

FACTUAL HISTORY

The Office accepted that on November 19, 2007 appellant, then a 41-year-old medical supply technician, sustained a lumbar strain with left radiculopathy as a result of lifting a bin that contained supplies. She stopped work on the date of injury. On December 21, 1997 appellant came under the care of Dr. James M.T. Garrity, an attending osteopath. On March 4, 2008 Dr. Garrity released her to return to work eight hours per day with temporary restrictions for two months. The record reflects that the Office approved requests for physical therapy and epidural steroid injections related to appellant's accepted back condition from December 30, 2007 through February 11, 2009.

Appellant subsequently came under the care of Dr. Irfan Ansari, a Board-certified psychiatrist, who performed an epidural steroid injection on January 9, 2009. Her back pain returned and, in a February 3, 2009 report, Dr. Ansari recommended an epidural steroid injection and physical therapy for lumbar stabilization. Dr. Ansari listed his essentially normal findings on physical examination with very mild myofascial tenderness in the lumbar paraspinal muscles. He advised that appellant sustained an L5-S1 central disc injury with central focal protrusion with bilateral, right greater than left, lumbar radiculopathy that was more probably than not related to the November 14, 2007 injury. Appellant had mild bilateral S1 joint and L4-5 and L5-S1 facet arthropathy and premorbid history of depression/anxiety that were unrelated to the November 14, 2007 employment injury.

On February 10, 2009 authorization for an epidural steroid injection and physical/occupational therapy for appellant's back conditions were requested. The Office advised that the requests could not be authorized at that time as further medical development was necessary.

By letter dated March 2, 2009, the Office referred appellant, together with a statement of accepted facts and the case record, to Dr. Bauer for a second opinion medical examination. In a March 18, 2009 report, Dr. Bauer reviewed a history of her November 19, 2007 employment injury and medical records. On physical examination, he reported his essentially normal findings, noting that appellant significantly limped. Essentially, normal findings with markedly positive Waddell signs were reported on orthopedic and neurological examination. Dr. Bauer stated that appellant reacted to simulated compression and rotation. Appellant experienced extreme tenderness in the lumbar spine although there was no withdrawal behavior or change in her general attitude. Migratory numbness in a nonphysiologic distribution in the right lower extremity was found on sensory examination. Dr. Bauer reviewed a February 6, 2008 magnetic resonance imaging (MRI) scan of the lumbar spine that demonstrated mild degenerative changes at L5-S1 with disc desiccation and a small physiologic bulge that was no more than three millimeters into the canal. There was no evidence of foraminal narrowing. There was contact on the right S1 nerve root of a minimal nature.

Dr. Bauer diagnosed strain/sprain that was more likely than not related to the November 19, 2007 employment injury. He also diagnosed mild degenerative changes in the lumbar spine without neurologic impingement and a preexisting history of depression and anxiety that were not related to the November 19, 2007 employment injury. Dr. Bauer advised that there was evidence of symptom magnification as there was no objective evidence to support

appellant's complaint of severe tenderness in the back. He noted medical literature which stated that the employment-related back condition she sustained on November 19, 2007 did not lead to low back pain illness. Dr. Bauer stated that there was no evidence of neurologic compression or objective evidence of radiculitis. He opined that appellant's employment-related condition had resolved. Appellant's current symptoms were not supported by objective data as the February 6, 2008 MRI scan was normal with mild degenerative changes and no evidence of nerve root compression. The small amount of contact being made by the degenerative bulging disc did not usually result in radiculitis and certainly not the bilateral symptoms alleged by appellant. Dr. Bauer stated that her anxiety and apprehension could lead to prolonged symptoms without objective physiologic findings. He recommended no further treatment as he found no benefit in receiving epidural injections or formal physical therapy. Dr. Bauer recommended over-the-counter analgesics and anti-inflammatory medications. He concluded that appellant could perform her usual work duties with no restrictions.

By letter dated April 7, 2009, the Office requested that Dr. Garrity review Dr. Bauer's March 18, 2009 report and provide an opinion regarding appellant's condition and requested treatment. Dr. Garrity was afforded 20 days to respond. No response was received from him within the allotted time period.

