

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

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**M.B., Appellant**

**and**

**DEPARTMENT OF HOMELAND SECURITY,  
CUSTOMS & BORDER PROTECTION,  
El Centro, CA, Employer**

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**Docket No. 17-1072  
Issued: August 16, 2017**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
CHRISTOPHER J. GODFREY, Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On April 17, 2017 appellant filed a timely appeal from a March 29, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUE**

The issue is whether OWCP properly exercised its discretion in denying appellant's requests for travel reimbursement.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that appellant submitted additional evidence to OWCP after the March 29, 2017 decision was issued. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, the Board lacks jurisdiction to review this additional evidence. 20 C.F.R. § 501.2(c)(1).

## **FACTUAL HISTORY**

On August 27, 2013 appellant, then a 64-year-old facilities maintenance work leader, filed a traumatic injury claim (Form CA-1) alleging that on August 26, 2013 he fell from the top of a roof through an open hatch to a floor approximately 16 feet below while in the performance of duty. OWCP accepted the claim for concussion with brief loss of consciousness, splenic laceration, right flank contusion, fracture of right ribs four through seven, lumbar transverse process fracture right L1-4, shoulder laceration, and occipital scalp laceration. It later expanded the claim to include closed fracture of acetabulum, right.

Appellant stopped work on August 26, 2013 and received continuation of pay through October 10, 2013. Thereafter, OWCP paid wage-loss compensation for temporary total disability. On February 18, 2014 appellant resumed his regular full-time duties and OWCP terminated his wage-loss compensation.<sup>3</sup>

On May 18, 2014 appellant requested permission from OWCP to change his treating physician. He explained that following the August 26, 2013 employment injury he was flown to a hospital in San Diego, CA. Appellant later learned that the physicians who initially treated him did not make final determinations for OWCP cases. Consequently, he asked OWCP that he be allowed to change to a physician located in El Centro, CA. Appellant explained that this would save time and reduce the distance traveled for his medical appointments.<sup>4</sup> He noted that it was approximately 240 miles round trip to attend medical appointments in San Diego, CA. Appellant requested to be treated by Dr. Lokesh S. Tantuwaya, a Board-certified neurosurgeon. OWCP subsequently approved the request.

OWCP authorized two lumbar-related surgeries, which Dr. Tantuwaya performed on April 1 and 15, 2015. Additionally, it paid appellant wage-loss compensation for temporary total disability associated with the authorized-surgical procedures.

On June 26, 2015 appellant requested to change his treating physician for a second time to Dr. James E. McSweeney, a Board-certified orthopedic surgeon, who had offices in San Diego, Chula Vista, and El Centro, CA. He reasoned that, changing to Dr. McSweeney's El Centro office located near his home in Imperial, CA, would eliminate the need to make long, costly visits to a physician's office in San Diego.

In a July 14, 2015 letter, OWCP advised appellant that it had approved his request to change his treating physician to Dr. McSweeney.

On July 27, 2015 appellant returned to work in a full-time, modified-duty capacity.<sup>5</sup>

In a June 15, 2016 letter, OWCP indicated that it had received requests for authorization for mileage reimbursements to travel over 100 miles round trip to obtain medical treatment on

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<sup>3</sup> Appellant stopped work on February 25, 2014 to undergo surgery for a nonwork-related condition.

<sup>4</sup> The employing establishment was located in El Centro, CA and appellant resided in nearby Imperial, CA.

<sup>5</sup> OWCP terminated appellant's wage-loss compensation effective July 27, 2015.

March 22 and May 2 and 17, 2016. It noted that appellant resided in Imperial, CA while his physician was located in San Diego, CA, and the distance between the two locations was approximately 116 miles. OWCP advised him that it could not authorize a mileage reimbursement for over 100 miles under normal circumstances unless there was a reasonable justification regarding why treatment could not be found within a 50-mile radius of his home, worksite, or workplace of injury. It afforded appellant 30 days to provide a detailed statement explaining why he could not find medical treatment closer to his home.

On June 21, 2016 appellant called OWCP and explained that he had been seeing his treating physician in El Centro, CA, but now saw him in his San Diego office. He noted that his mileage reimbursements had been covered in the past. OWCP's representative stated that the prior reimbursements may have been paid due to specific circumstances or they may have been paid in error.

On January 26, 2017 appellant called OWCP and further explained that he began seeing his physician in El Centro, but when the physician stopped going to the El Centro office, appellant started traveling to the San Diego office to continue seeing him.

By decision dated March 29, 2017, OWCP denied appellant's claims for travel reimbursement for medical appointments which exceeded 100 miles round trip. It found that he had been advised that only reimbursement for up to 100 miles per day was payable and any mileage reimbursement request over that amount needed to be accompanied by a detailed explanation regarding why he could not seek medical treatment closer to home. OWCP noted that appellant could also simply claim only 100 miles per day. It found that he failed to provide sufficient rationale for seeking medical treatment 116 miles from his home. OWCP further indicated that the decision did not affect appellant's ability to continue to seek treatment with his physician in San Diego, CA merely his claim for mileage reimbursement in excess of 100 miles per day was not authorized.

### **LEGAL PRECEDENT**

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 the Secretary of Labor considers likely to cure, give relief, reduce the degree of 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 OWCP considers necessary and may be furnished reasonable and necessary transportation and expenses incident to the securing of such services, appliances, and supplies.<sup>6</sup>

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.<sup>7</sup> 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,

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<sup>6</sup> 5 U.S.C. § 8103(a).

