

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

M.M., Appellant

and

DEPARTMENT OF THE NAVY, NAVAL AIR
SYSTEMS COMMAND CENTERS,
China Lake, CA, Employer

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**Docket No. 15-1724
Issued: February 16, 2016**

Appearances:
Sally F. LaMacchia, Esq. for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 6, 2015 appellant, through counsel, filed a timely appeal from a July 30, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). 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.

ISSUE

The issue is whether OWCP abused its discretion by denying appellant's request for reimbursement of travel expenses exceeding 100 miles roundtrip.

FACTUAL HISTORY

On January 10, 2006 appellant, then a 56-year-old information technology specialist, filed a traumatic injury claim (Form CA-1) alleging that she injured her right knee, right hand,

¹ 5 U.S.C. § 8101 *et seq.*

and wrist, after tripping on a hose and falling onto a sidewalk on December 21, 2005. She stopped work on July 24, 2008 and has not returned. OWCP initially accepted the claim for right knee contusion and contusions of right hand and wrist. It subsequently accepted right carpal tunnel syndrome, enthesopathy of the right wrist and carpus, right knee lateral meniscus tear, psychogenic pain, and aggravation of degenerative joint disease of the right knee.

OWCP paid wage-loss benefits. It also authorized appellant's surgical procedures, which included: a May 31, 2007 right knee surgery; a July 24, 2008 right carpal tunnel and right flexor tenosynovectomy; an August 12, 2009 right knee total arthroplasty and patelloplasty; and a December 2, 2011 right knee closed reduction. All surgeries were performed by Dr. Mohamed Z. Lameer, an orthopedic surgeon, in Lancaster, CA, or Palmdale, CA.² From August 2008 to July 2012 and in October 2012, appellant received approved physical therapy at the Heritage Physical Therapy Facility and the Total Rehabilitation Services Facility located near her home in Ridgecrest, CA.

On May 23, 2012 appellant underwent an approved revision right knee total arthroplasty with polyethylene exchange, performed by Dr. Paul Burton, an orthopedic surgeon, in Redlands, CA. She then underwent approved right-sided peroneal nerve injections under fluoroscopy by Dr. Shanin A. Sadik, a Board-certified anesthesiologist, in Palmdale, CA, and approved acupuncture treatments and physical therapy also in Palmdale, CA from October 2013 to the present as prescribed by Dr. Sadik.

Appellant resides in Ridgecrest, CA. She currently receives medical care in Palmdale, CA from Dr. Sadik and other practitioners at Universal Pain Management Group, as well as medical care in Redlands, CA from Dr. Burton. Appellant, through counsel, requested authorization for reimbursement of travel expenses related to obtaining treatment from Dr. Sadik in Palmdale, CA and Dr. Burton in Redlands, CA. OWCP determined that travel to Dr. Sadik in Palmdale, CA from appellant's home in Ridgecrest, CA was approximately 92 miles each way, and travel to Dr. Burton's office in Redlands, CA from appellant's home in Ridgecrest, CA was approximately 125 miles each way.³

In an August 23, 2013 letter, OWCP indicated that it had received requests for authorization for mileage reimbursements for the following dates of service: April 9, 2013 for 294 miles; April 10, 2013 for 294 miles; May 21, 2013 for 294 miles; May 22, 2013 for 294 miles; June 7, 2013 for 275 miles; June 13, 2013 for 275 miles; July 1, 2013 275 miles; July 3, 2013 for 275 miles; July 8, 2013 for 275 miles; and July 15, 2013 for 275 miles. Appellant was notified that her request for mileage reimbursement in excess of 100 miles roundtrip for treatment was not authorized and informed of the provision of 20 C.F.R. § 10.315. OWCP approved reimbursement for travel up to 100 miles roundtrip.

² Dr. Lameer's last medical note of file dated February 29, 2012 indicated that he would see appellant in one to two weeks.

³ OWCP advised that travel distances were based on online mapping website entry of the starting and ending cities.

In a January 27, 2014 letter, appellant's counsel disagreed with OWCP's denial of reimbursement for travel over 100 miles roundtrip. She quoted the relevant regulations and noted that several of her clients who live in Ridgecrest, CA could not find nearby treating physicians and all had to travel over 100 miles roundtrip for treatment. Counsel requested written approval or a formal disallowance on this issue.

