

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

D.C., Appellant)	
)	
and)	Docket No. 18-0080
)	Issued: May 22, 2018
U.S. POSTAL SERVICE, POST OFFICE,)	
Deltona, FL, Employer)	
)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 13, 2017 appellant, through counsel, filed a timely appeal from August 2 and 3, 2017 merit decisions 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 over the merits of this case.

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.*

ISSUES

The issues are: (1) whether OWCP abused its discretion by denying authorization for physical therapy; and (2) whether OWCP abused its discretion by denying appellant's requests for travel reimbursement.

On appeal counsel asserts that, at the very least, appellant should be compensated for 100 miles of travel to seek medical treatment with his physician.

FACTUAL HISTORY

On July 24, 2014 appellant, then a 55-year-old city letter carrier, filed an occupational disease claim (Form CA-2) alleging that his employment duties caused neck, lower back, right hip, and bilateral upper and lower extremity injuries. The employing establishment indicated that appellant had not worked since June 22, 2013, noting that he had been in an off-duty accident prior to that time.

In support of his claim, appellant, who lived in Deltona, FL, attached a June 10, 2014 report from Dr. Samy F. Bishai, an orthopedic surgeon with M&R Therapy Center, Inc., (M&R) in Tampa, Florida. Dr. Bishai diagnosed multiple orthopedic conditions and recommended physical therapy. Appellant began physical therapy on at least a weekly basis at M&R in July 2014.

On December 29, 2015 OWCP accepted appellant's claim for adhesive capsulitis of the left shoulder and bilateral carpal tunnel syndrome. In July 2016 it expanded acceptance of the claim to include bilateral elbow lesions of ulnar nerve.

Appellant continued treatment with Dr. Bishai. He also had various authorized therapy treatment modalities done at M&R.³ OWCP periodically approved travel reimbursement.

In correspondence dated December 5, 2016, OWCP notified appellant that physical therapy, which had been authorized from January 7 to November 26, 2016, had not resulted in increased function or a decrease in the level of disability, and that further physical therapy was not authorized. It advised appellant of the type of medical evidence needed to support continued physical therapy and indicated that if the requested information was not received within 30 days, a decision would be rendered.

Appellant did not respond, and by decision dated January 17, 2017, OWCP found that authorization for continued physical therapy was denied as the evidence of record did not support that it was medically necessary to address the effects of appellant's employment-related condition.

On January 23, 2017 appellant, through counsel, timely requested a hearing before an OWCP's hearing representative.

³ These included acupuncture, massage therapy, and various physical therapy modalities approximately two times weekly.

In correspondence dated January 25, 2017, OWCP advised appellant that, since further physical therapy had been denied by its January 17, 2017 decision, travel reimbursements for January 9 and 11, 2017 physical therapy appointments were denied. It further noted that he was travelling a long distance from his home to his treating physician. OWCP asked that appellant provide an explanation as to the necessity to travel that far when he should have found a qualified physician a reasonable distance, considered to be within 50 miles, of his home. It afforded him 30 days to submit additional evidence.

In a February 1, 2017 treatment note, Dr. Bishai indicated that appellant needed additional therapy and acupuncture treatment because he was having a lot of symptoms in his left shoulder, forearms, wrists, and hands, and that since he was not considering surgery, the only logical treatment was with medication and physical therapy. He recommended 12 weeks of additional physical therapy, two to three times weekly to improve appellant's chances of returning to gainful employment.

In a letter dated February 11, 2019, appellant informed OWCP that there was no doctor or physical therapist who accepted FECA cases locally, and that he had to travel to Tampa, Florida to find a doctor and for physical therapy appointments.

By decision dated February 27, 2017, OWCP found that appellant's claims for travel reimbursements and to his requests to continue to see Dr. Bishai had been denied. It noted that it had received his February 11, 2019 letter, but indicated that he had not provided any evidence to support his assertion that there were no qualified physicians who could provide treatment for the accepted conditions, noting that appellant lived only 30 miles from Orlando, Florida.

On March 8, 2017 appellant, through counsel timely requested a hearing before an OWCP hearing representative from the February 27, 2017 decision.

