

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

_____)	
D.V., Appellant)	
)	
and)	Docket No. 24-0671
)	Issued: August 26, 2024
DEPARTMENT OF VETERANS AFFAIRS,)	
PALO ALTO VA MEDICAL CENTER,)	
Palo, Alto, CA, Employer)	
_____)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On June 10, 2024 appellant filed a timely appeal from February 27 and May 20, 2024 merit decisions, and an April 5, 2024 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).¹ 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.

¹ Appellant submitted a timely oral argument request before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of his oral argument request, appellant contended that the "decision makers" do not understand that it is difficult to obtain an orthopedic surgeon specializing in the type of surgery that he requires. The Board, in exercising its discretion, denies his request for oral argument because the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied, and this decision is based on the case record as submitted to the Board.

² 5 U.S.C. § 8101 *et seq.*

ISSUES

The issues are: (1) whether OWCP abused its discretion by denying appellant's request for travel reimbursement for medical treatment on June 20, 2023 and March 1, 2024; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On September 1, 2022 appellant, then a 54-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that on August 28, 2022 he sustained right hip, elbow, and shoulder injuries when he slipped and fell on a wet floor while in the performance of duty. OWCP accepted the claim for right hip contusion, right hip acetabular labral tear, right hip iliopsoas tendinitis, and right rotator cuff capsule sprain. It paid appellant intermittent wage-loss compensation on the supplemental rolls commencing October 13, 2022.

On May 24, 2023 appellant notified OWCP that he was only able to locate two surgeons who accepted FECA claimants. After research and discussion with his treating physician, he had decided to have his hip arthroscopy surgery performed by Dr. Mark Wagner, a Board-certified orthopedic surgeon, located in the Portland, Oregon area. He explained that he lived in Stockton, California which was 650 miles away from Dr. Wagner's office in Tigard, Oregon and asked if OWCP would reimburse travel expenses incurred for any treatment by Dr. Wagner.

In a letter dated June 15, 2023, OWCP advised appellant that prior authorization was required for nonemergency medical treatment over 100 miles round trip. It informed him of the evidence required for entitlement to medical mileage reimbursement greater than 100 miles round trip.

On June 20, 2023 appellant submitted a Medical Travel Refund Request for hotel reimbursement of \$213.40 related to treatment in Tigard, Oregon and mileage of 650 miles one way. Attached to the request was a copy of his hotel bill. OWCP also received a June 20, 2023 note from Dr. Wagner verifying that he had seen and evaluated appellant that day.

By decision dated July 20, 2023, OWCP denied authorization for travel reimbursement related to appellant's June 20, 2023 medical appointment. It found the evidence was insufficient to establish that the requested travel was medically necessary to address his accepted work-related injury. OWCP informed appellant that he was welcome to treat in Tigard, Oregon, if referred by his treating physician. However, it advised him that it would not pay for any travel expenses related to appointments or treatment more than 50 miles from his home without prior written approval. OWCP attached the first few pages from a search for providers within 50 miles of his location.

On August 11, 2023 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. In a letter of even date, he related that he had contacted the physicians OWCP noted, and that only 1 of the 20 listed still accepted FECA claimants. Appellant explained that he chose Dr. Wagner based on his expertise performing hip arthroscopic surgery and his specialization in the newest forms of hip preservation. He also submitted literature on arthroscopic surgery.

On November 3, 2023 a telephonic hearing was held before an OWCP hearing representative. Appellant explained his rationale for choosing Dr. Wagner, who was located more than 100 miles from his residence, over a physician closer to his residence. Specifically, he stated that he could not find a hip arthroscopy fellowship trained orthopedic surgeon who accepted FECA claimants near his residence. Appellant explained that he had researched physicians with this expertise from San Diego, California to Seattle, Washington, but found only two who accepted FECA claimants. One was located in Los Angeles, California, and the other was Dr. Wagner, located in Tigard, Oregon. Appellant related that the local physician performed 10 hip arthroscopic surgeries a year while Dr. Wagner had performed as least 150 hip arthroscopy surgeries per year over the past 10 years.