By decision dated April 9, 2009, the Office denied authorization for the requested epidural steroid injection and physical therapy, finding that Dr. Bauer's March 18, 2009 opinion represented the weight of the medical evidence.¹

LEGAL PRECEDENT

Section 8103(a) of the Federal Employees' Compensation Act provides for the furnishing of services, appliances and supplies prescribed or recommended by a qualified physician which the Office, under authority delegated by the Secretary, considers likely to cure, give relief, reduce the degree or the period of disability or aid in lessening the amount of monthly compensation.² In interpreting section 8103(a), the Board has recognized that the Office has broad discretion in approving services provided under the Act to ensure that an employee recovers from his or her injury to the fullest extent possible in the shortest amount of time.³ The Office has administrative discretion in choosing the means to achieve this goal and the only limitation on the Office's authority is that of reasonableness.⁴

¹ Following the issuance of the Office's April 9, 2009 decision, the Office received additional evidence. The Board may not consider evidence for the first time on appeal which was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c). Appellant can submit this evidence to the Office with a formal written request for reconsideration. 5 U.S.C. § 8128; 20 C.F.R. § 10.606.

² 5 U.S.C. § 8103(a).

³ *Dale E. Jones*, 48 ECAB 648, 649 (1997).

⁴ *Daniel J. Perea*, 42 ECAB 214, 221 (1990) (holding that abuse of discretion by the Office is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or administrative actions which are contrary to both logic and probable deductions from established facts).

While the Office is obligated to pay for treatment of employment-related conditions, appellant has the burden of establishing that the expenditure is incurred for treatment of the effects of an employment-related injury or condition.⁵ Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.⁶ Therefore, in order to establish that the physical therapy is warranted, appellant must submit evidence to show that the procedure was for a condition causally related to the employment injury and that the surgery was medically warranted. Both of these criteria must be met in order for the Office to authorize payment.⁷

ANALYSIS

The Office accepted that appellant sustained a lumbar strain with left radiculopathy on November 19, 2007 while working as a medical supply technician at the employing establishment. The Board finds that the Office did not abuse its discretion in denying appellant's request for an epidural steroid injection and physical therapy for her back condition.

In a February 3, 2009 report, appellant's attending physician, Dr. Ansari, recommended an epidural steroid injection and physical therapy for appellant's back based on his findings on physical examination and diagnosis of an L5-S1 central disc injury with central focal protrusion with bilateral, right greater than left, lumbar radiculopathy. His finding that the diagnosed condition was more "probably" than not related to the November 14, 2007 injury is speculative in nature and, thus, is of limited probative value.⁸ Further, Dr. Ansari incorrectly noted the date of injury as November 14, 2007. The Board has held that medical reports must be based on a complete and accurate factual and medical background and that medical opinions based on an incomplete or inaccurate history are of diminished probative value.⁹ The Board finds that Dr. Ansari's report is insufficient to meet appellant's burden of proof.

On March 18, 2009 Dr. Bauer reviewed appellant's history of injury and concluded that her employment-related condition had resolved. He referenced medical literature which stated that the type of injury she sustained on November 19, 2007 did not lead to low back pain illness. Dr. Bauer related that the small amount of contact being made by the degenerative bulging disc exhibited on the February 6, 2008 MRI scan did not usually result in radiculitis and certainly not the bilateral symptoms alleged by appellant. He stated that her anxiety and apprehension could lead to prolonged symptoms without objective physiologic findings. Dr. Bauer concluded that no further treatment was medically necessary as he found no benefit in receiving epidural injections or formal physical therapy. He concluded that appellant could perform her usual work duties with no restrictions.

⁵ See *Dona M. Mahurin*, 54 ECAB 309 (2003); see also *Debra S. King*, 44 ECAB 203, 209 (1992).

⁶ See *Debra S. King*, *supra* note 5; *Bertha L. Arnold*, 38 ECAB 282 (1986).

⁷ See *Dona M. Mahurin*, *supra* note 5; see also *Cathy B. Millin*, 51 ECAB 331, 333 (2000).

⁸ *L.R. (E.R.)*, 58 ECAB 369 (2007); *D.D.*, 57 ECAB 734 (2006); *Cecelia M. Corley*, 56 ECAB 662 (2005).

⁹ *James R. Taylor*, 56 ECAB 537 (2005).

The Board finds that Dr. Bauer conducted a thorough medical examination and provided a well-rationalized opinion based upon a proper factual background such that it is the weight of the evidence and establishes that the requested epidural steroid injection and physical therapy are not medically necessary. For these reasons, the Board finds that the Office did not abuse its broad discretion under section 8103 of the Act when it denied authorization for an epidural steroid injection and physical therapy.

As set forth above, the Board finds that Dr. Ansari's opinion is insufficient to establish appellant's burden of proof and that Dr. Bauer conducted a thorough medical examination and provided a well-rationalized medical opinion.

CONCLUSION

The Board finds that the Office did not abuse its discretion in denying appellant's request for authorization of an epidural steroid injection and physical therapy for her back.

ORDER

IT IS HEREBY ORDERED THAT the April 9, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 8, 2010
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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