



in a role playing training exercise at work.<sup>2</sup> OWCP initially accepted his claim for impingement and rotator cuff tear of the left shoulder.<sup>3</sup>

OWCP accepted that appellant sustained a recurrence of disability on May 16, 2005 due to his December 19, 2002 work injury and expanded his accepted conditions to include bilateral affections of shoulder region, not elsewhere classified. Appellant received authorized treatment from Dr. Thomas B. Rivers, an attending Board-certified orthopedic surgeon.

In a January 29, 2015 decision, OWCP rescinded its acceptance of appellant's claim for bilateral affections of shoulder region, not elsewhere classified.<sup>4</sup>

In a February 7, 2015 letter, appellant requested authorization to travel to Oklahoma City, OK, to be examined by Dr. John Ellis, a Board-certified family practitioner.<sup>5</sup> He asserted that he was unable to find a physician closer to his home with the same or better qualifications. Appellant indicated that he had previously been treated by Dr. Ellis and stated, "I prefer Dr. Ellis; he knows my medical history."

In a March 5, 2015 letter, appellant, through his representative, requested that his authorized treating physician be changed to Dr. Ellis. His representative indicated that appellant had been unsuccessful in finding an appropriate physician closer to his home in Sugar Land, TX. The representative indicated that such a change was authorized by FECA Bulletin No. 14-02.<sup>6</sup> In a March 6, 2015 letter, appellant indicated that he could not find an appropriate physician who lived closer to his home than Dr. Ellis.

In an informational letter dated March 19, 2015, an OWCP claims examiner denied authorization of appellant's request to change his treating physician to Dr. Ellis. She discussed resources for finding a physician closer to appellant's home. In an April 6, 2015 letter, appellant's representative listed several physicians contacted by appellant who indicated that they did not take OWCP patients.

In an April 16, 2015 decision, OWCP denied appellant's request to change his treating physician noting that he had not provided sufficient reasons for changing his physician. It stated that his preference to be treated by Dr. Ellis was not a sufficient reason to change physicians. Visiting Dr. Ellis' office in Oklahoma City, OK, required a more than 900-mile roundtrip from appellant's home in Sugar Land, TX, whereas Sugar Land, TX was close to Houston, TX. OWCP stated, "[Y]ou have not provided sufficient evidence that you are unable to obtain

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<sup>2</sup> When he filed his claim, appellant was living in Sugar Land, TX, which is located approximately 20 miles from downtown Houston, TX.

<sup>3</sup> Appellant received compensation on the daily rolls for periods of disability.

<sup>4</sup> Appellant has not appealed this decision and this rescission action is not currently before the Board.

<sup>5</sup> At this time, appellant was still living in Sugar Land, TX, which was a one-way distance of more than 450 miles from Oklahoma City, OK.

<sup>6</sup> See *infra* note 14. A February 26, 2015 document was attached in which appellant discussed the physicians who treated his medical conditions.

appropriate medical care with another physician with a similar specialty within a 50-mile radius (or 100 miles roundtrip) from your residence or workplace.”

### **LEGAL PRECEDENT**

The payment of medical expenses incidental to securing medical care is authorized under section 8103 of FECA. The pertinent part provides that an employee may initially select a physician to provide medical services, appliances, and supplies in accordance with such regulations and instruction as the Secretary considers necessary.<sup>7</sup>

When the physician originally selected to provide treatment for a work-related injury refers the employee to a specialist for further medical care, the employee need not consult OWCP for approval. In all other instances, however, the employee must submit a written request to OWCP with his or her reasons for desiring a change of physician. OWCP will approve the request if it determines that the reasons submitted are sufficient. Requests that are often approved include those for transfer of care from a general practitioner to a physician who specializes in treating conditions like the work related one or the need for a new physician when an employee has moved.<sup>8</sup>

Any transfer of medical care should be accomplished with due regard for professional ethics and courtesy. No transfer or termination of treatment should be made unless it is in the best interest of the claimant and the government. An employee who wants to change attending physicians must explain his or her reasons in writing and OWCP must review all such requests. OWCP may approve a change when the original treating physician refers the claimant to another physician for further treatment, the claimant wants to change from the care of a general practitioner to that of a specialist in the appropriate field, or from the care of one specialist to another in the appropriate field, or the claimant moves more than 50 miles from the original physician (since OWCP has determined that a reasonable distance of travel is up to a roundtrip distance of 100 miles). It must use discretion in cases where other reasons are presented.<sup>9</sup>

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, OWCP 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 round-trip distance of up to 100 miles is considered a reasonable distance to travel.<sup>10</sup> If round-trip 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

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<sup>7</sup> 5 U.S.C. § 8103.

