United States Department of Labor
Employees' Compensation Appeals Board

M.F., Appellant	)	
and	)	**Docket No. 16-0107**
	)	**Issued: December 13, 2016**
DEPARTMENT OF THE AIR FORCE, ROBINS AIR FORCE BASE, GA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On October 19, 2015 appellant filed a timely appeal from two September 16, 2015 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 appellant has met her burden of proof to establish more than two percent permanent impairment of the right lower extremity and two percent permanent impairment of the left lower extremity, for which he had received a schedule award; and (2) whether OWCP properly exercised its discretion in denying appellant's requests for travel reimbursement**.**

FACTUAL HISTORY

OWCP accepted that on August 2, 2012 appellant, then a 30-year-old aircraft mechanic, who resided in Chester, GA, sustained a lumbosacral sprain when moving an aircraft stand. It later expanded the claim to include L3-4 and L4-5 disc disorders with myelopathy. On

[1] 5 U.S.C. § 8101 *et seq.*

February 26, 2013 appellant underwent an L3-4 discectomy and L4-5 decompression, approved by OWCP. He returned to full duty on April 26, 2013 with no loss of wages. Appellant remained under medical care for degenerative lumbar disc disease.[2]

A March 3, 2014 electromyogram (EMG) of both lower extremities was normal, without evidence of radiculopathy. In a May 17, 2014 report, Dr. George S. Stefanis, an attending Board-certified neurosurgeon, noted positive straight raising tests bilaterally, with no weakness, and a normal sensory examination of the lower extremities. He diagnosed multilevel lumbar degenerative disc disease.

In an August 19, 2014 telephone memorandum, OWCP noted that appellant had called to request approval to attend a medical appointment in Oklahoma on September 15, 2014. It advised him to "file for reimbursement *via* travel claim after he has attended the appointment."

Dr. John W. Ellis, a Board-certified family practitioner located in Oklahoma City, Oklahoma, provided a September 15, 2014 impairment rating. He reviewed medical records and related appellant's symptoms of genitourinary dysfunction. On examination, Dr. Ellis observed limited lumbar motion, weakness in plantar flexion of both feet, weakness in flexion and extension of the left knee, decreased sensation to light touch, pinprick, two-point discrimination, and monofilament testing in the right L5 and S1 dermatomes and the left L4, L5, and S1 dermatomes. He observed that in the right L4 nerve, appellant could "barely feel a 4.56 monofilament" and could not discriminate a 20-millimeter (mm) interval on two-point discrimination. "Along the left L4, bilateral L5 and right S1 spinal nerves, [appellant could] barely feel a 6.65 monofilament and [could not] discriminate 25 mm two-point discrimination." Also, appellant could not feel a 6.56 monofilament or perform two-point discrimination at 25 mm in the left S1 spinal nerve.

Dr. Ellis diagnosed a lumbosacral sprain, lumbar disc disease with myelopathy, neurogenic sexual dysfunction, and neurogenic bladder dysfunction. He opined that the accepted lumbar injury and surgery continued to cause the diagnosed conditions. Dr. Ellis found that appellant had reached maximum medical improvement. Referring to Table 16-12[3] of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter, A.M.A., *Guides*), he found 10 percent permanent impairment of the right leg due to 6 percent impairment of the L5 spinal nerve, and 4 percent impairment of the S1 spinal nerve. Dr. Ellis also found 29 percent permanent impairment of the left leg due to 6 percent impairment of the L4 spinal nerve, 16 percent impairment of the L5 nerve, and 10 percent impairment of the S1 nerve.

In a September 15, 2014 memorandum, OWCP's medical biller (ACS) approved reimbursement of Dr. Ellis' medical services performed that same day. OWCP also issued

[2] On October 30, 2013 Dr. James G. Shields, Jr., an attending Board-certified anesthesiologist, diagnosed postlaminectomy syndrome with radicular pain. He provided pain management services from October 2013 through August 2015. On February 10, 2014 a physical therapist performed an impairment rating, finding one percent impairment of the right leg and nine percent impairment of the left leg due to "soft findings" of bilateral S1 radiculopathy. He also provided a March 10, 2014 impairment rating finding one percent impairment of each leg for possible muscle weakness. Neither rating was signed or reviewed by a physician.

