

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

G.C., Appellant)

and)

DEPARTMENT OF THE NAVY, PEARL)
HARBOR NAVAL SHIPYARD,)
Pearl Harbor, HI, Employer)

**Docket No. 19-0298
Issued: June 24, 2019**

Appearances:
Appellant, pro se
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
JANICE B. ASKIN, Judge

JURISDICTION

On November 20, 2018 appellant filed a timely appeal from an October 2, 2018 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.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the October 2, 2018 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether OWCP has abused its discretion by denying appellant's requests for travel reimbursement in excess of 100 miles roundtrip.

FACTUAL HISTORY

This case has previously been before the Board.³ The facts of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On April 10, 1984 appellant, then a 33-year-old foreman, filed a traumatic injury claim (Form CA-1) alleging that on February 21, 1984 he sustained a herniated lumbar disc at L4-L5 while assisting a coworker with moving an aluminum pipe while in the performance of duty. On January 3, 1990 OWCP accepted appellant's claim for a herniated disc at L4-L5, and paid appellant wage-loss compensation on the periodic compensation rolls.

In a second opinion evaluation report dated September 12, 2017, Dr. Gary J. La Tourette, a Board-certified orthopedic surgeon, reviewed appellant's medical history and statement of accepted facts. He diagnosed sacroiliitis, displacement of lumbar intervertebral disc without myelopathy, degeneration of intervertebral disc, and chronic pain syndrome and opined that these conditions were causally related to appellant's accepted February 21, 1984 employment injury. Dr. Tourette recommended that appellant receive corticosteroid injections and a sacroiliac joint fusion.

On November 2, 2017 OWCP expanded acceptance of the claim to include sacroiliitis, displacement of lumbar intervertebral disc without myelopathy, degeneration of lumbar or lumbosacral intervertebral disc, and chronic pain syndrome.

In reports dated February 1 and August 2, 2017, Dr. David R. Lanzkowsky, a Board-certified anesthesiologist and pain medicine specialist, related that appellant had undergone right and left sacroiliac joint injections.

In a letter dated November 12, 2017, appellant indicated that he had moved from Nevada to Arizona, and that he wished to finish his current course of treatment with Dr. Lanzkowsky in Nevada. He noted that, after the course of treatment finished, he intended to begin treatment at a pain management treatment center closer to his new home in Arizona.

In a letter dated December 11, 2017, OWCP informed appellant that it updated his address in the system to reflect his move to Arizona, and that he could complete the approved treatment in Nevada. However, it advised him that OWCP would not reimburse him for mileage or travel over 100 miles roundtrip from his home. OWCP noted that appellant needed to select a new treating physician in Arizona.

³ Docket No. 00-2774 (issued March 13, 2002).

In a medical travel refund request form (Form OWCP-957), dated December 15, 2017, appellant requested reimbursement for travel for three trips of 640 miles roundtrip travel between Arizona and Nevada for the dates November 14 and December 13 and 15, 2017.

In a report dated December 13, 2017, Dr. Lanzkowsky related that on that day appellant had undergone a right L4 medial branch rhizotomy, left L4 medial branch rhizotomy, right L5 dorsal branch rhizotomy, left L5 dorsal branch rhizotomy, right S1 dorsal branch rhizotomy, left S1 dorsal branch rhizotomy, right S2 dorsal branch rhizotomy, and left S2 dorsal branch rhizotomy.

In a letter dated December 22, 2017, appellant related that he found a new doctor in Arizona, and that he cancelled all future appointments with the pain management group in Nevada. However, he argued that the three trips he took for treatment in Nevada were necessary because of a lack of communication from OWCP. Appellant alleged that OWCP took three months to inform him that he would not be reimbursed for travel over 100 miles roundtrip.

In a development letter dated February 12, 2018, OWCP advised appellant that he needed to provide a detailed statement explaining why he believed it was reasonable and necessary to travel approximately 320 miles each way from Arizona to Nevada for medical treatment. Appellant was afforded 30 days to submit the requested information. No response was received.

By decision dated April 9, 2018, OWCP denied appellant's request for authorization and reimbursement for travel to obtain medical services, finding that the evidence of record did not support that the travel mileage requested was reasonable and necessary. It noted that appellant remained entitled to travel reimbursement for medical treatment of up to 100 miles roundtrip.

