

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

B.N., Appellant)

and)

U.S. POSTAL SERVICE, JAMES C.)
BROWN, JR., POST OFFICE, Las Vegas, NV,)
Employer)
-----)

**Docket No. 24-0938
Issued: December 3, 2024**

Appearances:
Terry Nelson, for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On September 23, 2024 appellant, through his representative, filed a timely appeal from a May 31, 2024 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 over the merits of this case.³

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.*

³ The Board notes that, following the issuance of OWCP's May 31, 2024, 2024 decision, appellant submitted new 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 abused its discretion by denying appellant's request for travel reimbursement for medical treatment from February 26 through March 4, 2023.

FACTUAL HISTORY

On February 25, 2023 appellant, then a 63-year-old sales, services, and distribution associate, filed an occupational disease claim (Form CA-2) alleging that he developed a large hernia bump with associated pain due to factors of his federal employment, including pushing, pulling, and lifting heavy items during the workday. He noted that he first became aware of his condition and realized its relationship to his federal employment on February 13, 2023. Appellant stopped work on February 23, 2023.

In a letter dated February 22, 2023, an intake specialist for a medical provider located in Fort Myers, Florida, related that appellant was seeking treatment for his right inguinal hernia on February 28, 2023 with surgery scheduled for March 1, 2023. She further related that patients from all over the world sought hernia surgery from Dr. Robert Tomas, an osteopathic physician Board-certified in general surgery, as he was the only physician in the United States certified to perform the Desarda method of no mesh hernia surgery.

On March 1, 2024 Dr. Tomas examined appellant regarding his bilateral inguinal hernias and an umbilical hernia. He related his history of a right open inguinal hernia repair surgery in 1988 and performed an open bilateral mesh-free inguinal herniorrhaphies, Desarda technique, and an umbilical herniorrhaphy with triple layered closure repair of the fascia. Appellant returned to full-duty work on May 15, 2023.

On May 2, 2023 OWCP accepted the claim for bilateral inguinal hernia without obstruction or gangrene. It paid appellant wage-loss compensation on the supplemental rolls from February 23 through May 14, 2023.

On May 22, 2023 appellant, through his representative, filed a claim for travel reimbursement from his home in Nevada to Fort Myers, Florida, a distance of over 2,000 miles, for the dates of February 26 through March 4, 2023 in the amount of \$3,628.80. This included two round-trip airline tickets in the amount of \$2,201.62, lodging for two in the amount of \$1,063.74, airport parking in the amount of \$108.00, and meals in the amount of \$255.44.

In a letter dated August 31, 2023, OWCP advised appellant that it was unable to authorize his request for travel reimbursement because he had obtained medical treatment at a facility located in Fort Myers, Florida, approximately 2,920 miles from his residence in Nevada. It informed him that generally a roundtrip distance of 100 miles was considered a reasonable distance to travel. OWCP further noted that, if a roundtrip of more than 100 miles was contemplated, an employee must submit a written request describing the circumstances and necessity for travel expenses such as air transportation or overnight accommodations. It noted that the evidence of record did not establish that he was unable to have hernia surgery locally or that it was medically necessary for him to seek treatment in Florida.

On September 8, 2023 appellant, through his representative, resubmitted his request for travel reimbursement from February 26 through March 4, 2023, along with supporting documentation for airline tickets, lodging, and meals in the amount of \$3,628.80.

On September 15, 2023 OWCP requested that Dr. Harold A. Fenster, a Board-certified surgeon serving as an OWCP district medical adviser (DMA) review the medical evidence and determine whether appellant could have received the same surgical treatment without traveling over 2,000 miles to Dr. Tomas.

In his September 22, 2023 report, Dr. Fenster reviewed appellant's diagnosed conditions and opined that he could have undergone other various types of hernia repairs acceptable in the current general surgery literature including Shouldice repair, Bassini herniorrhaphy, Lichtenstein herniorrhaphy, mesh herniorrhaphy or laparoscopic herniorrhaphy without the need for extensive travel. He noted that the Desarda technique was a relatively new, but acceptable surgical treatment for a new or recurrent inguinal hernia and was used as an acceptable technique to avoid using artificial mesh. The DMA related that Dr. Tomas was trained by Dr. Desarda in this method.

