

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

J.T., Appellant

and

**DEPARTMENT OF DEFENSE, DEFENSE
DEPOT, Memphis, TN, Employer**

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**Docket No. 16-0731
Issued: May 11, 2017**

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 March 3, 2016 appellant filed a timely appeal from a December 30, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (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 in denying authorization for a new vehicle purchase.

¹ Appellant filed a timely request for oral argument. By order dated June 24, 2016, the Board exercised its discretion and denied his request as it determined that his arguments could adequately be addressed in a decision based on a review of the case record. *Order Denying Request for Oral Argument*, Docket No. 16-0731 (issued June 24, 2016).

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On July 25, 1991 appellant, then a 42-year-old management analyst, filed a traumatic injury claim (Form CA-1) alleging that on July 24, 1991 he injured his left leg after he tripped and fell in his office.³ OWCP accepted the claim for a left ankle sprain and an aggravation of a herniated nucleus pulposus.

In 1993, OWCP authorized the purchase of a wheelchair lift on appellant's 1992 Dodge Grand Caravan. On January 31, 1995 it authorized the purchase of a 1995 Ford Econoline van with remote starter. OWCP subsequently authorized the purchase of a 2008 Grand Caravan with wheelchair conversion on February 27, 2009. The van had 14,670 miles on its odometer at the time of purchase.

In a letter dated December 9, 2014 appellant advised that his vehicle ramp needed immediate repairs to be functional and that the repair would cost approximately \$1,100.00 with tax.⁴ He related that the vehicle also needed repairs to the constant velocity (CV) joint boots and new brakes. The van burned oil and had almost 100,000 miles. Appellant asked OWCP to consider replacing his vehicle as he no longer felt safe driving.

OWCP, on December 11, 2014, referred appellant to a vocational rehabilitation counselor for assistance with vehicle repair.

Appellant, on December 18, 2014, informed OWCP that his wheelchair ramp in his van was not working at all and that his wheelchair was stuck in the van. He advised that repairs on the van for both the ramp and other maintenance would cost thousands of dollars and requested for vehicle replacement.

In a report dated December 30, 2014, Dr. Stephen H. Landy, a Board-certified neurologist, diagnosed leg atrophy, a herniated lumbar disc at L5-S1 and reflex sympathetic dystrophy. He related, "[Appellant] is in medical need of the wheelchair and in medical need of [a] working, safe disabled vehicle. I do not believe [that] it is appropriate for him to drive a vehicle with nearly 100,000 miles. If it became disabled, [appellant] could not walk to summon help." Dr. Landy requested that OWCP provide appellant with a vehicle that lowered when the ramp extended, a power transfer seat, and power-heated seats for his muscle spasms.

An OWCP rehabilitation specialist, on January 7, 2015, related that United Access provided a repair estimate for replacing the wheelchair ramp at a cost of \$1,170.00 excluding tax. He noted that appellant's van at the time of purchase had 14,670 miles on it and currently had 95,000 miles on it, which equated to driving around 38.8 miles per day. The specialist asserted, "I verified with a local Dodge dealer, that with proper maintenance, a Dodge van can be expected to last for 200,000 miles before a major repair is needed." He noted that Dr. Landy had

³ Appellant's left leg was in a plastic leg/foot support brace from a preexisting condition at the time of injury. Medical records indicate that he had a long history of peroneal neuropathy and dysesthetic type pain in his left leg, which worsened after the work injury.

⁴ On December 9, 2014 appellant telephoned OWCP and advised that he was having difficulties with the ramp on his van and that repairs would total between \$800.00 and \$900.00.

advised that appellant required a new vehicle for safety with power-heated seats for muscle spasms. The rehabilitation specialist and indicated that OWCP should further develop this aspect of the claim before “accepting this opinion.”

By letter dated January 28, 2015, OWCP notified appellant that it had received a \$1,170.00 repair estimate for his wheelchair lift. It informed him that it maintained and repaired equipment furnished on his vehicle due to his disability, but he was responsible for routine maintenance. OWCP advised that appellant should submit evidence from a vehicle repair specialist if his current vehicle was not repairable. It indicated that it would consider purchasing a replacement vehicle only if the cost of reasonable repairs exceeded the lowest Blue Book value.

In a February 4, 2015 response, appellant indicated that his van required extensive repairs that exceeded its Blue Book value. He submitted an estimate from a Jeep dealership showing repairs needed totaled \$7,933.50 excluding engine work. The mechanic indicated that he could not test oil consumption given the broken CV joint, but could “give [an] approximate estimate of at least \$3,500[.00] plus for engine work alone.” Appellant submitted evidence from a Kelley Blue Book website showing that a 2008 Dodge Grand Caravan in good condition was worth \$8,385.00, and in fair condition was worth \$7,439.00. He also submitted an estimate from Midas Muffler indicated that a replacement muffler would cost \$206.32.

