

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATRICIA FISHER and DEPARTMENT OF DEFENSE,
DEFENSE FINANCE & ACCOUNTING SERVICE, Dallas, TX

*Docket No. 99-2035; Submitted on the Record;
Issued October 2, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs properly denied authorization for two back surgeries and a Spinal-Stim Fusion System.

This is the second time this case has been before the Board on appeal. Previously, the Board found that appellant was not entitled to a schedule award for a permanent partial impairment of her back, and that the Office properly denied authorization for two back surgeries and a Spinal-Stim Fusion System. The facts of the case are set forth in that decision.¹

Appellant requested that the Office reconsider the Board's decision. By decision dated April 6, 1999, the Office denied appellant's request for modification after a merit review of the claim.

The Board finds that the Office properly denied authorization for two back surgeries and a Spinal-Stim Fusion System.

Section 8103 of the Federal Employees' Compensation Act provides, in part:

“(a) The United States shall furnish to an employee who is injured while in the performance of duty, the service, 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 disability, or aid in lessening the amount of the monthly compensation.”²

¹ Docket No. 97-413 (issued March 2, 1999).

² 5 U.S.C. § 8103(a).

In interpreting this section of the Act, the Board has recognized that the Office has broad discretion in approving services provided under the Act. The only limitation on the Office's authority is that of reasonableness.³

In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.⁴

In this case, the weight of the medical opinion evidence rests with the September 29, 1993 report from Dr. Benzel MacMaster, a Board-certified orthopedic surgeon and impartial medical examiner, whose report provided a history of appellant's June 11, 1991 employment injury and medical treatment, his findings on physical examination, and a review of objective medical evidence. He opined that the proposed back surgeries and Spinal-Stim Fusion System were not warranted and that such treatment not related to the June 11, 1991 employment injury because there was no supportive objective evidence. Dr. MacMaster also found that appellant's neck condition was not related to the June 11, 1991 employment injury. Dr. MacMaster's opinion was rationalized and based on an accurate and factual medical background.

Appellant submitted a September 18, 1998 computerized tomography scan indicating that L2-3, L3-4 were normal, L4-5 had a broad based partial posterior extension of contrast without discrete fissuring to the superficial anular margin and L5-S1 showed a broad based posterior fissuring within a morphologic disc protrusion/herniation posterocentrally. A September 18, 1998 discogram/lumbar revealed normal central nuclear collection at L2-3, no pressure or pain and no central nuclear collection at L3-4, moderate low back pain at L4-5 and concordant central low back pain radiating to the right and the left of midline at L5-S1. The June 19, 1998 electromyogram (EMG) results were normal. In a report of the same date, Dr. Pedro Nosnik, a neurologist, referred to the EMG results and found that appellant had a post on-the-job injury with lumbar discogenic pain with no radiculopathy present on EMG. The February 19, 1998 magnetic resonance imaging test results were normal.

Although appellant submitted additional medical evidence in support of her request for authorization of two back surgeries and a Spinal-Stim Fusion System, the evidence failed to address whether the proposed medical treatment was necessary because of appellant's June 11, 1991 employment injury. Thus, the additional medical evidence submitted by appellant is insufficient to overcome the weight accorded Dr. MacMaster's opinion as the impartial medical specialist or to create a new conflict with it.⁵

Dr. MacMaster, the impartial medical examiner, found that the proposed back surgeries and a Spinal-Stim Fusion System would not be beneficial to appellant's condition. Therefore,

³ *Daniel J. Perea*, 42 ECAB 214 (1990).

⁴ *Nathan L. Harrell*, 41 ECAB 401, 407 (1990).

⁵ *Dorothy Sidwell*, 41 ECAB 857, 874 (1990).

the Office decision to deny appellant's request for surgery and the Spinal-Stim Fusion System was not unreasonable.

The April 6, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
October 2, 2001

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member