In a February 10, 2014 letter, appellant requested approval to travel beyond the 100 miles roundtrip allowed by OWCP. She indicated that, other than emergency care, there was no adequate medical staff in Ridgecrest, CA where she lives. Appellant needed a specialist and that the doctors she called refused to take her case due to the nature of her injury or because they did not accept OWCP claimants. She noted that at some unspecified point in the past, an emergency room doctor told her that he would not treat her knee when she had a dislocation.

In a March 1, 2014 letter, appellant advised that she had to travel to the closest location that would treat her. She noted that her workplace was in a very remote area and that the medical care in Ridgecrest, CA where she lives was very limited. Appellant described an incident when she had a fourth dislocation of her knee and that the emergency room in Ridgecrest refused to treat her. She had made calls to all the orthopedic doctors in Ridgecrest, Lancaster, and Palmdale, but none would treat her complicated case.

In an April 14, 2014 letter, OWCP advised appellant that her general statements were insufficient and requested that she provide specific information to support the need to travel over 100 miles roundtrip to obtain medical treatment. Appellant was asked to provide a detailed statement explaining why she believed it was reasonable and necessary for her to travel approximately 92 miles each way to and from Palmdale, CA to see Dr. Sadik and travel approximately 124 miles each way to and from Redlands, CA to see Dr. Burton. She was also requested to provide documentation of medical providers from whom she sought treatment and evidence of their refusal to provide her with treatment for the work injury. Appellant was afforded 30 days to provide the requested information.

In a May 15, 2014 letter, appellant's counsel indicated that it was OWCP's responsibility to determine what is considered a reasonable distance and the criteria for such determination; appellant only needed to submit a written request for prior authorization. She requested either written approval for travel beyond 100 miles roundtrip to attend medical appointments or a formal disallowance with appeal rights. No additional information was received.

By decision dated June 12, 2014, OWCP denied travel mileage reimbursement for distances in excess of 100 miles round trip for appellant's medical appointments in Palmdale, CA and Redlands, CA. It found that although she lived in a "relatively remote" area, she had not provided evidence that physicians closer to her home would not treat her. OWCP advised that the medical authorization and billing service's (ACS) online provider search portal revealed several doctors in the city of Ridgecrest, CA where appellant resides and numerous doctors in Lancaster, CA (approximately 84 miles one way) and Barstow, CA (approximately 77 miles one way) who could treat her and provided the list of these physicians. It noted that neither appellant nor counsel provided evidence to explain the necessity of travelling to Palmdale and Redlands to seek treatment and why such travel was reasonable and necessary. OWCP noted that appellant

remained entitled to reimbursement of travel up to the maximum generally allowable distance of 100 miles roundtrip.

On June 19, 2014 OWCP received appellant's request for a review of the written record by an OWCP hearing representative. In a September 9, 2014 brief, appellant's counsel reiterated some of her prior arguments. She also noted that Dr. Lameer, appellant's initial physician in Lancaster, CA, had treated her until early 2012, when he refused to treat her any longer. Counsel noted that appellant had made many calls to doctors in the Ridgecrest area and found that those doctors either did not accept workers' compensation patients or were not suited to treat her medical needs. She advised that the medical groups which accepted workers' compensation patients and which might meet some of her medical needs, did not perform full knee replacements or revisions at their Ridgecrest location. It was noted that appellant had contacted SoCal Orthopedic Institute and Valley Orthopedic Institute. Counsel indicated that appellant began treatment with Dr. Burton in Redlands, CA in April 2012 and saw him on a quarterly basis. Appellant also saw Dr. Sadik approximately once a month. Counsel cited FECA Bulletin No. 14-02 and argued that OWCP had failed to determine what was a reasonable distance to travel based on availability of services, when it would pay mileage in excess of 100 miles round trip to see a physician in Lancaster or Barstow, but deny reimbursement of her current physicians. A signed affidavit from appellant summarizing the same was attached.

By decision dated January 30, 2015, an OWCP hearing representative affirmed the June 12, 2014 decision, determining that there was no basis to authorize travel to Dr. Sadik in Palmdale, CA and Dr. Burton in Redlands, CA as there were closer facilities with appropriate specialists who could treat appellant's conditions. She found that there was no evidence that Dr. Lameer had discharged appellant from his care in early 2012 and nothing in the file indicated that he had released her from his care or he refused to continue to treat her. The hearing representative noted that there were orthopedic facilities nearer to appellant's residence which had pain management specialists and orthopedists in one facility. These were Antelope Valley Orthopedics in Lancaster, CA, a distance of 81.5 miles one way; Ridgecrest AVORS Medical Group, a distance of 4.29 miles from appellant's home; and LA Orthopedic Institute in Palmdale, CA, a distance of 89 miles away. The hearing representative noted that while appellant may continue to receive treatment from Drs. Sadik and Burton, she was not entitled to reimbursement for travel expenses, over 100 miles.