A hearing was held on June 22, 2017 regarding both the January 17 and February 27, 2017 OWCP decisions. At the hearing appellant testified that he was not working and was not receiving wage-loss compensation. He described his symptoms and indicated that prior counsel recommended Dr. Bishai. Counsel asked that reimbursement for at least 100 miles be considered.

By decision dated August 2, 2017, an OWCP hearing representative affirmed the January 17, 2017 decision that had denied appellant's request for authorization of additional physical therapy. He noted that he reviewed Dr. Bishai's February 1, 2017 report and found that he did not provide sufficient explanation as to how the recommended therapy would result in material improvement of appellant's accepted conditions.

By decision dated August 3, 2017, the hearing representative also affirmed the February 27, 2017 decision. He found there was no evidence to establish that there were no physicians in appellant's local area from whom appellant could seek treatment. The hearing representative further found that the record did not support that travel expenses to attend physical therapy appointments on or after January 9, 2017 were reimbursable.

LEGAL PRECEDENT -- ISSUE 1

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, or the period of disability, or aid in lessening the amount of monthly compensation.⁴ While OWCP is obligated to pay for treatment of employment-related conditions, the employee has the burden of establishing that the expenditure is incurred for treatment of the effects of an employment-related injury or condition.⁵

Section 10.310(a) of OWCP's implementing regulations provides that an employee is entitled to receive all medical services, appliances, or supplies which a qualified physician prescribes or recommends and which OWCP considers necessary to treat the work-related injury.⁶ Its procedures provide that nonmedical equipment such as waterbeds, saunas, weight-lifting sets, exercise bicycles, *etc.*, may be authorized only if recommended by the attending physician and if OWCP finds that the item is likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of monthly compensation.⁷

In interpreting section 8103 of FECA, the Board has recognized that OWCP has broad discretion in approving services provided, with the only limitation on OWCP's authority being that of reasonableness.⁸ 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 means to achieve this goal.

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.⁹

ANALYSIS -- ISSUE 1

The Board finds that OWCP did not abuse its discretion in denying appellant's request for authorization of continued physical therapy. The claim was accepted for adhesive capsulitis of the

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

⁵ *Kennett O. Collins, Jr.*, 55 ECAB 648 (2004).

⁶ 20 C.F.R. § 10.310(a).

⁷ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Services and Supplies*, Chapter 3.400.3.d(5) (October 1995); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Durable Medical Equipment*, Chapter 2.810.17.h (June 2014); *D.J.*, Docket No. 13-1637 (December 2013).

⁸ *See D.K.*, 59 ECAB 141 (2007).

⁹ *Minnie B. Lewis*, 53 ECAB 606 (2002).

left shoulder, bilateral carpal tunnel syndrome, and bilateral elbow lesions of the ulnar nerve. Appellant last worked on June 22, 2013 and has not received wage-loss compensation.

Dr. Bishai initially saw appellant on June 10, 2014 and recommended physical therapy. Appellant received physical therapy and other modalities of treatment at M&R at least once a week thereafter.¹⁰ The therapy was authorized by OWCP through November 26, 2016. On November 30, 2016 an additional three months of physical therapy, three times weekly, and three months of occupational therapy, three times week, were requested.

By decision dated January 17, 2017, OWCP found that authorization for continued physical therapy was denied as the evidence did not support that it was medically necessary to address the effects of appellant's employment-related condition.

Dr. Bishai advised on February 1, 2017 that appellant needed additional therapy and acupuncture treatment because he was having left shoulder, forearms, wrists, and hands symptoms, and that, since he was not considering surgery, the only logical treatment was with medication and physical therapy. He recommended 12 weeks of additional treatment two to three times weekly to improve appellant's chances of returning to gainful employment.

The Board finds that Dr. Bishai did not provide a sufficient explanation as to how and why the continued physical therapy would cure, give relief, reduce the degree or period of disability, or aid in lessening the amount of monthly compensation.¹¹ The evidence of record does not substantiate that the previous physical therapy had been curative or provided relief of appellant's accepted conditions. OWCP's obligation to pay for medical treatment under section 8103 of FECA extends only to treatment of employment-related conditions.¹²

For these reasons, OWCP did not abuse its discretion in denying appellant's request to authorize continued physical therapy. It explained that the medical evidence submitted provided insufficient explanation for the necessity of continued physical therapy. The Board finds that it was not unreasonable for OWCP to deny authorization for continued physical therapy.¹³

LEGAL PRECEDENT -- ISSUE 2

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.¹⁴ 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 round-trip distance of up to 100 miles is considered a

¹⁰ *Supra* note 3.

