United States Department of Labor
Employees' Compensation Appeals Board

G.P., Appellant	)	
and	)	**Docket No. 10-1143**
	)	**Issued: April 14, 2011**
FEDERAL AVIATION ADMINISTRATION, STAPLETON AIRPORT, Denver, CO, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 18, 2010 appellant filed a timely appeal from the December 23, 2009 decision of the Office of Workers' Compensation Programs, which denied reimbursement for CoQ10 capsules. He also appeals the Office's January 6, 2010 decision denying further reimbursement for a medical records review. Pursuant to the Federal Employees' Compensation Act[1] 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 the Office properly denied reimbursement for CoQ10 capsules and properly denied further reimbursement for a medical records review.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

In 1976 appellant, a 41-year-old air traffic controller, filed a claim for compensation alleging that he developed an emotional condition in the performance of duty.[2] The Office accepted his claim for coronary atherosclerosis; injury to other specified pelvic organs, without open wound into cavity; impotence of organic origin; pure hypercholesterolemia; occlusion multiple and bilateral arteries; coronary atherosclerosis of native coronary artery; mixed hyperlipidemia; other complications due to other vascular device, implant and graft; and congestive heart failure.

On February 2, 2009 appellant advised the Office that the Cleveland Clinic had agreed to review his records for $600.00 and provide a second opinion consultation. He stated that he would "overnight" the records to them in the next day or so. Appellant added: "I trust the $600.00 pay out of pocket to Cleveland will be reimbursed!"

In a report dated February 26, 2009, Dr. Christopher Bajzer, an internist with subspecialties in cardiovascular disease and interventional cardiology at the Cleveland Clinic, opined that appellant had received excellent and thoughtful care. He noted that appellant's local physician had made very reasonable recommendations to undergo repeat coronary angiography and the possibility of additional coronary intervention.[3]

The record indicates that the Office reimbursed appellant, based on a fee schedule, for $319.98 of the $565.00 charged for the medical records review. On April 1, 2009 appellant asked the Office to reimburse him for all of his out-of-pocket expenses related to the review, including the $245.02 balance, $56.92 for overnight shipping, $0.73 in copying expenses and sales tax.

On September 14, 2009 appellant purchased 60 capsules of CoQ10. On September 16, 2009 Dr. Joseph Chambers, appellant's cardiologist, prescribed the same.

In a decision dated December 23, 2009, the Office denied authorization for the CoQ10:

> "Under the Act, medications which require a prescription by a physician can be authorized for the accepted conditions … if such medications are recognized by this office as being appropriate for the accepted condition of the claim. However, over[-]the[-]counter medications are not compensable. Since the Q10 capsules you request are available without a prescription, authorization for this supplement cannot be issued at this time."

[2] In 1969 a crash resulting in fatalities occurred while appellant was "on the boards." Appellant thereafter had a difficult time working the boards.

[3] In his consultation request, appellant asked three questions: (1) Can angioplasty be done to remove or repair the blockage in my iliac and/or abdominal aorta and are rotary tools still in use? (2) If my recent (2007) coronary stent is blocked, can it be reopened? (3) Can you perform angioplasty with [computerized tomography] guidance?

In a decision dated January 6, 2010, the Office responded to appellant's request for reimbursement of all his out-of-pocket expenses for the medical records review:

> "Under the Act, medical expenses can be reimbursed to the extent allowable under the Federal Fee Schedule. You indicate that you have been compensated to that extent. Therefore, no additional payments can be made."

On appeal, appellant argued that the Office abused its discretion in denying reimbursement for the CoQ10 capsules and in denying full reimbursement for the medical records review. He noted that the Office previously paid for CoQ10 and had a legal obligation to do so. Appellant argues the Office's decision to deny reimbursement for over-the-counter supplements is arbitrary and capricious. He also emphasizes that he is entitled to "all" medical services, appliances and supplies.[4]

LEGAL PRECEDENT

Section 8103(a) of the Act 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 the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of any disability or aid in lessening the amount of any monthly compensation. The employee may initially select a physician to provide medical services, appliances and supplies, in accordance with such regulations and instructions as the Secretary considers necessary and may be furnished necessary and reasonable transportation and expenses incident to the securing of such services, appliances and supplies.[5]

Thus, the employee is entitled to receive all medical services, appliances or supplies that a qualified physician prescribes or recommends and which the Office considers necessary to treat the work-related injury. If there is any doubt as to whether a specific service, appliance or supply is necessary to treat the work-related injury, the employee should consult the Office prior to obtaining it.[6]

Payment for medical and other health services furnished by physicians, hospitals and other providers for work-related injuries shall not exceed a maximum allowable charge for such service as determined by the Director of the Office.[7] The employee may be only partially reimbursed for medical expenses because the amount he paid to the medical provider for a service exceeds the maximum allowable charge set by the Office fee schedule.[8] If the provider

[4] Appellant argued other issues, such as whether the Office properly required NDC codes. The Board's jurisdiction, however, is limited to reviewing the formal final decisions of the Office issued within 180 days of the filing of his appeal. 20 C.F.R. §§ 501.2(c) and 501.3(e). Appellant also argues that the Office has not provided documents under the Freedom of Information Act, but the Board has no jurisdiction to address issues arising under that statute. *Sherwood T. Rodrigues*, 37 ECAB 617 (1986).

[5] 5 U.S.C. § 8103(a).

[6] 20 C.F.R. § 10.310(a).

[7] *Id.* at § 10.805(a) (except as provided by this section).