In a letter dated October 25, 2023, OWCP advised appellant that it was unable to authorize his request for travel reimbursement because he had not provided evidence that it was medically necessary to address the effects of his accepted employment injuries. It advised appellant to submit the necessary documentation within 30 days.

Appellant responded on October 31, 2023 and provided a narrative statement disputing the DMA's conclusions that other appropriate medical options were available for treatment of his accepted medical conditions. He asserted that the only reasonable and medically necessary treatment was available in Florida and that flying to Florida was the only way to obtain this treatment. Appellant related that his wife was required by his physician to accompany him as a caretaker.

In a November 6, 2023 report, Dr. Tomas diagnosed appellant with multiple abdominal wall defects related to his bilateral inguinal hernias and a right recurrent umbilical hernia. He explained that he was the only physician trained in the United States in the Desarda technique of no mesh tension-free surgical hernia repair as well as the triple layers no mesh hernia repair for the umbilical hernia. Dr. Tomas related that appellant was interested in only no mesh surgical hernia repairs.

By decision dated December 1, 2023, OWCP denied appellant's claim for travel reimbursement for medical treatment from February 26 through March 4, 2023, finding that the medical evidence of record was insufficient to support the necessity and circumstances for reimbursement for travel expenses claimed.

On December 8, 2023 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review and submitted additional evidence.

In a January 29, 2024 report, Dr. Tomas related that he performed exclusively no mesh hernia surgeries and that these surgeries were performed on an outpatient basis eliminating hospital stays and reducing recovery time. He described his technique as utilizing a patient's own muscle, with no chance of rejection, dislodgment, or migration of the muscular approximation. Dr. Tomas further noted that he used absorbable sutures rather than traditional

steel sutures which lessened the chance of rejection. He related the length appellant's treatment stay and explained the necessity of a caretaker, a role which was assumed by his wife.

A hearing was held on March 8, 2024 where appellant outlined his need for treatment with Dr. Tomas. By decision dated May 31, 2024, OWCP's hearing representative affirmed the December 1, 2023 decision.

LEGAL PRECEDENT

OWCP regulations provide that the employee is entitled to reimbursement for 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 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 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, 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 did not abuse its discretion in denying appellant's request for travel reimbursement for medical treatment from February 26 through March 4, 2023.

⁴ 20 C.F.R. § 10.315(a).

⁵ *Id.*

⁶ *Id.* at 10.315(b).

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

⁸ *Id.*

⁹ *T.J.*, Docket No. 24-0706 (issued September 6, 2024); *V.L.*, Docket No. 23-0061 (issued August 22, 2023); *S.M.*, Docket No. 19-0989 (issued May 12, 2020); *G.C.*, Docket No. 19-0298 (issued June 24, 2019).

¹⁰ *Id.*

Appellant submitted requests for travel reimbursement for medical treatment from February 26 through March 4, 2023 to undergo mesh-free hernia surgeries by Dr. Tomas, whose practice in Fort Myers, Florida was located over 2,000 miles from his Nevada home.

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 maintained that Dr. Tomas was the only physician performing mesh-free hernia surgery repairs. However, the evidence of record is insufficient to establish that the treatment with Dr. Tomas was medically necessary.¹³

OWCP has broad discretion in considering whether to reimburse or authorize travel expenses.¹⁴ 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.¹⁵ The Board thus finds that OWCP has not abused its discretion by denying appellant's travel reimbursement request.¹⁶

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 did not abuse its discretion in denying appellant's request for travel reimbursement for medical treatment from February 26 through March 4, 2023.

¹¹ 20 C.F.R. § 10.315(a).

¹² *Id.* at 10.315(b).

¹³ *Supra* note 9.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *D.V.*, Docket No. 24-0671 (issued August 26, 2024) and *K.H.*, Docket No. 20-1134 (issued August 8, 2020); *J.J.*, Docket No. 10-1908 (issued June 16, 2011).

ORDER

IT IS HEREBY ORDERED THAT the May 31, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 3, 2024
Washington, DC

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

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board