On May 8, 2015 OWCP received appellant's counsel's request for reconsideration dated May 8, 2015. Counsel made the following contentions: that there are no physicians closer to appellant's residence who were willing and able to provide the medical treatment appellant required; that driving caused appellant a great deal of pain and she would travel a shorter distance for treatment if she knew of a closer facility that would treat her, that appellant had met her burden to prove that it was reasonable and necessary to travel 90 to 125 miles each way for her treatment with Drs. Sadik and Dr. Burton, respectively, and that OWCP failed to provide any evidence to support its finding that other appropriate physicians and physical therapy facilities of the appropriate specialty were available to appellant. She indicated that once a month appellant saw Dr. Sadik in Palmdale for a total of 2,160 miles a year and that she saw Dr. Burton in Redlands quarterly, for a total of 1,000 miles per year. If appellant was to be treated at the facilities noted by OWCP, the difference in mileage would only be 24 to 204 miles, depending on the facility. Counsel further argued that it was speculation on OWCP's part that appellant

would be able to schedule appointments with both an orthopedic and pain management specialist in the same trip. She contended that appellant had to travel the requested distance as Drs. Sadik and Burton were the only physicians able to treat her medical needs. Counsel noted that appellant traveled the distance even though her accepted knee injuries made the trip very hard. She argued that since OWCP appeared willing to reimburse for travel to facilities at distances of 163 to 178 miles round trip and appellant currently traveled 180 miles roundtrip to Dr. Sadik in Palmdale and 250 miles roundtrip to Dr. Burton, OWCP should reimburse appellant fully or provide her reimbursement of 178 miles roundtrip with Dr. Burton.

In an attached May 3, 2015 statement, appellant indicated that on or about April 19, 2012, she called Valley Orthopedic Institute, the Antelope Valley Orthopedics, and LA Orthopedic Institute and was told that neither facility had the ability to perform or treat a knee revision and they did not accept workers' compensation.

By decision dated July 30, 2015, OWCP denied modification of its prior decision. It noted that The Heritage Physical Therapy Facility and the Total Rehabilitation Services Facility, both in Ridgecrest, where appellant previously had physical therapy, had not been reexplored for continuing care and there was no evidence that Dr. Lameer, appellant's initial orthopedic surgeon, had released appellant from his care in early 2012.

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 reasonable and necessary 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 a reasonable travel distance, 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. OWCP will approve the request if it

⁴ 5 U.S.C. § 8103(a).

⁵ 20 C.F.R. § 10.315(a).

determines that the travel expenses are reasonable and necessary and are related to obtaining authorized medical services, appliances, or supplies.⁶

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 the OWCP claims examiner.⁷ 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.⁸

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.⁹ OWCP may authorize medical treatment but determine that the travel expense incurred for such authorized treatment was unreasonable or unnecessary.¹⁰

ANALYSIS

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.¹¹

The record reflects Dr. Lameer, located in Lancaster, CA within 100 miles round trip of appellant's residence, performed her 2007, 2009, and 2011 right knee surgeries and the 2008 right wrist surgery. Prior to 2013, appellant underwent physical therapy at the Heritage Physical Therapy Facility and the Total Rehabilitation Services Facility located near in her home in Ridgecrest, CA. On May 23, 2012 Dr. Burton, located in Redlands, CA, performed a revision surgery on her right knee. Appellant then began seeing Dr. Sadik in Palmdale, CA, who, in turn, made the physical therapy and acupuncture treatment referrals to Universal Pain Management Center in Palmdale. Appellant currently travels 184 to 250 miles roundtrip to obtain medical services for her injury from Dr. Sadik and Dr. Burton, respectively. OWCP accepted that appellant lives in a relatively remote location, but denied reimbursement for travel to Dr. Sadik in Palmdale, CA, approximately 92 miles each way, and Dr. Burton in Redlands, CA, approximately 125 miles each way as there is no supporting factual evidence to establish that it

⁶ *Id.* at § 10.315(b).