<sup>7</sup> 20 C.F.R. § 10.315(a).

the most recent regulations provide that a round-trip distance of up to 100 miles is considered a reasonable distance to travel.<sup>8</sup> 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.<sup>9</sup>

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 the OWCP claims examiner.<sup>10</sup> 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.<sup>11</sup>

In interpreting this section, the Board has recognized that OWCP has broad discretion in approving services provided under FECA.<sup>12</sup> 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.<sup>13</sup>

### ANALYSIS

The Board finds that OWCP did not abuse its discretion in denying appellant's requests for travel reimbursement in excess of 100 miles round trip. 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, as in this case.<sup>14</sup>

The record reflects that on June 26, 2015 appellant requested to change his treating physician to Dr. McSweeney, who had offices in San Diego, Chula Vista, and El Centro, CA. He reasoned that changing to Dr. McSweeney's El Centro office located near his home in Imperial, CA would eliminate the need to make long, costly visits to physicians in San Diego, CA.

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at § 10.315(b).

<sup>10</sup> FECA Bulletin No. 14-02 (issued January 29, 2014).

<sup>11</sup> *Id.*

<sup>12</sup> *A.O.*, Docket No. 08-0580 (issued January 28, 2009); *see also Marjorie S. Geer*, 39 ECAB 1099 (1988) (OWCP has broad discretionary authority in the administration of FECA and must exercise that discretion to achieve the objectives of section 8103).

<sup>13</sup> *W.M.*, 59 ECAB 132 (2007).

<sup>14</sup> *Id.*

As noted above, OWCP regulations provide that, generally, a round trip of up to 100 miles is a reasonable distance to travel.<sup>15</sup> There may be circumstances where travel reimbursement 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.<sup>16</sup> To establish that, a travel reimbursement of more than 100 miles is warranted, OWCP regulations indicate that the claimant must provide information describing the circumstances and necessity for such travel expenses.

With regard to the availability of medical services, appellant has not provided evidence to explain the necessity of traveling the specifically requested distances to San Diego, CA to seek care and why such travel is reasonable. He contends that he began seeing Dr. McSweeney in El Centro, CA, but when the physician stopped seeing patients at the El Centro, CA office, appellant started traveling 116 miles from his home in Imperial to the San Diego, CA office for treatment. Appellant provided no evidence to establish a lack of available services closer to his home or a specific need for the distances for which he was requesting authorization for reimbursement.<sup>17</sup>

Although OWCP had authorized travel expenses to Dr. McSweeney in the past, this past practice does not establish a right to continuing authorization.<sup>18</sup> As indicated in FECA Bulletin No. 14-02, any travel reimbursement request of more than 100 miles was to be reviewed by an OWCP claims examiner.<sup>19</sup>

OWCP has broad discretion in considering whether to reimburse or authorize travel expenses.<sup>20</sup> 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.<sup>21</sup> The Board finds that OWCP did not abuse its discretion in denying appellant's travel reimbursement requests.<sup>22</sup> No probative evidence was presented with respect to the necessity of travel over the 100-mile standard set forth in OWCP regulations or that OWCP abused its discretion in denying

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<sup>15</sup> 20 C.F.R. § 10.315(a).

<sup>16</sup> *Id.* at § 10.315(b).

<sup>17</sup> *See M.M.*, Docket No. 15-1724 (issued February 16, 2016).

<sup>18</sup> *See W.H.*, Docket No. 14-1662 (issued February 3, 2015). *See also L.W.*, Docket No. 17-0668 (issued June 13, 2017) (the Board found that OWCP properly denied appellant's request for reimbursement of travel expenses for 255 miles despite the fact it had paid for them in the past).

<sup>19</sup> *Supra* note 7.

<sup>20</sup> *See supra* note 9. *See also A.R.*, Docket No. 14-0185 (issued August 4, 2014); *M.O.*, Docket No. 13-1822 (issued November 26, 2013).

<sup>21</sup> *See J.J.*, Docket No. 10-1908 (issued June 16, 2011) (where the Board found that the claimant's contention that he did not feel comfortable with physicians near his home as they were not familiar with his case and would not accept workers' compensation cases was not sufficient to show traveling to another physician was reasonable and necessary).

<sup>22</sup> *See V.K.*, Docket No. 12-1103 (issued October 12, 2012).

reimbursement for travel expenses. OWCP has administrative discretion with respect to authorization of travel reimbursement.<sup>23</sup> The expenses appellant incurred for travel between his home in Imperial, CA to his treating physician in San Diego, CA beyond the 100-mile round-trip limit must be considered personal to him.<sup>24</sup>

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

**CONCLUSION**

The Board finds that OWCP properly exercised its discretion in denying appellant's requests for travel reimbursement.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 29, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 16, 2017  
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>23</sup> *Daniel J. Perea*, 42 ECAB 214 (1990) (abuse of discretion by OWCP is generally shown through proof of manifest error, clearly unreasonable exercise of judgement, or administrative actions which are contrary to both logic and probable deductions from established facts).

<sup>24</sup> *See W.J.*, Docket No. 10-1944 (issued June 1, 2011) (where the Board found that the claimant's travel between his new home in Macon, Georgia and his treating physician's office in Fort Myers, Florida must be considered personal to appellant and that OWCP's denial of his request for reimbursement was reasonable).