¹¹ *Supra* note 5.

¹² *See D.J.*, Docket No. 13-1637 (issued December 16, 2013).

¹³ *B.J.*, Docket No. 17-1825 (issued February 23, 2018).

¹⁴ 20 C.F.R. § 10.315(a).

reasonable distance to travel.¹⁵ 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 related to obtaining authorized medical services, appliances, or supplies.¹⁶

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's claims examiner.¹⁷ 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.¹⁸

In interpreting this section, the Board has recognized that OWCP has broad discretion in approving services provided under FECA.¹⁹ The only limitation on OWCP's authority is that of reasonableness. OWCP may authorize medical treatment, but determine that the travel expense incurred for such authorized treatment was unreasonable or unnecessary.²⁰

ANALYSIS -- ISSUE 2

The Board finds that OWCP did not abuse its discretion in denying appellant's requests for travel reimbursement. 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.²¹

The record reflects that at the time appellant began treatment with Dr. Bishai, he lived in Deltona, FL, approximately 119 miles each way from Dr. Bishai's office in Tampa, Florida.²² He has not shown that treatment with Dr. Bishai was reasonable and necessary. Although appellant maintained that he could not get medical treatment closer than in Tampa, Florida, appellant's residence at the time in Deltona, Florida was approximately 40 miles from Orlando, Florida.

¹⁵ *Id.*

¹⁶ *Id.* at § 10.315(b).

¹⁷ FECA Bulletin No. 14-02 (issued January 29, 2014).

¹⁸ *Id.*

¹⁹ *M.B.*, Docket No. 17-1072 (issued August 16, 2017).

²⁰ *W.M.*, 59 ECAB 132 (2007); *see also M.B.*, Docket No. 17-1072 (issued August 16, 2017).

²¹ *Id.*

²² Appellant has now moved to New Smyrna Beach, Florida, approximately 165 miles from Tampa, Florida.

OWCP regulations provide that, generally, a round trip of up to 100 miles is a reasonable distance to travel.²³ 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.²⁴ Appellant does not live in a remote area. 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 has not provided evidence to explain the necessity of traveling 119 miles each way to Tampa, Florida to seek care and why such travel is reasonable. While he maintained that no care was available locally, he provided no evidence to establish a lack of available services closer to his home or a specific need for the distances for which he was requesting authorization for reimbursement.²⁵

Although OWCP had authorized travel expenses for appellant to see Dr. Bishai in the past, this past practice does not establish a right to continuing authorization.²⁶ 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.²⁷

OWCP has broad discretion in considering whether to reimburse or authorize travel expenses.²⁸ As the only limitation on its authority is 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 deduction from known facts.²⁹ The Board finds that OWCP did not abuse its discretion in denying appellant's travel reimbursement requests. No probative evidence was presented with respect to the necessity of travel over the 100-mile round-trip 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.³⁰ The expenses appellant incurred for travel between his home in Deltona, Florida and his treating physician in Tampa, Florida beyond the 100-mile round-trip limit must be considered personal to him.³¹

²³ 20 C.F.R. § 10.315(a).

²⁴ *Id.* at § 10.315(b).

²⁵ *See M.M.*, Docket No. 15-1724 (issued February 16, 2016).

²⁶ *See W.H.*, Docket No. 14-1662 (issued February 3, 2015).

²⁷ *Supra* note 17.

²⁸ *Supra* note 19.

²⁹ *See J.J.*, Docket No. 10-1908 (issued June 16, 2011).

³⁰ *Supra* note 19.

³¹ *See W.J.*, Docket No. 10-1944 (issued June 1, 2011).

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 authorization for additional physical therapy and in denying appellant's requests for travel reimbursement.

ORDER

IT IS HEREBY ORDERED THAT the August 3 and 2, 2017 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 22, 2018
Washington, DC

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

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

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