

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

W.T., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Augusta, GA, Employer**

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**Docket No. 13-197
Issued: June 3, 2013**

Appearances:

Alan J. Shapiro, Esq. for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge
Dear Mom and Dad,

JURISDICTION

On October 31, 2012 appellant, through his attorney, filed a timely appeal from decisions of the Office of Workers' Compensation Programs' (OWCP) dated August 15 and October 4, 2012. 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.

ISSUES

The issues are: (1) whether OWCP abused its discretion by denying appellant's request for reimbursement of travel expenses; and (2) whether OWCP properly refused to reopen appellant's case for reconsideration of his claim under 5 U.S.C. § 8128.

FACTUAL HISTORY

On March 8, 1995 appellant, a 39-year-old mail handler, filed a Form CA-2 claim for benefits, alleging that he developed a left knee condition causally related to employment factors. OWCP accepted the claim for chondromalacia of the patella, left knee and aggravation of left

¹5 U.S.C. § 8101 *et seq.*

knee osteoarthritis; it also authorized a left knee arthroscopy and total left knee replacement procedure. Appellant stopped working on February 27, 1995 and returned to work on March 14, 1998. OWCP paid compensation for temporary total disability.

By decisions dated December 28, 1995 and November 13, 1998, OWCP granted appellant a 37 percent schedule award for a left lower extremity impairment.

Appellant retired from the employing establishment on November 17, 2001.

On June 30, 2002 appellant filed a Form CA-7 claim, requesting an additional schedule award. By letter dated June 30, 2002, he indicated that he was requesting an additional award based on a consequential right hip condition.

Appellant subsequently submitted medical reports indicating that he sustained right hip and lower back conditions as a consequence of his accepted left knee conditions.

By decision dated April 22, 2003, OWCP denied appellant's claim for a consequential right hip condition. It found that the medical evidence he submitted was not sufficient to establish that his claimed right hip and lower back conditions developed as a consequence of his accepted left knee conditions.

By nonmerit decision dated January 2, 2004, OWCP denied reconsideration of the April 22, 2003 decision.

By decision dated December 27, 2004, OWCP denied modification of the April 22, 2003 merit decision.

On March 5, 2009 appellant requested authorization for a right hip arthroplasty. By decision dated March 20, 2009, OWCP advised the claimant that it was denying authorization for a requested total right hip arthroplasty. It stated that it had accepted a left knee condition and had denied appellant's claim for a consequential right hip condition in its April 22, 2003 decision.

On March 23, 2009 appellant underwent a procedure for right total hip arthroplasty. The procedure was performed by Dr. Brian G. Evans, Board-certified in orthopedic surgery, at Georgetown University Hospital in Washington, DC. By letter to appellant dated April 24, 2009, OWCP reiterated that it was denying his request for authorization for right hip surgery.

By letter dated January 23, 2012, appellant requested authorization for medical treatment with Dr. Evans in Washington, DC. He indicated that Dr. Evans would be treating him for his accepted left knee condition and for "consequential" conditions of the lower extremity related to his left knee condition.

By form letter dated January 26, 2012, appellant requested authorization from OWCP to be treated by Dr. Evans on January 30, 2012. The letter indicated that the treatment was necessary to treat a left knee condition, a right hip condition and "joint pain-pelvis."

By letter dated February 7, 2012, OWCP advised appellant that it did not authorize reimbursement for his travel for treatment with Dr. Evans in Washington, DC. It stated that he

would be required to find a physician within a 25 mile radius of his home in Augusta, Georgia, pursuant to 20 C.F.R. § 10.315 in order to have medical treatment reimbursed.² OWCP advised appellant to provide any written comments within 30 days.

By decision dated March 12, 2012, OWCP denied authorization for reimbursement for transportation costs and expenses for travel for treatment with Dr. Evans in Washington, DC.

By letter dated March 19, 2012, appellant requested an oral hearing, which was held on July 6, 2012. At the hearing he argued that he sought treatment with Dr. Evans for his right hip condition because he had planned to relocate to Harper's Ferry, WV at that time; as Dr. Evans' office was located in Washington, DC, this was convenient for him. Appellant indicated that he had degenerative joint disease in his pelvis, hips and legs, which he considered workrelated because he was receiving payment from OWCP for medical treatment related to degenerative joint disease of the lower extremity. The hearing representative advised appellant that his claim had only been accepted for left knee conditions, not a right hip condition or any other lower extremity condition; he indicated that appellant may have been reimbursed erroneously for these additional conditions. In addition, he stated that medical treatment should generally be obtained within 25 miles of where he resided or worked; the mere fact that appellant intended to move to another area did not obligate OWCP to reimburse him for medical expenses to obtain treatment in that area. The hearing representative advised appellant that if he did move to another area, he could at that time request authorization for a new treating physician in his new area of residence. Finally, he noted that OWCP had issued a decision dated April 22, 2003 denying appellant's claims for consequential conditions.

