



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

December 7, 2015

CBCA 4707-TRAV

In the Matter of JODI L. HOOKS

Michael Bauernfeind, Pacific Area General Counsel, Federal Education Association, Fairfax, CA, appearing for Claimant.

Douglas Frison, Assistant General Counsel, DOD Education Activity Pacific/Korea DSO, Department of Defense, APO Area Pacific, appearing for Department of Defense.

POLLACK, Board Judge.

Claimant, Jodi L. Hooks, is a civilian employee of the Department of Defense Dependent Schools (DoDDS). Claimant was diagnosed with a medical condition that required her to make several trips to obtain medical treatment. Claimant's requests for employee medical travel (EMT) were denied. The agency argued that conditions requiring continuous treatment should not be continuously funded by the Government. Claimant asserts entitlement to EMT benefits and asks this Board to reverse the agency's denial of her requests. For the reasons discussed below, we grant the claim.

Background

At the time of her travel, Ms. Hooks was an educator assigned to an elementary school in Misawa, Japan. During her time in Misawa, Ms. Hooks developed certain medical conditions for which treatments did not exist at Misawa Air Force Base, which is located in a remote region of northern Japan. The closest facility that could offer the treatments was located at the United States Navy Hospital in Yokosuka, Japan, approximately 470 miles from Misawa.

Ms. Hooks required the treatments on a regular basis, until the treatment cycle was finished. After receiving her first treatment on September 4, 2014, Ms. Hooks learned that

EMT benefits were available to civilian employees working overseas. She requested and received EMT benefits, including travel expenses and per diem, for her second treatment on October 3, 2014. Thereafter, the agency denied all other EMT requests for further treatments. In support of its denial, on January 23, 2015, the agency explained:

The physician certification indicated the reasons for recommending EMT is for “continuity of care, familiarity with case, use of intravitreal medications, and ability to recognize and treat complication of treatment if indicated.” These do not indicate that your condition requires immediate emergency medical treatment as evidenced by the recurring treatments that have occurred monthly

EMT is a discretionary authorization and each case must be reviewed carefully to ensure the case meets the purpose of medical travel. As previously stated, that purpose is for immediate emergency treatment to prevent a worsening of condition if the treatment was delayed. If a health condition is chronic in nature the employee should develop a strategy to have the condition monitored and treated at no expense to the government.

Appeal, Exhibit 5.

Ms. Hooks traveled to obtain the remaining treatments at her own expense. She now asks this Board to reverse the agency’s decision and seeks reimbursement of travel costs associated with her medical treatment.

Medical travel of a civilian employee of the Department of Defense is governed by the Joint Travel Regulations (JTR). The statutory basis for the JTR provisions on employee medical travel is found in 10 U.S.C. § 1599b (2012). JTR 7110 provides in pertinent part:

A. General

1. When the Secretarial Process determines that local medical facilities (military or civilian) at a foreign OCONUS [outside the continental United States] area (see App A) are not able to accommodate an employee’s/dependent’s needs, transportation to another location may be authorized for appropriate medical/dental care.
2. If possible, medical travel should be scheduled with other non-medical travel (e.g., RAT [renewal agreement travel] or EML [environmental and morale leave] (funded or unfunded)) to avoid separate medical travel.

3. Required medical treatment that cannot be postponed until the employee's/dependent's next scheduled travel should be authorized as medical travel IAW [in accordance with] subpar. C.

4. An eligible employee (assigned to a foreign OCONUS PDS [permanent duty station]) or a dependent (whose employee sponsor is assigned to a foreign OCONUS PDS), is authorized travel and transportation allowances for travel to and from another location incident to the employee/dependent obtaining required health care (whether or not the care itself is at Gov't expense) under the conditions and limitations in this Part.

....

C. Required Health Care Determination.

Required health care is medical or dental care that the AO [administrative officer] determines is needed by an employee/dependent, stationed at a foreign OCONUS PDS, at which there is no adequate facility to provide suitable care. This determination must be based on the advice of an appropriate professional certifying physician.

D. Authorized Health Care

1. Medical Care. Qualified medical care is treatment that:

- a. Must be completed before the next scheduled RAT, or EML (funded or unfunded) travel, and
- b. Which, if delayed, could result in the condition becoming worse

In support of the necessity of the treatment, the claimant has provided a November 24, 2014, letter from Colonel Alden D. Hilton in which he states in pertinent part:

As the senior physician at Misawa Air Base and the Commander of the 35th Medical Group Hospital, I certify that:

1. The 35th Medical Group and the host nation medical system does not have the capability to provide the care required by Mrs. Hooks.

2. Yokosuka Naval Hospital is the closest Medical Treatment Facility with the medical capability required to treat Mrs. Hooks medical condition.
3. The recurrent, monthly medical care provided to Mrs. Hooks at Yokosuka Naval Hospital is needed and required . . . and cannot be delayed or postponed.

Appeal, Exhibit 3.

JTR 7125 addresses how and for how long per diem expenses related to medical travel may be authorized, and in pertinent part provides:

B. Maximum Number of Days. Subject to pars. 7190-C, 7190-D, 7190-E, 7190-F, and 7190-G, the AO may authorize/approve per diem for up to, ***but in no case for more than***, 180 consecutive days including:

1. Travel time to and from the designated point/elective destination, and
2. Necessary delays before treatment and while awaiting return transportation, and
3. Necessary outpatient treatment periods.