By decision dated January 17, 2024, OWCP's hearing representative affirmed the July 20, 2023 decision, finding that appellant's decision to travel such a distance for treatment on June 20, 2023 was based on his preferred choice, and was not reasonable.

On February 20, 2024 appellant requested reconsideration of OWCP's hearing representative's decision affirming the denial of his request for travel reimbursement.

By decision dated February 27, 2024, OWCP denied modification finding the evidence of record failed to adequately explain the reasonableness and necessity of his travel request.

OWCP received a March 1, 2024 report from Abigail Bala, a physician assistant, in Tigard, Oregon which indicated that appellant was seen for right hip pain, right hip labral tear, and right hip femoroacetabular impingement, four months following a right hip arthroscopy.

On March 31, 2024 appellant requested reconsideration of the February 27, 2024 decision. He alleged that OWCP failed to understand the difficulty in finding an appropriate and qualified hip surgeon to address his specific work injury in California, who would accept FECA claimants.

By decision dated April 5, 2024, OWCP denied appellant's request for reconsideration of the merits of his claim for medical treatment on June 20, 2023.

In a letter dated April 8, 2024, OWCP noted receipt of a request for travel reimbursement for expenses occurred on March 1, 2024 to receive treatment for his accepted hip conditions. It advised appellant that prior authorization was required for nonemergency medical treatment over 100 miles round trip. OWCP informed him of the evidence required to establish entitlement to medical mileage reimbursement greater than 100 miles round trip.

By decision dated May 20, 2024, OWCP denied authorization for travel reimbursement for medical treatment on March 1, 2024.

LEGAL PRECEDENT -- ISSUE 1

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.³ 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,

³ 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.⁴ 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.⁵

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.⁶ 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.⁷

In interpreting this section, the Board has recognized that OWCP has broad discretion in approving services provided under FECA.⁸ 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.⁹

ANALYSIS -- ISSUE 1

The Board finds that OWCP did not abuse its discretion by denying appellant's requests for travel reimbursement for medical treatment on June 20, 2023 and March 1, 2024.

On May 24, 2023 appellant inquired as to whether OWCP would reimburse travel expenses incurred for treatment by Dr. Wagner, whose practice in Tigard, Oregon was located 650 miles from his home in Stockton, California.

In a June 15, 2023 letter, OWCP informed appellant that generally a roundtrip distance of 100 miles was considered a reasonable distance to travel. It 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.

OWCP's regulations provide that, generally, a round trip of up to 100 miles is a reasonable distance to travel.¹⁰ 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

⁴ *Id.*

⁵ *Id.* at 10.315(b).

⁶ FECA Bulletin No. 14-02 (issued January 29, 2014).

⁷ *Id.*

⁸ *VL.*, 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).

⁹ *Id.*

¹⁰ 20 C.F.R. § 10.315(a).

a remote area with limited medical services and physicians of an appropriate specialty.¹¹ 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 has not provided sufficient evidence to explain the necessity of traveling approximately 650 miles one way to Tigard, Oregon or why such travel was reasonable when he lives in a metropolitan area which has a number of qualified physicians.¹² Appellant asserted it was reasonable for him to choose Dr. Wagner because of his expertise in performing arthroscopic hip surgery. Appellant also asserted that he could not locate an appropriate surgeon in his geographical area who accepted FECA claimants. However, he has not submitted evidence establishing that OWCP's denial of the travel expense incurred for treatment with Dr. Wagner was unreasonable or unnecessary.¹³ Although OWCP had authorized him to treat with Dr. Wagner, issues of authorization for medical treatment and reimbursement of travel expenses for medical treatment are separate and distinct. It may authorize medical treatment, but determine that the travel expense incurred for such authorized treatment was unreasonable or unnecessary.¹⁴

OWCP has broad discretion in considering whether to reimburse or authorize travel expenses.¹⁵ 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.¹⁶ The Board thus finds that OWCP has not abused its discretion by denying appellant's travel reimbursement request for hotel expense and mileage for a 650 mile one way trip.¹⁷ OWCP has administrative discretion with respect to authorization for travel reimbursement.¹⁸ Appellant has not submitted probative evidence with respect to the necessity of travel over the 100-mile round-trip standard set forth in OWCP regulations. OWCP has administrative discretion with respect to authorization of travel reimbursement.¹⁹ Therefore, the expenses appellant incurred for travel between his home in Stockton, California and Dr. Wagner in Tigard, Oregon beyond the 100-mile round-trip limit must be considered personal to him.²⁰

¹¹ *Id.* at 10.315(b).