[3] Table 16-12, page 535 of the sixth edition of the A.M.A., *Guides* is entitled "Peripheral Nerve Impairment -- Lower Extremity Impairments."

wage-loss compensation to appellant for his work absence on September 15, 2014 to see Dr. Ellis.

After he returned from his appointment with Dr. Ellis in Oklahoma City, Oklahoma,[4] appellant claimed a total of $1,378.44 in expenses related to his travel to see Dr. Ellis including: $154.00 for lodging on September 14 and 15, 2014; $199.00 for meals; $552.72 mileage reimbursement for the 987-mile drive from his home in Chester, Georgia, to Dr. Ellis' office in Oklahoma City, Oklahoma; $552.72 in mileage reimbursement for the return drive.[5]

On October 21, 2014 appellant filed a claim for a schedule award. In an October 27, 2014 letter, OWCP advised him of the evidence needed to establish his claim, including an impairment rating according to the sixth edition of the A.M.A., *Guides*.

November 13 and December 4, 2014 OWCP billing memoranda demonstrates that its billing service denied reimbursement of appellant's claim for a mileage allowance, meals, and lodging from September 14 to 16, 2015.

On December 3, 2014 an OWCP medical adviser reviewed Dr. Ellis' impairment rating and disagreed with the percentages offered, as he based his assessment on "more subjective/empirical evidence rather than hard objective evidence." He found that appellant had one percent impairment of each lower extremity for "mild bilateral S1 sensory deficit."

In a February 23, 2015 letter to his elected congressional representative, appellant explained that he had obtained an impairment rating from Dr. Ellis because he was the best qualified physician to perform the examination. He was unable to locate a physician in his immediate area willing to perform the impairment rating.

On March 27, 2015 OWCP sought to refer appellant for a second opinion examination regarding the appropriate percentage of permanent impairment. It noted in an April 28, 2015 memorandum that it was temporarily closing the second opinion referral as "there is n[o]t a provider within 100 miles that would accept the case."

OWCP advised appellant by March 27, 2015 letter that "the number of miles requested for reimbursement exceed[ed] the 100 miles maximum allowable." Also, its authorization of medical services by Dr. Ellis did "not automatically authorize travel to that provider." OWCP afforded appellant 30 days to submit evidence that it had authorized appellant's travel reimbursement request.

On July 13, 2015 OWCP referred appellant, the medical record, and a statement of accepted facts to Dr. Harry J. Lenaburg, Jr., a Board-certified orthopedic surgeon located in Dublin, Georgia, to obtain a second opinion regarding the percentage of permanent impairment to the lower extremities caused by the accepted lumbar conditions. Dr. Lenaburg provided an

[4] The record contains a fragment of a request for travel reimbursement (Form OWCP-957), imaged into the case record on February 25, 2015. However, the date the form was originally submitted is not of record.

[5] In an October 24, 2014 letter, the employing establishment requested that OWCP deny appellant's request for travel reimbursement as Dr. Ellis allegedly was "known to overinflate impairment ratings and has submitted questionable medical documentation in the past."

August 7, 2015 report, which reviewed the medical record and statement of accepted facts. On examination, he found diminished touch sensation over the medial aspect of both legs, and bilaterally absent patellar reflexes. Appellant had no objective signs of lumbar radiculopathy. Dr. Lenaburg diagnosed post-laminectomy syndrome. He opined that appellant had reached maximum medical improvement and that the accepted conditions had resolved with no residuals. Referring to Table 16-12 of the A.M.A., *Guides*, Dr. Lenaburg found two percent permanent impairment of each lower extremity for a class 1, grade A mild sensory deficit in the L4 dermatome.