By letter to appellant dated July 12, 2012, appellant's attorney noted that there had been a dispute at the hearing as to whether his claimed right hip arthritis condition was due to his work-related left knee conditions. Counsel requested a copy of the April 22, 2003 decision and noted that his request for travel expenses to Washington,DC, would probably not be approved. He advised appellant to try to obtain the services of an orthopedic surgeon in Georgia if he intended to continue residing there.

In a statement dated July 17, 2012, appellant asserted that he underwent a functional capacity evaluation at the Department of Veterans' Affairs on January 20, 2012, which established a causal relationship between the degenerative joint disease of the lower extremity in the left knee and both the right and left hip.

By decision dated August 15, 2012, an OWCP hearing representative affirmed the March 12, 2012 decision.

By letter dated August 30, 2012, appellant requested reconsideration. He argued that the hearing representative erred in failing to consider the fact that OWCP paid for medical treatment pertaining to his work-related conditions, including treatment for degenerative joint disease of the lower extremity, which he had received since March 26, 2004 at the Department of Veterans' Affairs for his accepted left knee condition. Appellant further asserted that in December 2008 the Department of Veterans' Affairs referred him to Georgetown University Hospital, where he underwent his right hip replacement surgery on March 23, 2009 and left hip replacement surgery

²20 C.F.R. § 10.315.

on March 20, 2012; based on this referral, he contended that all expenses for travel and treatment of degenerative joint disease of the lower extremity should be authorized. He specifically requested reimbursement for travel expenses incurred for his March 20, 2012 left hip replacement surgery, which he contends was casually related to his accepted left knee conditions.

By decision dated October 4, 2012, OWCP denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require it to review its prior decision.

LEGAL PRECEDENT -- ISSUE 1

Section 8103 of FECA³ 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.

Section 10.315 of Title 20 of the Code of Federal Regulations provides, 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, [OWCP] will consider the availability of services, the employee's condition and the means of transportation. Generally, 25 miles from the place of injury, the worksite 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

As the only limitation on OWCP'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.⁵ The Board has long held that OWCP has broad discretion in approving services provided under FECA.⁶

ANALYSIS -- ISSUE 1

OWCP accepted the claim for chondromalacia of the patella, left knee and aggravation of left knee osteoarthritis. Appellant subsequently filed a claim for a consequential right hip condition and requested authorization for right hip replacement surgery, which he underwent on March 23, 2009. OWCP denied this request by decision dated March 20, 2009. By decision dated March 20, 2009 it advised appellant that it was denying authorization for a requested total right hip arthroplasty, stating that it had only accepted a left knee condition and had denied his

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

⁴ 20 C.F.R. § 10.315.

⁵ See *William B. Webb*, 56 ECAB 156 (2004); *Lecil E. Stevens*, 49 ECAB 673 (1998).

⁶ See *Wanda L. Campbell*, 44 ECAB 633 (1993).

claim for a consequential right hip condition in its April 22, 2003 decision. In January 2012, appellant requested authorization for travel expenses incurred for treatment with Dr. Evans in Washington, DC. He indicated that Dr. Evans would be treating him for his accepted left knee condition and for “consequential” conditions of the lower extremity related to his left knee condition, which included, his right hip condition and “joint pain-pelvis.” By letter dated February 7, 2012, OWCP advised appellant that it did not authorize reimbursement for his travel for treatment with Dr. Evans in Washington, DC. It stated that he would be required to find a physician within a 25-mile radius of his home in Augusta, Georgia, pursuant to 20 C.F.R. § 10.315 in order to have medical treatment reimbursed. By decision dated March 12, 2012, OWCP denied authorization for reimbursement for transportation costs and expenses for travel for treatment with Dr. Evans in Washington, DC.

