

FACTUAL HISTORY

On April 1, 2008 appellant, then a 54-year-old rehabilitation technician, filed a traumatic injury claim, alleging that she was injured when she slipped and fell down three or four steps. She stopped work that day, received continuation of pay, and returned to regular duty on May 15, 2008. OWCP accepted that she sustained left face abrasions, a cheek laceration, a left shoulder contusion/sprain, neck pain/sprain, bilateral knee/skin abrasions, and a left knee sprain.

In an April 1, 2008 report, Dr. Sangeeta S. Bhavnani, an employing establishment physician Board-certified in internal medicine, noted that appellant was injured that day when she fell down four steps, striking her face, left shoulder, left forearm and bilateral knees and shins. He provided findings on physical examination and diagnosed multiple contusions and abrasions. Facial and skull x-rays demonstrated no fractures and a cervical spine series demonstrated degenerative disc disease. Left shoulder and bilateral knee x-rays were negative.

By report dated April 3, 2008, Dr. D. Philip Stickney, a Board-certified orthopedic surgeon, noted the history of injury, his review of the x-rays, and appellant's complaint of constant daily pain and stiffness. His findings included decreased cervical range of motion and diagnosed left shoulder and neck pain, noting that she had no radicular symptoms extending beyond her elbow. In an April 7, 2008 report, Dr. Stickney advised that appellant's shoulder pain had significantly improved and her neck pain was somewhat worse. He also diagnosed a left knee sprain/strain and advised that her degenerative neck symptoms clearly predated her fall but were significantly aggravated. On May 5, 2008 Dr. Stickney reported improved cervical range of motion. On June 30, 2008 he noted that appellant's pain was gone and that she was working without restriction. Examination demonstrated good functional cervical range of motion. Dr. Stickney advised that, because of her degenerative cervical discs, she would likely have a waxing and waning course through the years and advised that he would see her "as needed." He next saw appellant on October 9, 2008 when he reported that her left shoulder and neck pain became worse over the past several weeks. Examination showed no focal findings and tenderness in the trapezius muscles or along the cervical spine. Dr. Stickney recommended a magnetic resonance imaging (MRI) scan study of the cervical spine and advised that appellant was having progressive disability secondary to her cervical impairment that was aggravated by the employment injury.

A November 24, 2008 MRI scan of the cervical spine demonstrated a reversal of normal cervical lordosis with disc-osteophyte complexes at C4-5 and C5-6 causing impingement on the thecal sac and flattening of the underlying cord. In a December 11, 2008 report, Dr. Stickney noted his review of the MRI scan study and advised that appellant was a good candidate for an anterior cervical fusion.

On June 2, 2009 OWCP referred appellant to Dr. Manhal A. Ghanma, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a June 29, 2009 report, Dr. Ghanma noted the history of injury and his review of the medical record. He provided findings on physical examination and advised that there were no current diagnoses for the face, left shoulder, right or left knee. Dr. Ghanma noted that appellant had degenerative changes of the cervical spine, as shown on the November 24, 2008 MRI scan study. He opined that her cervical condition was not caused, accelerated, aggravated or precipitated by the April 1, 2008

employment injury but was due to the preexisting degenerative changes. Dr. Ghanma stated that the recommended surgery was not related to the April 1, 2008 employment injury, and that he would not recommend surgery at the present time because appellant had no objective examination findings to support the need for surgery.

In reports dated October 12, 2009, Dr. Stickney diagnosed cervical disc herniations and reported tenderness in the trapezius region. He advised that appellant could perform her usual job duties without restriction.

OWCP determined that a conflict in medical opinion was created between Dr. Stickney and Dr. Ghanma regarding the residuals of April 1, 2008 employment injury and need for surgery. It referred appellant to Dr. Ralph J. Kovach, Board-certified in orthopedic surgery, for an impartial evaluation. In an October 27, 2009 report, Dr. Kovach noted his review of the statement of accepted facts and medical record. He described the employment injury and reported appellant's complaint of left trapezius pain. Physical examination demonstrated no sensory deficits in the upper and lower extremities and excellent range of motion of the neck. There was no spasm or tenderness on palpation of the neck and diminished left shoulder range of motion with complaints of pain. Dr. Kovach advised that there were no residuals of the face, left shoulder, neck, right or left knee conditions. He stated that the November 2008 MRI scan study demonstrated degenerative changes that were not caused or accelerated by the work injury, and that appellant did not have objective findings to indicate that she would not benefit from the recommended surgical procedure. Dr. Kovach advised that she should only be treated on a symptomatic basis with simple analgesics. In an attached work capacity evaluation, he reported that appellant could perform her regular duties with no restrictions.