On April 17, 2018 appellant timely requested an oral hearing with an OWCP hearing representative from the April 9, 2018 decision.

In a letter dated April 17, 2018, appellant indicated that he was neither offered, nor had he requested, travel reimbursement for 32 years while he lived in Hawaii and Nevada, and it was not until he was directed to undergo a second opinion evaluation in 2016 that he requested a travel reimbursement. He noted that he asked for a travel reimbursement after his move from Nevada to Arizona because the trips to and from Nevada and Arizona totaled over 600 miles, took more than 10 hours, and were grueling and detrimental to his condition. Appellant related that he was never told he would not be reimbursed for travel expenses until after he completed the entire rhizotomy operation including pre-op and post-op.

The hearing was held telephonically on August 28, 2018 regarding OWCP's April 9, 2018 decision. During the hearing appellant argued that he should be reimbursed for travel over 100 miles because OWCP had previously reimbursed for such travel expenses.

By decision dated October 2, 2018, OWCP's hearing representative affirmed the April 9, 2018 decision, finding that OWCP properly denied appellant's mileage reimbursement request for travel exceeding 100 miles roundtrip.

LEGAL PRECEDENT

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.⁴ 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 reasonable distance to travel.⁵ 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.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 OWCP's 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.⁹ 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.¹⁰

ANALYSIS

The Board finds that OWCP has not abused its discretion by denying appellant's requests for travel reimbursement in excess of 100 miles roundtrip.

The record reflects that appellant moved from Las Vegas, Nevada to Cottonwood, Arizona on October 30, 2017 and notified OWCP of his move on November 12, 2017. In Nevada appellant had been treated by Dr. Lanzkowsky, his authorized treating physician. After moving to Arizona, OWCP advised that he could complete his treatment with Dr. Lanzkowsky. Appellant requested

⁴ 20 C.F.R. § 10.315(a).

⁵ *Id.*

⁶ *Id.* at § 10.315(b).

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

⁸ *Id.*

⁹ *D.C.*, Docket No. 18-0080 (issued May 22, 2018); *M.B.*, Docket No. 17-1072 (issued August 16, 2017).

¹⁰ *Id.*; *W.M.*, 59 ECAB 132 (2007).

authorization for mileage reimbursement for traveling approximately 320 miles each way to continue treatment with Dr. Lanzkowsky in Nevada. On December 11, 2017 OWCP informed appellant that he would not be reimbursed for travel expenses in excess of 100 miles roundtrip in accordance with its procedures. In a development letter dated February 12, 2018, it advised appellant that he needed to provide a detailed statement as to why it was reasonable and necessary for him to travel approximately 320 miles each way for medical treatment.

OWCP's regulations provide that, generally, a round trip of up to 100 miles is a reasonable distance to travel.¹¹ There may be circumstances where reimbursement for travel 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.¹² To establish that a travel reimbursement of more than 100 miles is warranted, OWCP's 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 320 miles each way to Nevada to seek care or why such travel was reasonable.¹³ Although OWCP had authorized appellant to see Dr. Lanzkowsky in the past, 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.¹⁴

OWCP has broad discretion in considering whether to reimburse or authorize travel expenses.¹⁵ 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.¹⁶ The Board finds that OWCP has not abused its discretion by denying appellant's travel reimbursement requests over 100 miles roundtrip. Appellant has not submitted probative evidence with respect to the necessity of travel over the 100-mile round-trip standard set forth in OWCP regulations. OWCP has administrative discretion with respect to authorization of travel reimbursement.¹⁷ The expenses appellant incurred for travel between his home in Arizona and his treating physician in Nevada beyond the 100-mile round-trip limit must be considered personal to him.¹⁸

¹¹ 20 C.F.R. § 10.315(a).

¹² *Id.* at § 10.315(b).

¹³ *D.C.*, *supra* note 9; *see M.M.*, Docket No. 15-1724 (issued February 16, 2016).

¹⁴ *Id.*

¹⁵ *Supra* note 9.

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

¹⁷ *Supra* note 9.

¹⁸ *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 has not abused its discretion in denying appellant's requests for travel reimbursement in excess of 100 miles roundtrip.

ORDER

IT IS HEREBY ORDERED THAT the October 2, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 24, 2019
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board