

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

C.S., Appellant)

and)

U.S. POSTAL SERVICE, GENERAL MAIL)
FACILITY, Washington, DC, Employer)

**Docket No. 14-1377
Issued: June 23, 2015**

Appearances:
Appellant, pro se
No appearance, for the Director

Oral Argument January 28, 2015

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 30, 2014 appellant filed a timely appeal from a May 19, 2014 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 the appeal.

ISSUES

The issues are: (1) whether OWCP abused its discretion by recovering travel reimbursement for the period February 27, 2007 through August 7, 2012; (2) whether appellant received an overpayment of compensation in the amount of \$1,969.31 for the same period; (3) whether OWCP properly found that she was at fault in creation of the overpayment, thereby precluding waiver of recovery of the overpayment; and (4) whether it properly recovered the overpayment by withholding \$1,969.31 from continuing compensation payments.

¹ 5 U.S.C. § 8101 *et seq.*

On appeal appellant contends that she did not commit fraud as she accurately reported mileage for travel from her home in Greenville, North Carolina to Duke University and Temple Hills, Maryland.

FACTUAL HISTORY

On February 15, 1993 appellant, then a 38-year-old former distribution clerk, filed an occupational disease claim alleging that she sustained left hand, wrist, and finger injuries as a result of pulling cases at work. OWCP accepted her claim for right and left ulnar entrapment, herniated nucleus pulposus at C7-T1 and C4-5, and left carpal tunnel syndrome. It authorized C7-T1 anterior fusion and discectomy performed on March 10, 1995.

In a May 16, 1996 decision, OWCP granted appellant a schedule award for 42 percent impairment of the left upper extremity. The period of the award ran from April 28, 1996 to August 22, 1998. In an August 17, 1998 decision, OWCP amended the May 16, 1996 decision to reflect an award period of April 28, 1996 to November 2, 1998.

By letter dated May 8, 2008, OWCP expanded the acceptance of appellant's claim to include left carpal tunnel syndrome. In a January 23, 2014 decision, it granted appellant a schedule award for an additional six percent impairment to the left arm. OWCP noted that she had previously received a schedule award for 42 percent impairment of the left arm. It also granted appellant a schedule award for seven percent impairment of the right arm.

On November 8, 2013 a special agent in the employing establishment's Office of Inspector General (OIG) submitted an investigative report covering the period August 8, 2012 to September 11, 2013 with exhibits that included OWCP-957 forms dated December 2006 to July 2012 claiming travel reimbursement. The investigation determined that, from December 2006 to August 2012, appellant claimed approximately 3,862 miles from her residence to medical facilities that were either inflated or not driven. As a minimum of 14 percent of the total mileage claimed was fraudulent, appellant received approximately \$1,969.00 in fraudulent travel reimbursement from OWCP. A comparison of the mileage reported on travel refund request forms (OWCP-957) by appellant for the period December 2006 to July 2012 and mileage calculations on MapQuest.com, an internet-based service, indicated that she routinely reported inflated travel mileage. The OIG contacted the medical facilities and practices where appellant claimed she was seen and treated. On OWCP-957 forms she claimed that a medical facility identified as Rehab Pain Management was 20 and 24 miles roundtrip from her residence. The report stated that MapQuest.com showed that this facility was only 6.94 miles from appellant's residence, an inflation of 13.067 and 17.06 miles per trip. Appellant submitted OWCP-957 forms for a facility identified as Duke Health Center, 932 Morreene Road, Durham, North Carolina. She claimed she traveled 150 miles one way or 300 miles roundtrip each time to this facility on January 15, 22 and October 15, 2010, and July 22, 2011. MapQuest.com indicated that the roundtrip mileage from appellant's residence to Duke Health Center was 222.26 miles, an inflation of 77.24 miles per trip. Appellant claimed that she traveled 482 miles to National Medical Rehabilitation (NMR), 3611 Branch Avenue, Suite 309, Temple Hills, Maryland on August 10, 2007. The facility's copy of her dates of service indicated that she was not seen on that date. Appellant claimed back-to-back trips to Maryland on March 25 and 26, 2007, 448 miles roundtrip from her residence. The report noted that it seemed unlikely that she

would drive 448 miles home, only to return for a doctor visit the next day, again driving 448 miles. Appellant claimed back-to-back trips to NMR on October 29 to 30, 2007 and July 9 and 10, 2008. A consultation report from the medical practice of Dr. Hampton Jackson, located at 6144 Oxon Hill Road, Oxon Hill, Maryland revealed that she was only seen on August 3, 2010. The report stated that it was unclear why appellant had travelled over 4½ hours one way for medical treatment. Appellant claimed back-to-back roundtrips when she travelled 472 miles from her residence to Dr. Jackson's office on August 3, 2010 and 448 miles from her residence to NMR on August 4, 2010. Several documents were attached to the report which included a General Services Administration privately-owned vehicle (POV) mileage rates chart for reimbursement, the employing establishment's injury compensation performance analysis systems case cost as of October 16, 2013, and reports from MapQuest.com reflecting the distance between appellant's residence and medical facilities from which she sought medical treatment.