On February 13, 2015 OWCP referred appellant to another rehabilitation counselor with Ascendant Consulting, Incorporated, for assistance with repairing his vehicle.⁵

In a March 3, 2015 telephone call report, the rehabilitation counselor advised OWCP that appellant’s van was towed to Katz’ Mainstreet Garage for appraisal. The mechanic indicated that, without driving the van, it could not determine if there was a transmission or engine problem. Appellant did not want the van driven. The counselor indicated that he would check the vendor’s credentials and discuss with appellant.

On March 11, 2015 Collierville Chrysler Dodge Jeep advised that it would give appellant \$6,000.00 for trade-in of his van.

The rehabilitation counselor, on March 13, 2015, submitted an estimate from the National Automobile Dealers Association Guides indicating that the average trade-in value for a 2008 Dodge Grand Caravan was \$6,375.00. As estimate from the Edmunds website provided that a 2008 Dodge Grand Caravan was worth \$5,930.00 in a trade-in and \$7,355.00 to a private party. A Kelley Blue Book website indicated that the van had a trade-in value of \$6,414.00 if in good condition.

In a report of telephone call dated March 13, 2015, the rehabilitation counselor advised that a mechanic at Christian Brothers Automotive indicated that the van required a new

⁵ The initial rehabilitation counselor experienced an unexpected absence.

transmission and other repairs, but not a muffler.⁶ The mechanic indicated that Dodge vans “burn oil and that this is normal.”

Christian Brothers Automotive provided an unsigned repair estimate of \$5,275.66. The repairs consisted of rebuilding the transmission, servicing the brakes, replacing the front axles, aligning the wheels, replacing the rear shocks, and replacing the front struts and mounts.

United Access, in an e-mail dated March 16, 2015, informed the rehabilitation counselor that a rough estimate for an appraisal on appellant’s van was \$5,236.00 for the chassis and \$4,513.00 for the conversion, for an undamaged wholesale value of \$10,749.00.

In a memorandum dated March 16, 2015, OWCP noted that the rehabilitation counselor provided a repair estimate of \$5,275.55 from Christian Brothers Automotive and appellant provided an estimate of \$7,933.50 from Collierville Jeep, with an additional estimate of \$206.32 from Midas Mufflers for a replacement muffler. It found that the trade-in value of the chassis was estimated at between \$6,000.00 and \$6,500.00 and the value with modification was \$10,749.00 excluding repairs. OWCP noted that the cost of repairs was appellant’s responsibility. It also found that he could be supplied with heated seats with a “portable plug in heating pad designed specifically for vehicle use at a cost of approximately \$50.00.”

By decision dated March 23, 2015, OWCP denied appellant’s request for the purchase of a new vehicle. It found that the cost of needed repairs did not exceed the estimated value of the van of \$10,749.00.

On March 27, 2015 appellant advised OWCP that he was purchasing a new van and that the vehicle modification from his old van would be transferred to the new van.⁷ He purchased a 2014 van.

Appellant, by letter dated April 20, 2015 and postmarked April 23, 2015, requested an oral hearing. By decision dated May 11, 2015, OWCP denied his request for an oral hearing as untimely.

On November 10, 2015 appellant requested reconsideration. He asserted that his vehicle “did not stand up to the additional weight of being converted to a disabled van, and this was the first year of this particular model which had a very bad reliability rating.” Appellant noted that the rehabilitation counselor did not seek the opinion of a Dodge dealer. He spoke with the mechanic at Christian Brothers Automotive who provided the repair estimate on his van and learned that the rehabilitation counselor told him to ignore problems with the engine, brakes, fuel pump, torque converter, and muffler. Appellant advised that corrected repair estimate was \$12,465.00 without tax. Appellant indicated that America’s Mobility Superstore (AMS)

⁶ On March 12, 2015 the rehabilitation counselor advised OWCP that Katz’ Mainstreet Garage would not provide an estimate for anything other than the CV joints. He indicated that he would take the van to another repair establishment. The rehabilitation counselor, in a March 16, 2015 report, noted that Katz’ garage did not find a transmission problem “as far as they can tell.” The garage could not find the computer code for the vehicle.

⁷ On April 27, 2015 OWCP authorized a facility to provide heated vehicle seats to appellant.

provided a repair estimate that was even higher and noted that both exceeded the Blue Book value.

Appellant submitted an unsigned estimate form from Christian Brothers Automotive. On the form an individual related that a man for Ascendant Consulting told him to do only a “bare bones estimate” on the van. The man also told him not to include some items on the list, including torque converter, a diagnosis of engine noise, an electric fuel pump, and brake pads. The estimate contained typewritten additions listed additional repairs and a handwritten notation adding the extra repairs to the prior estimate for a total cost of \$12,465.00.

In an undated and unsigned statement received November 10, 2015, AMS indicated that it spent \$15,636.50 repairing appellant’s van in order to make it “a safe and reliable vehicle for a disabled person to drive.” AMS provided an extensive list of repairs.