An OWCP medical adviser reviewed Dr. Lenaburg's impairment rating on August 18, 2015 and concurred with his findings and calculations.

By decision dated September 16, 2015, OWCP issued a schedule award for two percent permanent impairment of each leg, based on Dr. Lenaburg's opinion. It noted that it did not rely on Dr. Ellis' opinion as he had utilized subjective findings to calculate impairment.

In a second September 16, 2015 decision, OWCP denied reimbursement for mileage, meals, and lodging in the amount of $1,378.44 from September 14 to 16, 2014. It found that he had not provided adequate reasons for his travel to Oklahoma City, Oklahoma for an impairment rating, nor had he established sufficient evidence of a valid preauthorization to consult Dr. Ellis.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provisions of FECA[6] provide for compensation to employees sustaining impairment from loss or loss of use of specified members of the body. FECA, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of OWCP. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by OWCP as a standard for evaluation of schedule losses and the Board has concurred in such adoption.[7] For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition of the A.M.A., *Guides*, published in 2008.[8]

No schedule award is payable for a member, function, or organ of the body not specified in FECA or in the regulations.[9] Because neither FECA nor the regulations provide for the payment of a schedule award for the permanent loss of use of the back,[10] no claimant is entitled

[6] 5 U.S.C. § 8107.

[7] *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

[8] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (February 2013); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

[9] *Henry B. Floyd, III*, 52 ECAB 220 (2001).

[10] FECA specifically excludes the back from the definition of "organ." 5 U.S.C. § 8101(19).

to such an award.[11] However, in 1966, amendments to FECA modified the schedule award provision to provide for an award for permanent impairment to a member of the body covered by the schedule regardless of whether the cause of the impairment originated in a scheduled or nonscheduled member. As the schedule award provision of FECA includes the extremities, a claimant may be entitled to a schedule award for permanent impairment to an extremity even though the cause of the impairment originated in the spine.[12]

The sixth edition of the A.M.A., *Guides* provides a diagnosis-based method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability and Health (ICF).[13] Under the sixth edition, the evaluator identifies the impairment Class of Diagnosis (CDX), which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE), and Clinical Studies (GMCS).[14] The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).

Section 8123(a) of FECA provides that when there is a disagreement between the physician making the examination for the United States and the physician of the employee, a third physician shall be appointed to make an examination to resolve the conflict.[15] When there are opposing medical reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a), to resolve the conflict in the medical evidence.[16] In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.[17]

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained a lumbosacral strain, and L3-4 and L4-5 disc disorders with myelopathy. It authorized an L3-4 discectomy and L4-5 decompression performed on February 26, 2013.

Appellant had claimed schedule award on October 21, 2014. In support of his claim, he had provided a September 15, 2014 impairment rating from Dr. Ellis. Dr. Ellis observed sensory deficits in the L4, L5, and S1 spinal nerves. Referring to Table 16-12 of the A.M.A., *Guides*, he found 10 percent permanent impairment of the right leg due to 6 percent impairment of the L5 spinal nerve, and 4 percent impairment of the S1 nerve. For the left leg, Dr. Ellis calculated a combined 29 percent permanent impairment due to 6 percent impairment of the L4 spinal nerve,

[11] *Thomas Martinez*, 54 ECAB 623 (2003).

[12] *See Thomas J. Engelhart*, 50 ECAB 319 (1999).

[13] A.M.A., *Guides* (6th ed. 2008), page 3, section 1.3, "The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement."

[14] A.M.A., *Guides* 494-531 (6th ed. 2008).

[15] 5 U.S.C. § 8123(a); *Robert W. Blaine*, 42 ECAB 474 (1991).

[16] *Delphia Y. Jackson*, 55 ECAB 373 (2004).

[17] *Anna M. Delaney*, 53 ECAB 384 (2002).