[8] *Id.* at § 10.337(a).

does not refund to the employee or credit his account the money paid in excess of the charge allowed by the Office, the employee shall submit documentation of the attempt to obtain such refund or credit to the Office. The Office may make reasonable reimbursement to the employee after reviewing the facts and circumstances of the case.[9]

Services, appliances and supplies that meet the statutory criteria may be approved.[10] The Office has broad discretion in approving services under the Act. It has the general objective of ensuring that an employee recovers from his injury to the fullest extent possible in the shortest amount of time. The Office therefore has broad administrative discretion in choosing the means to achieve this goal. The only limitation on the Office's authority is that of reasonableness.[11]

In general, drugs and medications that are necessary to treat an injury or occupational disease may be purchased at Office expense on the recommendation of the attending physician. These include prescription as well as nonprescription medications.[12] The employee, however, has the burden of establishing that the expenditure is incurred for treatment of the effects of an employment-related injury or condition.[13]

ANALYSIS

As described in the statute, regulations, procedure and case law noted above, the Office has broad discretion whether to pay for a medical records review or an over-the-counter supplement. There is no mandate. It is up to the Office to decide, in its discretion, whether the medical records review and the supplement were necessary and reasonable or likely to cure, give relief, reduce the degree or the period of any disability or aid in lessening the amount of any monthly compensation.

The regulations anticipated appellant's request to be reimbursed for all out-of-pocket expenses incident to securing the record review. Payment for such service shall not exceed a maximum allowable charge as determined by the Director of the Office. This left appellant only partially reimbursed because the amount he paid to the Cleveland Clinic for its record review exceeded the maximum allowable charge set by the Office fee schedule. The Office has discretion to make further reasonable reimbursement to appellant after reviewing the facts and circumstances of the case, but its decision not to do so is no abuse.

The evidence does not show the medical necessity of a record review by the Cleveland Clinic. Appellant sought this review for his own reasons and without consulting the Office about

[9] *Id.* at § 10.337(c).

[10] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Services and Supplies*, Chapter 3.400.2 (September 1995).

[11] *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

[12] *Supra* note 10 at Chapter 3.400.3.a. (September 1995).

[13] *See Dale E. Jones*, 48 ECAB 648, 649 (1997); *Mamie L. Morgan*, 41 ECAB 661, 667 (1990) (finding that the employee was not entitled to reimbursement for the purchase of a hot tub because he failed to submit rationalized medical evidence explaining why it was medically necessary or how it would provide relief).

the costs, such as overnight shipping, to be reimbursed. He thus assumed a financial risk. Appellant was reimbursed for half his expenses under the fee schedule. Had the Office requested the review and partially paid the Cleveland Clinic as a result of applying its fee schedule, the Cleveland Clinic would have the right to contest the partial payment, but it could not request reimbursement from him for the balance of its charge.[14] Because it acted within its broad discretion to reimburse appellant under the fee schedule, the Board will affirm the Office's January 6, 2010 decision denying further reimbursement.

Appellant purchased CoQ10 capsules and subsequently obtained a prescription note or recommendation for it the following day. The evidence, again, does not show the medical necessity. A prescription note alone does not explain why the purchase of CoQ10 was medically necessary and reasonable to treat one of the accepted conditions. It does not establish that CoQ10 capsules are, in the words of the statute, "likely to cure, give relief, reduce the degree or the period of any disability or aid in lessening the amount of any monthly compensation." Moreover, if Dr. Chambers, the attending cardiologist, were to provide some discussion of why he was prescribing or recommending CoQ10, the Office would still retain discretion to authorize its purchase.[15] Because the Office acted within its broad discretion to deny reimbursement for the purchase of CoQ10 capsules, the Board will affirm the Office's December 23, 2009 decision.

Appellant argues on appeal that the Office previously paid for CoQ10, but this does not mean the Office found the supplement to be medically necessary or likely to cure, give relief, reduce the degree or the period of any disability or aid in lessening the amount of any monthly compensation. It could simply mean that he was fortunate to receive a benefit the Office later determined, on closer inspection, he should not receive. To be clear, the Office has no legal obligation to pay for the supplement. Like payment for the record review, the matter rests within the exercise of the Office's broad discretion. Under the facts of this case, the Board finds no abuse of that discretion.

Appellant argues under the regulations that he is entitled to receive "all" medical services, appliances or supplies that a qualified physician prescribes or recommends, but this language is followed by a critical qualifying conjunctive, namely, "and which the Office considers necessary to treat the work-related injury." What the Office considers necessary is determinative. That same regulations offer guidance: "If there is any doubt as to whether a specific service, appliance or supply is necessary to treat the work-related injury, the employee should consult the Office prior to obtaining it."[16]

To provide appellant final decisions that he could then appeal to the Board, the Office issued decisions with reasons. He objects to the precise reasons provided, but where the Office retains such discretion and latitude in deciding these matters, the Board sees no reason to remand

[14] 20 C.F.R. § 10.813.

[15] *See Dale E. Jones*, *supra* note 13 above (affirming the denial of a hot tub where the physician concluded that hydrotherapy would alleviate the employee's back condition and where he explained that a hot tub was preferable because a portable unit would not produce adequate water movement).

[16] 20 C.F.R. § 10.310(a).

this case to issue another decision on the issue at hand. The Board has reviewed these issues and appellant has received due process. The issues are decided.

CONCLUSION

The Board finds that the Office properly denied reimbursement for CoQ10 capsules and properly denied further reimbursement for a medical records review.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated January 6, 2010 and December 23, 2009 are affirmed.

Issued: April 14, 2011
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board