⁷ FECA Bulletin No. 14-02 (issued January 29, 2014).

⁸ *Id.*

⁹ *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).

¹⁰ *W.M.*, 59 ECAB 132 (2007); *Mira R. Adams*, 48 ECAB 504 (1997).

¹¹ *W.M.*, *id.*

was reasonable and necessary for her to travel such distances to obtain medical services for her injury.

As noted above, OWCP regulations provide that, generally, a round trip of up to 100 miles is a reasonable distance to travel.¹² There may be circumstances where travel reimbursement of more than 100 miles is appropriate. An example of those circumstances might be an appellant who 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.

Appellant was seeing Dr. Lameer, an orthopedic specialist, for her knee and it is reasonable that she would continue to need care from an orthopedist following her knee revision. While she asserted that Dr. Lameer had discharged her from his care in early 2012, the evidence fails to establish that he either released appellant from his care or informed her that he would not continue to treat her. OWCP also provided a list of closer facilities with appropriate specialists who could treat appellant's conditions.

With regard to the availability of services, appellant and her counsel have not provided evidence to explain the necessity of traveling the specifically requested distances to Palmdale and Redlands to seek care and why such travel is reasonable. She generally contends that there were no available services in her area, or that the facilities she contacted from OWCP's list did not accept workers' compensation cases or could not treat her medical needs. While appellant provided a signed affidavit advising that on or about April 19, 2014 she contacted the Valley Orthopedic Institute in Lancaster, the Antelope Valley Orthopedics, and LA Orthopedics Institute in Palmdale and that these facilities do not accept workers' compensation cases, there is no evidence to show that this rejection was due to the complexity of her case or that the facilities have an actual policy of denying medical care to injured workers. She provided no evidence to support her statements about the lack of available services or the specific need for the distances for which she was requesting authorization for reimbursement.

As noted, OWCP provided appellant a list of facilities with appropriate specialists who were willing to accept federal workers' compensation patients. It additionally noted that the Heritage Physical Therapy Facility and the Total Rehabilitation Services Facility, both in Ridgecrest, where appellant previously had physical therapy, had not been reexplored for continuing care.

Appellant's counsel suggested that OWCP compromise and provide payment for at least 168 miles roundtrip with Dr. Sadik and for at least 178 miles roundtrip for visits to Dr. Burton based on the contention that OWCP appeared willing to reimburse appellant at distances of 163 to 178 miles. However, neither appellant nor counsel have provided any compelling reason to show why treatments with Dr. Sadik and associated therapy/acupuncture treatments at Universal Pain Management, and quarterly follow-up visits with Dr. Burton was reasonable and necessary when there are appropriate specialists and facilities closer to appellant's home.

¹² 20 C.F.R. § 10.315(a).

While appellant lives in a relatively remote area, appellant and counsel have not provided evidence to explain the necessity of traveling the specifically requested distances to Palmdale and Redlands to seek care and why such travel is reasonable. Although OWCP had authorized travel expenses to Dr. Sadik and Dr. Burton in the past, this past practice does not establish a right to continuing authorization.¹³ As indicated in FECA Bulletin No. 14-02, any travel reimbursement request of more than 100 miles was to be reviewed by an OWCP claims examiner.¹⁴

The Board finds that OWCP did not abuse its discretion in denying appellant's travel reimbursement requests.¹⁵ No probative evidence was presented with respect to the necessity of travel over the 100-mile standard set forth in OWCP regulations or that OWCP abused its discretion in denying reimbursement for travel expenses. OWCP has administrative discretion with respect to authorization of travel reimbursement.¹⁶

On appeal, appellant's counsel offers arguments pertaining to OWCP's conflict statement and an upcoming impartial medical examination. However, this issue is not presently before the Board.

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 OWCP did not abuse its discretion by denying appellant's request for travel reimbursement.

¹³ See *W.H.*, Docket No. 14-1662 (issued February 3, 2015).

¹⁴ *Supra* note 7.

¹⁵ See *V.K.*, Docket No. 12-1103 (issued October 12, 2012).

¹⁶ *Daniel J. Perea*, 42 ECAB 214 (1990) (abuse of discretion by OWCP is generally shown through proof of manifest error, clearly unreasonable exercise of judgement, or administrative actions which are contrary to both logic and probable deductions from established facts).

ORDER

IT IS HEREBY ORDERED THAT the July 30, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 16, 2016
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board