16 percent impairment of the L5 spinal nerve, and 10 percent impairment of the S1 spinal nerve. He provided detailed measurement of the clinical tests used to establish each of these impairments.

The second opinion physician Dr. Lenaburg found two percent permanent impairment of each lower extremity due to a mild sensory deficit in the L4 dermatome bilaterally according to Table 16-12. OWCP's medical adviser reviewed and concurred with Dr. Lenaburg's assessment.

On September 16, 2015 OWCP issued its schedule award for two percent permanent impairment of each lower extremity, based on Dr. Lenaburg's opinion. However, the Board finds that the case is not in posture for a decision due to a conflict in the medical evidence.

Dr. Ellis provided extensive clinical findings documenting sensory impairment in the L4, L5, and S1 spinal nerves. He explained the tests used to determine that appellant had 29 percent permanent impairment of the left leg and 10 percent impairment of the right leg due to sensory deficits. In contrast, Dr. Lenaburg found a "mild" sensory deficit in the L4 dermatome only. Both physicians thus reached different conclusions about the nature and extent of appellant's lower extremity impairment. This conflict of medical opinion requires resolution by an impartial medical specialist.[18] The case will be remanded to OWCP to refer appellant, the medical record, and a statement of accepted facts to an appropriate specialist, to obtain an impartial opinion regarding the appropriate percentage of permanent impairment. Following this and all other development deemed necessary, OWCP shall issue a *de novo* decision in the case.

LEGAL PRECEDENT -- ISSUE 2

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 OWCP considers likely to cure, give relief, reduce the degree of the period of disability or aid in lessening the amount of monthly compensation.[19]

An injured employee may be entitled to compensation for lost wages incurred while obtaining authorized medical services.[20] This includes the actual time spent obtaining the medical services and a reasonable time spent traveling to and from the medical provider's location.[21] As a matter of practice, OWCP generally limits the amount of compensation to four hours with respect to routine medical appointments.[22] However, 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.[23]

[18] 5 U.S.C. § 8123(a).

[19] *Id.* at § 8103.

[20] *See id.* at § 8103(a); *Gayle L. Jackson*, 57 ECAB 546-48 (2006).

[21] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Compensation of Claims*, Chapter 2.901.19(a)(1) (February 2013).

[22] *Id.* at Chapter 2.901c.

[23] *Id.*

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.[24] To determine a reasonable distance, it will consider the availability of services, the employee's condition, and the means of transportation. Effective August 29, 2011, OWCP regulations provide that a round-trip distance of up to 100 miles is considered a reasonable distance to travel.[25] 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. OWCP will approve the request if it determines that the travel expenses are reasonable and necessary and are incident to obtaining authorized medical services, appliances or supplies.[26]

Pursuant to FECA Bulletin No. 14-02, issued January 29, 2014, when a claimant submits a travel reimbursement in excess of 100 miles for a single date of service, the bill will automatically be suspended and the Central Bill Processing provider will send notification to OWCP claims examiner.[27] FECA Bulletin No. 14-02 notes that in some limited circumstances it may be necessary for a claimant to travel more than 100 miles on a regular basis, such as when the claimant lives in a remote area.[28]

In interpreting this section, the Board has recognized that OWCP has broad discretion in approving series under FECA. The only limitation on OWCP's authority is that of reasonableness.[29] OWCP may authorize medical treatment but determine that the travel expense incurred for such authorized treatment was unreasonable or unnecessary.[30]

ANALYSIS -- ISSUE 2

The Board finds that OWCP did not abuse its discretion in denying appellant's requests for travel reimbursement over 100 miles roundtrip. It is noted that issues of authorization for medical treatment and reimbursement of travel expenses for medical treatment are separate and distinct. OWCP may authorize medical treatment but determine that the travel expense incurred for such authorized treatment was unreasonable or unnecessary, as in this case.[31]

[24] 20 C.F.R. § 10.315(a).

[25] *Id.*

[26] *Id*. at § 10.315(b).

