

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

T.N., Appellant

and

**DEPARTMENT OF HOMELAND SECURITY,
IMMIGRATION & CUSTOMS
ENFORCEMENT, San Diego, CA, Employer**

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**Docket No. 13-2097
Issued: September 16, 2014**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 19, 2013 appellant filed a timely appeal from a June 10, 2013 decision of the Office of Workers' Compensation Programs (OWCP) denying reimbursement for mileage. 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

ISSUE

The issue is whether OWCP abused its discretion by denying appellant's request for reimbursement of travel expenses.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence following the June 10, 2013 decision along with her appeal. Since the Board's jurisdiction is limited to evidence that was before OWCP at the time it issued its final decision, the Board may not consider this evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

FACTUAL HISTORY

The case has been before the Board on prior occasions on the underlying issues in her case.³ The pertinent and relevant facts pertaining to her claim for travel reimbursement are described below.

On August 20, 1998 appellant, then a 39-year-old deportation assistant, filed an occupational disease claim alleging that she experienced numbness, tingling and pain in her right upper extremity as a result of her employment duties. In November 1998, OWCP accepted her claim for bilateral wrist, elbow and shoulder strain but denied her claim for a cervical strain. In July 2000, it expanded appellant's claim to include bilateral carpal tunnel syndrome. Appellant continued to receive medical treatment for her accepted bilateral carpal tunnel syndrome. On October 12, 2006 she underwent authorized right carpal tunnel release surgery. Appellant has been receiving medical treatment continuously since then.

By letter dated June 14, 2012, OWCP authorized left wrist endoscopy surgery, carpal tunnel surgery and right incision of the tendon sheath for June 14 to August 14, 2012.

A surgical procedure of right revision open carpal tunnel release surgery through separate incision of the right de Quervain's release and left endoscopic carpal tunnel release by Dr. Mark D. Mellinger, a Board-certified orthopedic surgeon, took place on August 1, 2012. Dr. Mellinger noted diagnoses of bilateral carpal tunnel syndrome and right de Quervain's disease.

By letter dated August 30, 2012, appellant informed OWCP that she no longer lived in Parks, AZ and provided her new address in Calexico, CA.

By letter dated January 4, 2013, appellant stated that she had requested mileage reimbursement but had not received a formal report. She listed the following specifics: \$257.56 on March 26, 2012 for mileage to Santa Monica, CA; \$428.46 on May 22, 2012 for mileage to Flagstaff, AZ; \$436.23 on August 1, 2012 for mileage to Flagstaff, AZ for authorized surgery; and \$430.68 on August 14, 2012 for mileage to Flagstaff, AZ for post operation examination.

By letter dated June 10, 2013, OWCP denied authorization for reimbursement for 398 miles for travel to Dr. Mellinger's office in Flagstaff, AZ on May 22, 2012. It stated that

³ By order dated September 1, 2005, the Board determined that OWCP denied appellant of her right to an oral hearing as a matter of right and remanded the case in order for OWCP to provide her with an opportunity to exercise her right to an oral hearing. Docket No. 05-844 (issued September 1, 2005). By order dated July 12, 2007, the Board dismissed appellant's appeal docketed as Docket No. 06-1552 because on May 19, 2006 an OWCP hearing representative set aside its denial decisions and remanded the case for further development, thereby eliminating the adverse finding against appellant. Docket No. 06-1552 (issued July 12, 2007). By order dated February 4, 2010, the Board remanded the case to OWCP for reconstruction of the record and an appropriate order to preserve appellant's rights of appeal. Docket No. 09-2350 (issued February 4, 2010). By order dated May 25, 2011, the Board remanded appellant's claim finding that OWCP had an obligation to secure a second opinion report addressing whether appellant sustained a cervical condition causally related to her accepted injury. Docket No. 10-1810 (issued May 25, 2011). By decision dated December 18, 2012, the Board found that a conflict in medical opinion still existed regarding whether appellant sustained an additional cervical condition as a result of her accepted employment injuries and remanded the case in order for OWCP to secure a supplemental impartial medical report. Docket No. 12-1056 (issued December 18, 2012).

medical travel reimbursement in excess of 100 miles round trip must be medically justified and preauthorized in order to be paid. OWCP advised appellant that, if she wished to continue treating with her current physician she should only file a claim for mileage in excess of 100 miles if she receives a letter that the travel was preauthorized.

