

She received wage-loss compensation for total disability effective July 24, 2011 for which she was placed on periodic rolls.² Appellant stopped work on June 10, 2011 and returned to limited-duty work on October 18, 2012.

By letter dated March 26, 2013, appellant requested that her treating physician be changed because her current physician no longer accepted workers' compensation cases. By letter dated April 10, 2013, OWCP authorized Dr. Mary Burgesser, Board-certified in physical medicine and rehabilitation, as appellant's treating physician. Appellant first sought treatment with Dr. Burgesser on May 7, 2013. Dr. Burgesser prescribed a BuTrans pain patch to be worn on appellant's skin weekly and Celebrex to aid with her status post lumbar fusion. In a May 27, 2013 follow-up report, she noted that the patch and Celebrex made appellant sick and prescribed her a Revlon cream as a treatment alternative.

Appellant did not seek follow-up treatment with Dr. Burgesser and began treatment on June 10, 2013 with Dr. Jacob Rosenstein, a Board-certified neurological surgeon, whose practice was located in Arlington, Texas.

In a June 18, 2013 OWCP telephone memorandum, the claims examiner noted that appellant stated that Dr. Rosenstein's office was located over 400 miles from her home and appellant requested overnight stays for her medical visits. Appellant also stated that the pain patch Dr. Burgesser prescribed resulted in side effects. As a result, she sought treatment with Dr. Rosenstein. The claims examiner informed appellant that she should find a treating physician closer to her local commuting area. Appellant stated that no one took workers' compensation cases. The claims examiner informed appellant that mileage would be reimbursed for her travel but that she needed to find a closer treating physician.

On June 19, 2013 appellant filed a claim for compensation (Form CA-7) for leave without pay for the period June 2 to 15, 2013. In a June 20, 2013 time analysis form (CA-7a), she requested eight hours for travel for a physician's visit on June 9, 2013 and eight hours for a physician's visit on June 10, 2013.

By letter dated July 24, 2013, OWCP advised appellant that it had received her CA-7 form. It informed her that it could not authorize her to miss her regular work shift on June 9, 2013 to attend the June 10, 2013 physician's appointment. Appellant would be authorized for round-trip mileage reimbursement.³

² The Board notes that appellant had a prior appeal before the Board regarding an overpayment issue. By decision dated January 2, 2013, the Board affirmed a July 2, 2012 OWCP merit decision, which found that appellant received a \$1,924.56 overpayment of compensation for the period July 24 to September 24, 2011 and that OWCP did not abuse its discretion by refusing to waive recovery of the overpayment. Docket No. 12-1486 (issued January 2, 2013). The findings of fact and conclusions of law from the prior decision and order are hereby incorporated by reference.

³ The Board notes that, although OWCP's July 24, 2013 letter was not accompanied by appeal rights, it effectively denied appellant's request for wage-loss compensation on July 9, 2013. The Board considers the claims examiner's July 24, 2013 action a final, adverse decision subject to review under 20 C.F.R. §§501.2(c) and 501.3(a).

By letter dated July 31, 2013, appellant stated that she was informed by OWCP that it was her responsibility to find a physician to treat her. She stated that she lived in Amarillo, Texas and found a treating physician in Arlington, Texas. Appellant explained that it was a six-hour drive to see her physician which took her seven hours because she needed to stop and rest several times as a result of her back pain. She stated that she was appealing the July 24, 2013 OWCP decision, which did not allow her to miss her regular work shift the day before her appointment. Appellant stated that her regular work hours were 12:00 p.m. to 9:00 p.m., after which she would have to drive a seven-hour trip to arrive to her physician's appointment at 10:30 a.m. the following day and then attend another physician's appointment at 3:00 p.m. before driving back home another seven hours. She argued that she should be allowed to travel the day before and receive compensation for wage loss, attend her physician's appointment the following day and travel home after she finished with her appointments.

LEGAL PRECEDENT

For each period of disability claimed, the employee has the burden of proving that he or she was disabled for work as a result of the accepted employment injury.⁴ As used in FECA, the term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury. Disability is thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.⁵ Whether a particular injury caused an employee disability from employment is a medical issue, which must be resolved by competent medical evidence.⁶

With respect to claimed disability for medical treatment, section 8103 of FECA provides for medical expenses, along with transportation and other expenses incidental to securing medical care, for injuries.⁷ Appellant would be entitled to compensation for any time missed from work due to medical treatment for an employment-related condition.⁸ However, OWCP's obligation to pay for medical expenses and expenses incidental to obtaining medical care, such as loss of wages, extends only to expenses incurred for treatment of the effects of any employment-related condition. Appellant has the burden of proof, which includes the necessity to submit supporting rationalized medical evidence.⁹

OWCP's procedure manual provides that wages lost for compensable medical examination or treatment may be reimbursed.¹⁰ It notes that a claimant who has returned to work

⁴See *Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁵*Cheryl L. Decavitch*, 50 ECAB 397 (1999); *Maxine J. Sanders*, 46 ECAB 835 (1995).