<sup>8</sup> 20 C.F.R. § 10.316.

<sup>9</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Authorizing Examination and Treatment*, Chapter 3.300.5c (February 2012).

<sup>10</sup> 20 C.F.R. § 10.315(a).

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.<sup>11</sup>

The Board has recognized that OWCP, acting as the delegated representative of the Secretary of Labor, has broad discretion in approving services provided under FECA. OWCP has the general objective of ensuring that an employee recovers from his or her injury to the fullest extent possible in the shortest amount of time. It, therefore, has broad administrative discretion in choosing the means to achieve this goal. The only limitation on OWCP's authority is that of 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 established facts. It is not enough to show merely that the evidence could be construed to produce a contrary conclusion.<sup>12</sup>

### ANALYSIS

The Board finds that OWCP appropriately exercised its discretion in denying appellant's request to change his treating physician.

In a March 5, 2015 letter, appellant, through his representative, requested that his authorized treating physician be changed to Dr. Ellis, a Board-certified family practitioner whose office was in Oklahoma City, OK. At the time, he was living in Sugar Land, TX, which is located about 20 miles from downtown Houston, TX, and more than 450 miles from Oklahoma City. Appellant indicated that he preferred Dr. Ellis because he knew his medical history and asserted that he could not find a suitable physician closer to home.

The Board finds that, in its April 16, 2015 decision, OWCP properly exercised its discretion to deny appellant's request to change treating physicians. It found that he had not provided sufficient reasons for changing his physician, noting that his preference to be treated by Dr. Ellis was not a sufficient reason to change physicians. OWCP pointed out that visiting Dr. Ellis' office in Oklahoma City, OK, required a more than 900-mile roundtrip from appellant's home in Sugar Land, TX, whereas Sugar Land, TX, was close to Houston, TX, a major metropolitan area. It stated that appellant had not provided sufficient evidence that he was unable to obtain appropriate medical care with another physician with a similar specialty within a 50-mile radius (or 100 miles roundtrip) from his home.<sup>13</sup> Although appellant indicated that he had contacted several physicians who would not take OWCP patients, he did not submit evidence showing that there were no appropriate physicians close to his home that were available to treat him.

Before OWCP and on appeal, appellant's representative argued that FECA Bulletin No. 14-02 controlled appellant's situation and dictated that travel should be approved for up to 900

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<sup>11</sup> *Id.* at § 10.315(b).

<sup>12</sup> *J.W.*, Docket No. 13-1852 (issued January 23, 2014); *Rosa Lee Jones*, 36 ECAB 679 (1985).

<sup>13</sup> *See supra* notes 8 through 11 regarding the standards for considering requests to change physicians and for travel authorization to visit physicians.

miles in distance and up to six months in length. The Board notes that FECA Bulletin No. 14-02 provides that, in limited circumstances, travel may be approved for more than 100 miles for reasons such as the need to see a treating physician or therapist if the claimant lives in a remote area.<sup>14</sup> However, in the present case, appellant does not live in a remote area as the record shows that he lives in the Houston, TX, metropolitan area. He has not submitted evidence showing that there are no appropriate physicians in his area.

As noted above, OWCP has broad administrative discretion in choosing the means to achieve the goal of providing treatment to a claimant. The only limitation on its authority is that of reasonableness and 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 established facts.<sup>15</sup> The Board finds that, under these standards, OWCP has not abused its discretion in denying appellant's request to change his treating physician.

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 exercised its discretion in denying appellant's request to change his treating physician.

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<sup>14</sup> See FECA Bulletin No. 14-02 (issued January 29, 2014).

<sup>15</sup> See *supra* note 12.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 16, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 19, 2015  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

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