U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN KORY and DEPARTMENT OF THE INTERIOR, NATIONAL PARK SERVICE, GRAND TETON NATIONAL PARK, Moose, WY

Docket No. 97-2371; Submitted on the Record;
Issued September 1, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for travel expenses related to a medical examination.

On June 16, 1982 appellant, then a 31-year-old heavy mobile equipment operator, was helping to unload a forklift from a trailer when the forklift rolled forward and pinned his left leg against the trailer gooseneck. Appellant sustained a crush injury of the left leg with a comminuted fracture of the tibial plateau with subsequent myonecrosis. He underwent surgery for repair of the fracture, including anterior posterior compartment fasciotomies, a fasciotomy of the superficial compartment and peroneal compartment and debridement of the wound. Appellant received continuation of pay for the period June 17 to July 31, 1982. The Office accepted appellant's claim and began payment of temporary total disability compensation effective August 1, 1982. Appellant returned to work part time on February 6, 1983 and full-time work at a new position on January 8, 1984. In a January 25, 1985 decision, the Office issued a schedule award for a 66 percent permanent impairment of the left leg. On August 21, 1990 appellant filed a claim for a recurrence of disability due to pain in his right leg. Appellant underwent arthroscopic surgery for a partial medial meniscectomy to repair a tear in the medial meniscus of the right leg. The Office accepted the right knee condition and the surgery as consequences of appellant's injury to his left leg. Appellant stopped work on November 9, 1990 and returned to work on January 15, 1991. He received temporary total disability or authorization for buy back of leave for the period he did not work. In an October 31, 1994 decision, the Office issued a schedule award for a 32 percent permanent impairment of the right leg. Appellant subsequently began to receive temporary total disability compensation.

On October 18, 1996 appellant filed a request for reimbursement of $941.54 in travel expenses for the period October 11 through October 16, 1996 for a round trip from Post Fall, Idaho to Apple Valley, California for a medical examination. In a May 1, 1997 decision, the Office authorized reimbursement for $15.50, finding that his trip to California was unauthorized and that, under Office regulations, 25 miles was a reasonable distance to travel for medical

treatment with reimbursement at $.31 a mile. In a May 12, 1997 letter, appellant requested reconsideration. In a June 20, 1997 decision, the Office denied appellant's request for reconsideration as insufficient to warrant review of the case on its merits.

The Board finds that the Office properly denied appellant's request for reimbursement of $926.04 in travel expenses.

Appellant's claim was accepted for the crush injury and fracture of his left leg and medial meniscus tear of the right knee. Appellant, therefore became entitled to treatment of these conditions under the Federal Employees' Compensation Act.

Section 8103(a) of the Act states in pertinent part:

> "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 the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of disability or aid in lessening the amount of the monthly compensation…. The employee … may be furnished necessary and reasonable transportation and expenses incident to the securing of such services, appliances and supplies."[1]

In interpreting this section of the Act, the Board has recognized that the Office has broad discretion in approving services provided under the Act. The only limitation on the Office's authority is that of reasonableness.[2]

The Office regulations state:

> "In determining the use of medical facilities, consideration must be given to their availability, the employee's condition and the method and means of transportation. Generally, 25 miles from the place of injury, the employing agency or the employee's home, is a reasonable distance to travel, but other pertinent factors must also be taken into consideration."[3]

In this case, the Office informed appellant in an October 11, 1996 letter that, in order to continue to receive compensation, he was to submit a current medical report from his physician. The Office suggested that appellant present the letter to his physician and indicated that it would pay a reasonable fee for an examination and report. The Office indicated that the physician should bill it directly. In his request for reconsideration, appellant indicated that he had moved from California to Idaho but the paperwork had not been completed for a transfer in health insurance plans from California to Idaho. He contended that he was unable to get a medical examination in Idaho and therefore, had to travel to his former residence in California to comply

[1] 5 U.S.C. § 8103(a).

[2] *Peggy J. Reed,* 46 ECAB 139 (1994); *Daniel J. Perea*, 42 ECAB 214 (1990).

[3] 20 C.F.R. § 10.402(c).

with the Office's requirement to obtain a current medical report. However, the Office, in its October 11, 1996 letter, had informed appellant that it would pay reasonable medical expenses for the examination and report by a physician and indicated that the physician performing the examination could bill the Office directly. Therefore, appellant did not need to have coverage by a health insurance plan to have a medical examination pursuant to the Office's October 11, 1996 letter as the Office indicated that it would directly pay the physician performing the examination. The Office's regulations indicate that 25 miles from the site of the injury, the employing establishment or appellant's home would generally be considered a reasonable distance to travel for medical examination or treatment. The Office is required to consider all pertinent facts in making its determination. In this case, appellant has not shown that the examination or treatment he needed was available only at his former residence in California nor has he presented any other pertinent facts that would indicate his trip to California was his only reasonable course of action in getting a medical examination or treatment.[4] The Office acted within its discretion to reimburse appellant only for 50 miles of travel expenses, 25 miles in each direction. As the only limitation on the Office's 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 deductions from known facts.[5] Appellant has not established that the Office's decision to reimburse only $15.50 in travel expenses was an abuse of discretion.

The decisions of the Office of Workers' Compensation Programs, dated June 20 and May 1, 1997, are hereby affirmed.

Dated, Washington, D.C.
September 1, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

A. Peter Kanjorski
Alternate Member

[4] *See Patsy Trentanelli*, 40 ECAB 402 (1988).

[5] *Daniel J. Perea*, *supra* note 2.