

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

D.F., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Indianapolis, IN, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 17-0482
Issued: June 7, 2017**

Appearances:

Alan J. Shapiro, Esq., for the appellant¹

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 January 3, 2017 appellant, through counsel, filed a timely appeal from a November 14, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

ISSUE

The issue is whether OWCP properly exercised its discretion in denying appellant's requests for travel reimbursement for a hotel stay and meals on October 26, 2015.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

On appeal counsel argues that the hearing representative ignored appellant's testimony when affirming the denial of his request for reimbursement.

FACTUAL HISTORY

On April 6, 1986 appellant, then a 37-year-old postal clerk, filed an occupational disease claim (Form CA-2) alleging that on March 10, 1986 he first realized that his respiratory condition was due to exposure to toxic paint fumes at work. OWCP accepted the claim for respiratory distress and allergic pneumonitis due to paint fume exposure, which was subsequently expanded to include right leg deep venous thrombosis, low back pain, and rectal bleeding due to treatment for his respiratory distress. It paid compensation for accepted periods of disability. Appellant accepted the employing establishment's January 25, 2011 limited-duty offer on February 3, 2011.

Appellant filed a schedule award claim (Form CA-7) on October 24, 2014.

On December 15, 2014 OWCP informed appellant that a second opinion examination was necessary to address the issue of permanent impairment. It advised that it would pay for the examination and would reimburse appellant "for any reasonable and necessary expense incurred in obtaining this examination."

On October 15, 2015 OWCP referred appellant for a second opinion evaluation with Dr. Richard B. Fries, a Board-certified vascular and general surgeon. The appointment was scheduled for 9:30 a.m. on October 26, 2015 in Cincinnati, Ohio.

In a letter dated December 10, 2015, OWCP advised counsel that it had not received Dr. Fries' report from the October 26, 2015 examination as the report was found to be incomplete and an addendum report had been requested from the physician.

On December 29, 2015 appellant's spouse contacted OWCP via telephone inquiring about reimbursement for travel-related expenses to the second opinion examination.

Appellant stated that the appointment with Dr. Fries was scheduled for 9:30 a.m. He noted that he had been informed that the appointment was at no cost to him and that reasonable and necessary costs incurred from the examination would be reimbursed. Due to the early appointment time, traffic congestion, and unfamiliarity with the area, appellant made a reservation to stay overnight at a hotel close to Dr. Fries' office. In a letter dated December 30, 2015, he provided an explanation for the reimbursement request for lodging and meals and requested that they be approved.

By decision dated January 11, 2016, OWCP denied appellant's request for reimbursement for an overnight hotel stay and meals resulting from the overnight stay. It found that its procedures did not provide for reimbursement for lodging and meals when travel time required was under 12 hours total, less than 500 miles round trip. Also reimbursement for lodging required prior authorization.

In a letter dated January 19, 2016, counsel requested a telephonic hearing before an OWCP hearing representative, which was held on September 13, 2016. During the hearing

appellant testified that Dr. Fries' office was approximately 130 miles from his home or 260 miles round trip. He testified that by traveling the day before, he was able to avoid rush hour traffic and could be near the doctor's office, so that he could arrive on time for the appointment.

By decision dated November 14, 2016, OWCP's hearing representative affirmed the January 11, 2016 decision denying reimbursement for appellant's lodging and meal expenses. She noted appellant's hearing testimony as to why he believed he was entitled to reimbursement for lodging and meals and that he had been reimbursed for mileage for travel from his home and back from the examination. However, the hearing representative found OWCP's procedures did not provide for reimbursement for lodging and meal expenses when travel time required was under 12 hours total, less than 500 miles round trip, and without prior authorization.

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 OWCP considers likely to cure, give relief, reduce the degree of the period of disability, or aid in lessening the amount of monthly compensation.³

Section 10.322 of title 20 of the Code of Federal Regulations provide in pertinent part: "OWCP will pay second opinion and referee medical specialist directly. OWCP will reimburse the employee all necessary and reasonable expenses incident to such an examination, including transportation, costs...."⁴

OWCP's FECA Procedure Manual states that "[t]here will be no reimbursement for meals or lodging when travel is for less than 12 hours in total or fewer than 500 miles round trip." It also requires appellant to seek prior authorization for lodging.⁵

ANALYSIS

OWCP accepted appellant's claim for respiratory distress and allergic pneumonitis due to paint fume exposure and right leg deep venous thrombosis, low back pain, and rectal bleeding due to treatment for his respiratory condition. On October 15, 2015 it referred appellant for a second opinion evaluation with Dr. Fries scheduled for October 26, 2015 at 9:30 a.m. Appellant was examined by Dr. Fries on October 26, 2015 at the scheduled time. OWCP denied appellant's request for reimbursement for lodging and meals by decision dated January 11, 2016. That decision was affirmed by an OWCP hearing representative in a November 14, 2016 decision. The issue on appeal is whether OWCP properly exercised its discretion in denying appellant's claim for reimbursement.

³ *Id.* at § 8103.

⁴ 20 C.F.R. § 10.322

⁵ Federal (FECA) Procedure Manual, Part 5 -- Overview of the BPS, *Unique Bills*, Chapter 5.200.9(i) (April 2005).

The Board finds that OWCP acted within its discretion in denying appellant's claim for reimbursement for lodging and meals to attend an OWCP-directed medical examination.

Appellant argued that he was entitled to reimbursement for his lodging and meals because of his concern about traffic as the appointment was early in the morning. He also noted that he was unfamiliar with the area where the doctor's office was located.

The Board finds that OWCP's procedures provide that reimbursement will not be made for lodging when travel was less than 12 hours total or less than 500 miles round trip.⁶ Further, such requests must be made in advance.⁷ Appellant testified at the hearing that the distance from his home to the appointment was 260 miles round trip and less than 12 hours in total.⁸ The hearing representative further noted that appellant had not requested authorization for lodging in advance. Consequently, OWCP properly denied appellant's request for reimbursement for lodging and meal expenses.⁹

On appeal counsel argues that the hearing representative ignored appellant's testimony in affirming the denial of his claim for reimbursement. To the contrary, the hearing representative did consider appellant's testimony, but found the requirements of the FECA Procedure Manual determinative with respect to determining whether appellant was entitled to reimbursement for the cost of a hotel stay and meals.

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 denied appellant's request for reimbursement of an overnight hotel stay and meals incurred on October 26, 2015.

⁶ *Id.*

⁷ *Supra* note 5.

⁸ *Id.*

⁹ *T.M.*, Docket No. 11-449 (issued September 20, 2011).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 14, 2016 is affirmed.

Issued: June 7, 2017
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