On April 17, 2014 OWCP made a preliminary finding that appellant received a \$1,969.31 overpayment of compensation because she received travel expense reimbursement from February 27, 2007 through August 7, 2012 for reported inflated mileage. It found her at fault in the creation of the overpayment because she accepted a payment that she knew or should have known was incorrect. Appellant was advised to complete an accompanying overpayment recovery questionnaire and submit supporting financial documents. Additionally, she was advised that, within 30 days of the date of the letter, she could request a telephone conference, a final decision based on the written evidence, or a precoupment hearing.

In a May 15, 2014 letter, appellant denied falsifying her travel mileage. She stated that, she lived in Greenville, North Carolina. If OWCP had made a mistake in thinking that she lived in Greensboro, North Carolina then appellant could understand that this city was 117 miles from the clinic in Durham, North Carolina.

By decision dated May 19, 2014, OWCP finalized the fact and amount of the preliminary overpayment determination and the finding of fault.² It directed recovery of the overpayment by deducting \$1,969.31 from appellant's continuing compensation.

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 the monthly compensation.³ While OWCP is obligated to pay for treatment of employment-related

² In a prior decision dated January 22, 2014 decision, OWCP found that appellant received an overpayment of compensation in the amount of \$2,365.36 because she received benefits from the Office of Personnel Management and under FECA for the same time period. On April 10, 2014 it indicated that the overpayment had been repaid in full.

³ 5 U.S.C. § 8103; see *Dona M. Mahurin*, 54 ECAB 309 (2003).

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.⁴

Section 10.310(a) of the implementing regulations provide 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.⁵ OWCP 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.⁶

Section 10.315 of OWCP regulations provide, in relevant part that the employee is entitled to reimbursement of reasonable and necessary expenses, including transportation needed to obtain authorized medical services, appliances, or supplies. To determine what is a reasonable distance to travel OWCP will consider the availability of services, the employee's condition, and the means of transportation. Generally, 25 miles from the place of injury, the work site or the employee's home, is considered a reasonable distance to travel.⁷

In interpreting section 8103(a) of FECA, the Board has recognized that OWCP has broad discretion in approving services provided under FECA to ensure that an employee recovers from his or her injury to the fullest extent possible in the shortest amount of time. OWCP has administrative discretion in choosing the means to achieve this goal and the only limitation on OWCP's authority is that of reasonableness.⁸ It has broad discretion in considering whether to reimburse or authorize travel expenses.⁹ Proof of causal relationship must include supporting rationalized medical evidence.¹⁰

ANALYSIS -- ISSUE 1

OWCP accepted appellant's claim for right and left ulnar entrapment, herniated nucleus pulposus at C7-T1 and C4-5, and left carpal tunnel syndrome, and authorized C7-T1 anterior fusion. It found that the mileage she reported for reimbursement of travel from February 27, 2007 through August 7, 2012 was fraudulent.

⁴ *Kennett O. Collins, Jr.*, 55 ECAB 648 (2004).

⁵ 20 C.F.R. § 10.310(a).

⁶ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Services and Supplies*, Chapter 3.400.3(d)(5) (October 1995).

⁷ 20 C.F.R. § 10.315; *see W.J.*, Docket No. 10-1944 (issued June 1, 2011).

⁸ *R.L.*, Docket No. 08-855 (issued October 6, 2008).

⁹ *See W.T.*, Docket No. 13-197 (issued June 3, 2013).

¹⁰ *M.B.*, 58 ECAB 588 (2007).

An OIG investigation revealed that appellant listed travel from her home in Greenville, North Carolina to medical facilities and practices in North Carolina and Maryland in numerous medical travel refund request forms. The OIG investigation claimed to find that the mileage was either inflated or not driven. Although the investigative report indicated that appellant's OWCP-957 forms were included as exhibits, no such forms were contained in the record.

It is particularly important to be able to review these forms because OWCP subsequently issued a decision finding that appellant received an overpayment of compensation for which she was at fault in creating. OWCP found that her signature on each OWCP-957 form certified that any information she provided was true and correct and that she could be subjected to civil penalties and/or criminal prosecution for knowingly making any false statement or misrepresentation to obtain reimbursement. The Board finds, therefore, that OWCP has not established that the mileage claimed by appellant was incorrect. The Board will set aside the May 19, 2014 OWCP decision and remand the case to OWCP for reconstruction of the record, including obtaining the OWCP-957 forms completed and signed by appellant for the claimed reimbursement period. Following reconstruction of the record, OWCP shall issue a *de novo* decision on the merits of the claim.¹¹

CONCLUSION

As the case is not in posture for a decision regarding appellant's claim for reimbursement of medical travel expenses, it is premature to address the issues of fact and amount of overpayment, fault, and recovery. The second, third, and fourth issues are therefore moot.

¹¹ OWCP's decision shall also cite the legal authority by which the existence of an overpayment in this case is established and explain the calculation methods used and their validity.

ORDER

IT IS HEREBY ORDERED THAT the May 19, 2014 decision of the Office of Workers' Compensation is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: June 23, 2015
Washington, DC

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

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

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