¹² *K.H.*, Docket No, 20-1134 (issued August 8, 2020); *G.C.*, *supra* note 8; *D.C.*, Docket No. 18-0080 (issued May 22, 2018); *M.B.*, Docket No. 17-1072 (issued August 16, 2017); *M.M.*, Docket No, 15-1724 (issued February 16, 2016).

¹³ *Supra* note 8.

¹⁴ *D.C.*, *supra* note 12; *M.B.*, *supra* note 12; *M.M.*, *supra* note 12.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *K.H.*, *supra* note 12; *J.J.*, Docket No. 10-1908 (issued June 16, 2011).

¹⁸ *Supra* note 14.

¹⁹ *Id.*

²⁰ *K.H.*, *supra* note 12; *D.C.*, *supra* note 12.

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.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of FECA does not entitle a claimant the review of an OWCP decision as a matter of right.²¹ OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.²² One such limitation is that the request for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.²³

A timely request for reconsideration, including all supporting documents, must set forth arguments, and contain evidence that either: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.²⁴ When a timely request for reconsideration does not meet at least one of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.²⁵

The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record,²⁶ and the submission of evidence or argument which does not address the particular issue involved, does not constitute a basis for reopening a case.²⁷

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of the denial of his claim, pursuant to 5 U.S.C. § 8128(a).

In his reconsideration request, appellant did not show that OWCP erroneously applied or interpreted a specific point of law, nor did he advance a new and relevant legal argument not

²¹ 5 U.S.C. § 8128(a).

²² 20 C.F.R. § 10.607.

²³ *Id.* at § 10.607(a). For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (September 2020). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

²⁴ *Id.* at § 10.606(b)(3); *see R.M.*, Docket No. 23-0748 (issued October 30, 2023); *L.F.*, Docket No. 20-1371 (issued March 12, 2021); *B.R.*, Docket No. 19-0372 (issued February 20, 2020).

²⁵ *Id.* at § 10.608.

²⁶ *J.N.*, Docket No. 23-0974 (issued May 14, 2024); *N.L.*, Docket No. 18-1575 (issued April 3, 2019); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

²⁷ *J.N.*, *id.*; *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *Edward Matthew Diekemper*; 31 ECAB 224, 225 (1979).

previously considered. He repeated the contentions he previously raised before OWCP's hearing representative regarding the difficulty of finding an experienced physician who accepted FECA claimants near his home in Stockton, California. As this argument submitted on reconsideration was cumulative, duplicative, or repetitive in nature, it was insufficient to warrant reopening the claim for merit review.²⁸ Consequently, appellant was not entitled to a review of the merits based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).²⁹

On reconsideration, appellant did not submit any new evidence. The underlying issue of the case is factual in nature, *i.e.*, whether appellant established that it was reasonable and necessary for him to seek medical treatment 650 miles away from his home. Appellant did not submit relevant and pertinent new evidence in connection with his reconsideration request. Therefore, appellant is not entitled to further review of the merits of his claim based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).

The Board accordingly finds that appellant has not met any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

CONCLUSION

The Board finds that OWCP did not abuse its discretion by denying appellant's request for travel reimbursement for medical treatment on June 20, 2023 and March 1, 2024. The Board further finds that OWCP properly denied appellant's request for reconsideration of the merits of the denial of his claim, pursuant to 5 U.S.C. § 8128(a).

²⁸ *J.R.*, Docket No. 23-0980 (issued January 23, 2024); *J.V.*, Docket No. 19-1554 (issued October 9, 2020); *see T.B.*, Docket No. 16-1130 (issued September 11, 2017).

²⁹ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the February 27, April 5, and May 20, 2024 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 26, 2024
Washington, DC

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

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

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