropriate specialty were available to appellant in his commuting area. It did not provide any evidence to the record to support this finding. OWCP mentioned a January 21, 2013 report of Dr. Wallace, an attending Board-certified pain medicine physician at the Mayo Clinic in Jacksonville. It incorrectly asserted that the January 21, 2013 report of Dr. Wallace supported a finding that other appropriate physicians, pain management treatment and physical therapy facilities were available in appellant's commuting area. In fact, however, Dr. Wallace suggested that appellant receive a "continued workup here at Mayo Clinic" in a "comprehensive pain

¹⁰ 20 C.F.R. § 10.315.

¹¹ OWCP had previously accepted that appellant sustained neck and right shoulder injuries due to prior work incidents.

rehabilitation program” and requested that these efforts be approved by OWCP. He did not provide an opinion that it would become reasonable for appellant to continue receiving treatment at the Mayo Clinic or Brooks Rehabilitation Center. OWCP has not submitted sufficient evidence to support its termination of transportation costs and expenses for travel to these facilities.

The Board finds that OWCP improperly terminated reimbursement for transportation costs and expenses for travel to the Mayo Clinic and Brooks Rehabilitation Center in Jacksonville, FL.

CONCLUSION

The Board finds that OWCP did not meet its burden of proof to terminate reimbursement for transportation costs and expenses for travel to the Mayo Clinic and Brooks Rehabilitation Center in Jacksonville, FL.

ORDER

IT IS HEREBY ORDERED THAT the March 1, 2013 decision of the Office of Workers’ Compensation Programs is reversed.

Issued: July 9, 2013
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees’ Compensation Appeals Board

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