[27] FECA Bulletin No. 14-02 (issued January 29, 2014).

[28] *Id.*

[29] *M.M.*, Docket No. 15-1724 (issued February 16, 2016); *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).

[30] *M.M., id.*; *W.M.*, 59 ECAB 132 (2007); *Mira R. Adams*, 48 ECAB 504 (1997).

[31] *M.M.*, *supra* note 29; *W.M.*, *id*.

Appellant claimed a total of $1,378.44 in travel expenses related to his September 15, 2014 appointment with Dr. Ellis. He listed a total $154.00 for lodging on September 14 and 15, 2014, $199.00 for meals, $552.72 mileage reimbursement for the 987-mile drive from his residence in Chester, Georgia, to Dr. Ellis' office in Oklahoma City, OK, and $552.72 in mileage reimbursement for the return drive. OWCP has administrative discretion with respect to authorization of travel reimbursement.[32]

OWCP denied appellant's claim for travel expenses, in part, because he failed to submit a written request for preauthorization. As noted above, a written request for prior authorization must be submitted to OWCP describing the circumstances and necessity for such travel expenses.[33] Appellant telephoned OWCP on August 19, 2014 seeking preapproval for travel expenses for his planned travel to Dr. Ellis in Oklahoma City, Oklahoma on September 15, 2014. OWCP instructed appellant to file a claim for reimbursement after he attending the appointment. There is no evidence that OWCP waived the requirement that all prior authorization requests be in writing. No request for preapproved authorization was received.

Additionally, OWCP found that appellant had not demonstrated that there were inadequate medical services in his area, such that he could not obtain an impairment rating within 100 miles of his residence. As noted above, OWCP regulations provide that, generally, a round trip of up to 100 miles is a reasonable distance to travel.[34] There may be circumstances where travel reimbursement of more than 100 miles is appropriate. An example of those circumstances might be where a claimant lives in a remote area with limited medical services and physicians of an appropriate specialty. To establish that a travel reimbursement of more than 100 miles is warranted, OWCP regulations indicate that the claimant must provide information describing the circumstances and necessity for such travel expenses. The Board notes that OWCP was successful in locating a second opinion physician in Dublin, Georgia, within 100 miles of appellant's home. As there were sufficient practitioners nearby, appellant clearly did not have to travel to Oklahoma City to be evaluated. Appellant provided no evidence to support that there was a lack of available medical services within a 100 mile round trip distance.

The Board finds that OWCP did not abuse its discretion in denying appellant's travel reimbursement request.[35] No probative evidence was presented with respect to the necessity of travel beyond the 100-mile standard set forth in OWCP's regulations or that OWCP abused its direction in denying reimbursement for travel expenses. It has administrative discretion with respect to authorization of travel reimbursement.[36]

[32] *Daniel J. Perea*, 42 ECAB 214 (1990).

[33] 20 C.F.R. § 10.315(b).

[34] *Id*. at § 10.315(a).

[35] *M.M.*, *supra* note 29. *See also V.K.*, Docket No. 12-1103 (issued October 12, 2012).

[36] *Daniel J. Perea*, 42 ECAB 214 (1990)(abuse of discretion by OWCP is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or administrative actions which are contrary to both logic and probable deductions from established facts).

On appeal, appellant asserts that OWCP authorized his appointment with Dr. Ellis and indicated its approval of his travel expenses. As set forth above, however, OWCP properly exercised its discretion in denying appellant's claim for travel reimbursement.

Appellant may submit new evidence or argument regarding this issue 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 the case is not in posture for a decision regarding the schedule award due to a conflict of medical evidence. The Board further finds that OWCP properly exercised its discretion in denying appellant's requests for travel reimbursement.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 16, 2015 regarding the schedule award is set aside, and the case remanded for additional development consistent with this opinion. The decision of OWCP dated September 16, 2015 regarding the denial of travel expenses is affirmed.

Issued: December 13, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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