The Board notes that appellant is entitled to reimbursement for reasonable and necessary travel expenses as provided under 20 C.F.R. § 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, OWCP must consider the availability of medical services in appellant’s area, his condition and the means of transportation.⁷ It found that he did not reasonably need to seek medical treatment in Washington, DC, as this was well beyond a 25-mile radius of his home in Augusta, Georgia and the record did not establish that he was unable to obtain competent and appropriate medical care within his commuting area given the number of available specialists.⁸

OWCP has broad discretion in considering whether to reimburse or authorize travel expenses. As the only limitation on OWCP’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.⁹ 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 Augusta, Georgia.¹⁰ The Board finds that the expenses appellant incurred for travel between his home in Augusta, Georgia and Dr. Evans’ office in Washington, DC, must be considered personal to appellant and that OWCP’s denial of his request for reimbursement was reasonable.¹¹ Thus OWCP properly denied authorization for travel expenses to Washington, DC, in its March 12, 2012 decision.

Following the March 12, 2012 decision, appellant requested a hearing and contended that he had degenerative joint disease in his pelvis and hips and legs, which he considered workrelated because he was receiving payment from OWCP for medical treatment related to degenerative joint disease of the lower extremity. As the hearing representative noted, appellant’s claim was only accepted for left knee conditions; he stated that if appellant’s

⁷W.M., 59 ECAB 132 (2007).

⁸See *Julia A. Strickland*, 54 ECAB 649 (2003).

⁹See *William B. Webb*, *supra* note 5.

¹⁰See *David Spearman*, 49 ECAB 445 (1998).

¹¹*Lecil E. Stevens*, *supra* note 5.

assertion was correct, he may have been reimbursed erroneously for these additional conditions. Appellant, however, has provided no documentation to support his assertions that he was being reimbursed by OWCP for medical treatment unrelated to his accepted left knee conditions. He also argued in his July 17, 2012 statement that his January 20, 2012 functional capacity evaluation at the Department of Veterans' Affairs on January 20, 2012 established a causal relationship between the degenerative joint disease of the lower extremity in the left knee and his alleged right and left hip. As the hearing representative properly determined, however, OWCP properly denied appellant's request for authorization for travel expenses in its March 12, 2012 decision because his claim for a consequential right hip condition had been denied by OWCP in its April 22, 2003 decision and because OWCP had denied authorization for right hip replacement surgery on March 20, 2009; therefore, his request for reimbursement for travel expenses was not authorized insofar as the travel was undertaken to receive treatment for a nonaccepted condition.

OWCP properly considered the factors enumerated in section 10.315 and denied appellant's request for authorization for travel expenses to see Dr. Evans in Washington, DC. It did not abuse its discretion by denying authorization of travel expenses between Augusta, Georgia and Washington, DC.

LEGAL PRECEDENT -- ISSUE 2

Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that OWCP erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by OWCP; or by submitting relevant and pertinent evidence not previously considered by OWCP.¹² Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.¹³

ANALYSIS -- ISSUE 2

In the present case, appellant has not shown that OWCP erroneously applied or interpreted a specific point of law; nor has he advanced a relevant legal argument not previously considered by OWCP. He argued in his August 30, 2012 letter that the hearing representative failed to consider the fact that OWCP paid for medical treatment pertaining to all claimed, consequential conditions stemming from his accepted left knee conditions. Appellant further asserted that the Department of Veterans Affairs had treated him for these conditions since 2004 and that because it had referred him to Georgetown University Hospital, where he underwent right and left hip replacement surgery, all expenses for travel and treatment of all of his claimed conditions should be authorized. As noted above, he had submitted no documentation to support his contention that OWCP had reimbursed him for any medical treatment other than for his accepted left knee conditions. In addition, the hearing representative fully and thoroughly addressed appellant's contentions that his right hip and any other degenerative conditions of the lower extremities had been accepted by OWCP or were causally related to his accepted left knee conditions. Thus the contentions raised by appellant in his request for reconsideration were

¹²20 C.F.R. § 10.606(b).*See generally* 5 U.S.C. § 8128(a).

¹³*Howard A. Williams*, 45 ECAB 853 (1994).

cumulative and duplicative.¹⁴ His reconsideration request failed to show that OWCP erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by OWCP. OWCP did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.

CONCLUSION

The Board finds that OWCP did not abuse its discretion by denying appellant's request for reimbursement of travel expenses. The Board finds that OWCP properly refused to reopen his case for reconsideration on the merits of his claim under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the October 4 and August 15, 2012 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 3, 2013
Washington, DC

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

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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

¹⁴See *Patricia G. Aiken*, 57 ECAB 441 (2006).