⁶See *Debra A. Kirk-Littleton*, 41 ECAB 703 (1990).

⁷5 U.S.C. § 8103(a).

⁸*Vincent E. Washington*, 40 ECAB 1242 (1989).

⁹*Dorothy J. Bell*, 47 ECAB 624 (1996); *Zane H. Cassell*, 32 ECAB 1537 (1981).

¹⁰See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Computing Compensation*, Chapter 2.901.16 (December 1995).

following an accepted injury or illness may need to undergo examination or treatment and such employee may be paid compensation for wage loss while obtaining medical services and for a reasonable time spent traveling to and from the medical provider's location.¹¹ As a rule, no more than four hours of compensation or continuation of pay should be allowed for routine medical appointments. Longer periods of time may be allowed when required by the nature of the medical procedure and/or the need to travel a substantial distance to obtain the medical care.¹²

Medical expenses, along with transportation and other expenses incidental to securing medical care, are covered by section 8103 of FECA.¹³ This section 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 the Secretary of Labor considers likely to cure, give relief, reduce the degree of the period of any disability or aid in lessening the amount of any monthly compensation. The employee may initially select a physician to provide medical services, appliances and supplies, in accordance with such regulations and instructions as the Secretary considers necessary and may be furnished necessary and reasonable transportation and expenses incident to the securing of such services, appliances and supplies. In interpreting this section, the Board has recognized that OWCP has broad discretion in approving services provided under FECA. The only limitation on OWCP's authority is that of reasonableness.¹⁴

OWCP regulations provide that 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.¹⁵

ANALYSIS

OWCP accepted appellant's claim for thoracic or lumbosacral neuritis or radiculitis. Appellant filed a claim for wage-loss compensation for eight hours of leave without pay on June 9, 2013 to travel to a medical appointment and eight hours for time spent at the medical appointment on June 10, 2013. OWCP found that she was not entitled to wage-loss compensation on June 9, 2013, noting that she was not authorized to miss eight hours of her regular work shift to travel to a physician's appointment. It found that appellant was entitled to reimbursement for mileage for round-trip travel.

¹¹See also *Daniel Hollars*, 51 ECAB 355 (2000); *Jeffrey R. Davis*, 35 ECAB 950 (1984).

¹²See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Administrative Matters*, Chapter 3.900.8 (November 1998).

¹³*Supra* note 7.

¹⁴*Lecil E. Stevens*, 49 ECAB 673, 675 (1998); 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).

¹⁵20 C.F.R. § 10.315 (1999).

On March 26, 2013 appellant requested that her treating physician be changed to Dr. Burgesser. She sought treatment with Dr. Burgesser on May 7 and 27, 2013 and failed to follow up stating that the pain patch and medication that Dr. Burgesser prescribed caused side effects. Appellant then sought treatment with Dr. Rosenstein on June 10, 2013. She stated that his practice was located over 400 miles from her home in Arlington, Texas.

By decision dated July 24, 2013, OWCP denied eight hours of wage-loss compensation for travel the day before the medical appointment on June 9, 2013. 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 worksite 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, her condition and the means of transportation.¹⁶

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.¹⁷ 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 Amarillo, Texas.¹⁸ OWCP considered appellant's accepted conditions and the availability of medical services in Amarillo, Texas. The Board finds that OWCP gave due regard to the relevant factors and is not required to provide wage-loss compensation due to travel between her home in Amarillo, Texas and Dr. Rubenstein's office in Arlington, Texas.¹⁹ The expenses must be considered personal to appellant and OWCP's denial of her request for wage-loss compensation on June 9, 2013 was reasonable.

Moreover, the medical reports provided by Dr. Burgesser and Dr. Rubenstein do not indicate that appellant was medically required to drive to her appointments the day before as a result of her accepted disability.²⁰ As the record did not establish that appellant was unable to obtain competent and appropriate medical care within her commuting area, OWCP properly denied her wage-loss compensation on June 9, 2012.²¹

¹⁶*W.M.*, 59 ECAB 132 (2007).

¹⁷*See William B. Webb*, 56 ECAB 156 (2004); *Lecil E. Stevens*, 49 ECAB 673 (1998).

¹⁸*See David Spearman*, 49 ECAB 445 (1998).

¹⁹*J.J.*, Docket No. 10-1908 (issued June 16, 2011).

²⁰*D.W.*, Docket No. 10-1967 (issued June 22, 2011).

²¹ The Board notes that appellant may submit a request to OWCP to change her treating physician to a qualified physician who is closer to her home commuting area in Amarillo, Texas. 20 C.F.R. § 10.315.

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she is entitled to compensation for time missed from work due to travel for medical treatment on June 9, 2013.

ORDER

IT IS HEREBY ORDERED THAT the July 24, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 26, 2013
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