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 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 OWCP considers necessary and may be furnished necessary and reasonable transportation and expenses incident to the securing of such services, appliances and supplies.⁴

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 a reasonable distance to travel is, it will consider the availability of services, the employee's condition and the means of transportation. Effective August 29, 2011, the most recent regulations provide that a roundtrip distance of up to 100 miles is considered a reasonable distance to travel.⁵ 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. 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.⁶

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.⁷ OWCP may authorize medical treatment but determine that the travel expense incurred for such authorized treatment was unnecessary or unreasonable.⁸

⁴ 5 U.S.C. § 8103(a).

⁵ 20 C.F.R. § 10.315(a).

⁶ *Id.* at § 10.315(b).

⁷ *A.O.*, Docket No. 08-580 (issued January 28, 2009); *see also 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).

⁸ *W.M.*, 59 ECAB 132 (2007); *Mira R. Adams*, 48 ECAB 504 (1997).

ANALYSIS

OWCP accepted that appellant sustained bilateral carpal tunnel syndrome as a result of her employment duties. It authorized left wrist endoscopy surgery, carpal tunnel surgery and right incision of the tendon sheath, which was performed on August 1, 2012 by Dr. Mellinger. By letter dated August 30, 2012, appellant advised OWCP that she had moved to Calexico, CA, which the Board notes is 376 miles away. She requested travel reimbursement for mileage on March 26, 2012 to Santa Monica, CA for a medical examination on May 22, 2012 to Flagstaff, AZ in addition to other dates. In its letter dated June 10, 2013, OWCP denied appellant's request for reimbursement for 398 miles on May 22, 2012.

OWCP regulations provide that an employee is entitled to reimbursement of reasonable and necessary expenses, including transportation needed to obtain authorized medical services, appliances or supplies. The most recent regulations provide that a roundtrip distance of up to 100 miles is considered a reasonable distance to travel.⁹ 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.¹⁰

The Board notes that Calexico, CA is more than 100 miles from Flagstaff, AZ. Accordingly, in order to receive reimbursement for transportation, appellant must submit a written request for prior authorization with information describing the necessity for such travel expenses. In this case, she did not request prior authorization for travel reimbursement from Calexico, CA to Flagstaff, AZ on May 22, 2012. Appellant did not explain why travel to Dr. Mellinger's office was both reasonable and necessary for the treatment of her accepted conditions. The Board further notes that she did not inform OWCP that she moved to Calexico, CA until August 30, 2012, after she began traveling to Dr. Mellinger's office for medical treatment and surgery.

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 only shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deductions from established facts.¹¹ The Board finds that OWCP properly exercised its discretion to deny appellant's request for reimbursement of travel expense on May 22, 2012.¹² Appellant failed to show that travel from California to Arizona was necessary and reasonable for treatment of her accepted conditions and did not request prior authorization for reimbursement of travel expenses since

⁹ *Supra* note 4.

¹⁰ *Supra* note 5.

¹¹ *Daniel J. Perea*, 42 ECAB 221 (1990).

¹² The Board notes that appellant also requested travel reimbursement for the dates March 26, August 1 and 14, 2012. As OWCP has not issued formal decisions regarding these dates, the Board cannot address these issues on appeal. 20 C.F.R. § 501.2(c).

travel to Dr. Mellinger's office is more than 100 miles.¹³ For these reasons, the Board will affirm the June 10, 2013 decision.

CONCLUSION

The Board finds that OWCP did not abuse its discretion by denying appellant's request for reimbursement of travel expenses.

ORDER

IT IS HEREBY ORDERED THAT the June 10, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 16, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

¹³ See *T.A.*, Docket No. 12-368 (issued June 22, 2012).