Discussion

Ms. Hooks was stationed at a foreign OCONUS PDS (Misawa, Japan), so the above provisions apply to her. While stationed in Misawa, she developed a medical condition which required multiple treatments. Because the medical facility at Misawa was not suitable for the treatments she needed, Ms. Hooks had to travel to the United States Navy Hospital in Yokosuka, Japan. In connection with her travel, Ms. Hooks requested EMT benefits. The agency approved her for a single trip but denied any additional travel benefits for the remaining treatments on the basis that Ms. Hooks' condition did not require immediate emergency medical treatment, EMT was a discretionary authorization, and each case must be reviewed carefully to ensure the case meets the purpose of medical travel.

The purpose of medical travel is to enable civilian employees, working abroad, to obtain medical care for an illness, injury, or medical condition where there is no suitable person or facility to provide such care. *See David C. Scheivert*, CBCA 4123-TRAV, 15-1 BCA ¶ 36,029. Here, it is undisputed that the locality where Ms. Hooks was located was not able to provide her with the care she required. Therefore, she is entitled to obtain medical care at a suitable facility. The agency granted her travel benefits associated with this

entitlement for a single treatment session. Here, the Board must determine whether the agency's decision to deny EMT for all other treatment sessions was proper. While the agency has the discretion to determine whether or not medical travel is necessary, it must exercise that discretion reasonably. "[W]e will not disturb an agency's discretionary judgments unless we are convinced that they are arbitrary, capricious or clearly erroneous." *William T. Orders*, GSBICA 16095-RELO, 03-2 BCA ¶ 32,389, at 160,290.

In its response, the agency explains that its decision was based on the fact that authorization for government funded medical travel is discretionary, and in accordance with past practice, the agency determined that travel for chronic conditions requiring repetitive and continuous medical treatment should not be continuously funded by the agency. The agency further explained that Ms. Hooks did not provide comparative cases of approval or travel in similar circumstances, indicating that the agency had veered from this position and practice. "Because similar cases of chronic conditions and repetitive need for medical treatment have been treated similarly," the agency maintains, "the discretionary denial of Ms. Hooks' claim was not arbitrary or capricious."

The agency has taken a position contrary to the applicable JTR provisions. Pursuant to JTR 7110-C, the agency's determination as to whether health care is required must be based on the advice of an appropriate professional certifying physician. Instead, the agency here argues that in accordance with its past practice, it determined that travel for chronic conditions requiring repetitive and continuous medical treatment should not be continuously funded by the agency. The agency made its determination based on its customary practices and not on the recommendation of Ms. Hooks' physician.

In stark contrast to the agency decision, Colonel Hilton makes clear in his November 24, 2014, letter, that not only does the medical system at the PDS not have the capability to provide the care required and the Yokosuka Naval Hospital is the closest Medical Treatment Facility with that capability, but also that the recurrent, monthly medical care provided to Ms. Hooks at Yokosuka Naval Hospital is necessary and cannot be delayed or postponed.

Despite its admission that the purpose of EMT is for immediate emergency treatment to prevent a worsening of condition if delayed, the agency ignores the certification of Colonel Hilton. This case is distinguishable from the Board's recent decision in *Brian J. Ebel*, CBCA 4357-TRAV, 15-1 BCA ¶ 36,037. In that case, the Board found that the agency's decision to limit travel benefits was reasonable, where the supporting documents relating to the need for treatment were from a physician's assistant, as opposed to a physician, and where the letter failed to provide detailed information addressing the medical necessity.

Further, JTR 7110-C.3 provides that required medical treatment that cannot be postponed until the employee's next scheduled travel should be authorized as medical travel. Yet, despite Colonel Hilton's certification attesting to the urgency of her medical condition, the agency determined that Ms. Hooks' condition did not warrant immediate treatment to qualify her for medical travel. The agency's determination was not in accordance with JTR 7110-C.3.

Furthermore, the agency erroneously concluded that the Government only has to pay for one treatment, even though the physician makes it clear that several recurring treatments are required to treat Ms. Hooks' condition. In reaching its conclusion, the agency relies on its belief that travel for chronic conditions requiring repetitive and continuous medical treatment should not be continuously funded by the agency. The JTR provides no limitation that would justify the agency's position. JTR 7125-B limits per diem expenses related to medical travel to up to 180 consecutive days. Absent from the regulation is any provision that limits or restricts recurring or continuous medical treatment of a condition. The agency's decision to limit EMT benefits to a single medical trip was unreasonable and not in accord with the regulations, which are based on medical necessity and not concerns over the number of trips that may be needed.

Decision

Ms. Hooks' medical condition requires a set cycle of recurring treatments. The medical facility at her location was unable to provide her with proper care, thereby requiring her to travel to another medical facility. She therefore is entitled to receive all applicable EMT benefits in connection with the series of treatments she received for her condition. Ms. Hooks must supply the agency with the required documentation to support her requests for reimbursement of travel costs. The claim is granted.

HOWARD A. POLLACK
Board Judge