Appellant submitted a form from the General Services Administration indicating that passenger vehicles should be replaced at 75,000 miles and five years.

By decision dated December 30, 2015, OWCP denied modification of its March 23, 2015 decision. It found that the new unsigned estimate from Christian Brothers Automotive did not negate the prior estimate it provided.

On appeal appellant contends that OWCP discriminated against him due to his disability, noting that the employing establishment replaced vehicles with less mileage than his van.

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.⁸ In interpreting this section of FECA, the Board has recognized that OWCP has broad discretion in approving services provided under section 8103, with the only limitation on OWCP's authority being that of reasonableness.⁹ 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 merely show that the evidence could be construed so as to produce a contrary factual conclusion.¹⁰ In order to be entitled to reimbursement for medical expenses, a claimant must establish that the expenditures were incurred for treatment of the effects of an employment-related injury.¹¹

OWCP's procedures provides that equipment furnished for a vehicle by OWCP should be maintained and repaired at OWCP expense and may be replaced after normal wear and tear. Equipment required for the injury will be repaired and maintained at OWCP expense. Other parts of the vehicle will be repaired, maintained and replaced at the owner's expense even if OWCP paid for the vehicle. Replacement equipment for the present vehicle or similar equipment will be provided on a replacement vehicle if the claimant can establish that the vehicle should be replaced. OWCP may only consider the purchase of a subsequent vehicle when the estimated cost of reasonable mechanical repairs on the current vehicle exceeds its lowest current Blue Book value.¹²

ANALYSIS

OWCP accepted that appellant sustained a left ankle strain and an aggravation of a herniated nucleus pulposus due to a July 24, 1991 employment injury. It purchased a 2008 Grand Caravan with wheelchair conversion for him on February 27, 2009. Appellant requested a new vehicle on December 9, 2014. He maintained that the wheelchair ramp was not functional and that the van required significant repairs. Appellant submitted an estimate from Collierville Jeep quoting repairs of \$7,933.50, excluding engine work. The mechanic indicated that engine

⁸ 5 U.S.C. § 8103; *see Thomas W. Stevens*, 50 ECAB 288 (1999).

⁹ *Joseph P. Hofmann*, 57 ECAB 456 (2006); *James R. Bell*, 52 ECAB 414 (2001).

¹⁰ *Claudia L. Yantis*, 48 ECAB 495 (1997).

¹¹ *Cathy B. Mullin*, 51 ECAB 331 (2000).

¹² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Housing and Vehicle Modifications*, Chapter 2.1800.5 (October 2009).

repairs would be a minimum of \$3,500.00. Appellant also submitted an estimate from Midas Muffler showing a muffler replacement cost of \$206.32. He provided OWCP with an estimate from a Kelley Blue Book website listing the value of a 2008 Dodge Caravan in good condition as \$8,385.00 and in fair condition as \$7,439.00.

OWCP referred appellant to a rehabilitation counselor for assistance with vehicle repairs. The counselor advised that a Kelley Blue Book website showed the trade-in value of the van was \$6,414.00 in good condition.

The rehabilitation counselor obtained a repair estimate from Christian Brothers Automotive of \$5,275.66. The repairs included work on the transmission, brakes, front axles, wheels, rear shocks, and front struts and mounts.

Based on the repair estimate from Christian Brothers Automotive, OWCP denied appellant's request for a replacement vehicle as the cost of repairs did not exceed the lowest current Blue Book value. With respect to denying authorization for a replacement vehicle, the only limitation on OWCP's authority in approving services under FECA is that of reasonableness.¹³ The quoted estimate for repairs obtained by the rehabilitation counselor did not exceed the Blue Book value and thus OWCP's denial of authorization for a new vehicle was reasonable.

Appellant submitted an unsigned repair statement from an individual purporting to be a mechanic with Christian Brothers Automotive. The individual advised that he had not included all the necessary repairs based on the instruction of the rehabilitation counselor. As noted by OWCP, however, the statement is unsigned and the individual is not identified, and thus it is of diminished probative value.

Appellant also submitted an unsigned estimate from AMS indicating that it spent \$15,536.50 repairing his van to make it a dependable vehicle. The issue, however, is whether the estimated cost of reasonable mechanical repairs on the van exceeded its lowest current Blue Book value. As OWCP obtained an estimate showing that the cost of repairs did not exceed the lowest current Blue Book value, it did not abuse its discretion in denying authorization for a new vehicle.¹⁴

On appeal appellant alleges that OWCP discriminated against him due to his disability. He also asserts that the employing establishment replaced vehicles with less mileage than his van. As discussed, however, OWCP followed its procedures in denying authorization for a new vehicle. There is no evidence that it discriminated against appellant as a result of his disability.

CONCLUSION

The Board finds that OWCP did not abuse its discretion in denying authorization for a new vehicle purchase.

¹³ See S.R., Docket No. 09-2332 (issued August 16, 2010).

¹⁴ *Id.*

ORDER

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

Issued: May 11, 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