By report dated November 23, 2009, Dr. Stickney described appellant's employment injury and advised that, while her cervical symptoms had resolved by June 30, 2008, they recurred in October 2008.

In a supplementary report dated March 9, 2010, Dr. Kovach advised that the preexisting changes in appellant's cervical spine were not aggravated or precipitated by the April 1, 2008 employment injury. He noted that she had excellent cervical motion with no neurological findings in the extremities and no atrophy of either upper extremity.

By decision dated April 5, 2010, OWCP found that the weight of the medical evidence rested with the opinion of Dr. Kovach and denied appellant's claim for a cervical condition beyond a sprain/strain.²

Appellant, through her attorney, requested a hearing that was held on June 29, 2010. Counsel argued that additional cervical conditions should be accepted.

² On October 5, 2009 appellant claimed a schedule award. In a November 23, 2009 report, Dr. Stickney advised that, under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, she had a five percent whole person impairment due to her cervical spine injury. In a January 29, 2010 report, Dr. Kovach advised that, under the sixth edition of the A.M.A., *Guides*, appellant had a two percent impairment of the left upper extremity. By report dated March 27, 2010, OWCP's medical adviser agreed with Dr. Kovach's assessment. On April 15, 2010 appellant was granted a schedule award for a two percent loss of use of the left arm. She did not appeal the schedule award decision to the Board.

In a September 27, 2010 decision, OWCP's hearing representative affirmed the April 5, 2010 decision. She found that the weight of the medical evidence rested with Dr. Kovach's opinion that appellant had no cervical condition in excess of a simple sprain causally related to the April 1, 2008 employment injury and that cervical spine surgery was not indicated for an employment-related condition.³

LEGAL PRECEDENT -- ISSUE 1

A claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that a claimed medical condition was caused or adversely affected by employment factors. This burden includes the submission of a detailed description of the employment factors or conditions which the claimant believes caused or adversely affected the condition or conditions for which compensation is claimed. If a claimant does establish an employment factor, she must submit medical evidence showing that a medical condition was caused by such a factor.⁴

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁵ Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁶ Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁷

Section 8123(a) of FECA provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.⁸ The implementing regulations state that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or OWCP's medical adviser, OWCP shall appoint a third physician to make an examination. This is called a referee examination, and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior

³ The hearing representative's decision was initially mailed on September 17, 2010. However, due to a typographical error on the cover letter, it was resent on September 27, 2010.

⁴ V.C., 59 ECAB 137 (2007).

⁵ D.G., 59 ECAB 734 (2008).

⁶ *Id.*

⁷ *Roy L. Humphrey*, 57 ECAB 238 (2005).

⁸ 5 U.S.C. § 8123(a); *see Y.A.*, 59 ECAB 701 (2008).

connection with the case.⁹ When there exist 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 upon a proper factual background, must be given special weight.¹⁰

ANALYSIS -- ISSUE 1

OWCP determined that a conflict in the medical evidence arose between the opinions of appellant's attending physician, Dr. Stickney, and Dr. Ghanma, who provided a second opinion evaluation for OWCP, regarding residuals of the April 1, 2008 employment injury and need for cervical surgery. It properly referred appellant to Dr. Kovach for an impartial evaluation.¹¹

The Board finds Dr. Kovach's opinion is well rationalized and supports a finding that appellant's degenerative cervical condition was not caused or aggravated by the April 1, 2008 employment injury.¹² In reports dated October 27, 2009 and March 9, 2010, Dr. Kovach noted the history of injury and his review of the record, including the November 2008 MRI scan study. He described the employment injury and advised that physical examination demonstrated no sensory deficits in the upper and lower extremities, that appellant had excellent neck range of motion with no spasm or tenderness on palpation of the neck and no atrophy of either upper extremity. Dr. Kovach stated that the November 2008 MRI scan study demonstrated preexisting degenerative changes that were not caused or aggravated by the April 1, 2008 work injury. He concluded that appellant could perform her regular employment duties with no restrictions. OWCP properly accorded special weight to Dr. Kovach's findings in denying any additional conditions as due to appellant's work injury.¹³

LEGAL PRECEDENT -- ISSUE 2

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 OWCP considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation.¹⁴ While OWCP is obligated to pay for treatment of employment-related conditions, the employee has the burden of establishing that the expenditure is incurred for treatment of the effects of an employment-related injury or condition.¹⁵

⁹ 20 C.F.R. § 10.321.

¹⁰ *V.G.*, 59 ECAB 635 (2008).

¹¹ *Supra* note 8.

¹² *V.G.*, *supra* note 10.

¹³ *I.J.*, 59 ECAB 408 (2008).

¹⁴ 5 U.S.C. § 8103; *see L.D.*, 59 ECAB 648 (2008).

¹⁵ *Kennett O. Collins, Jr.*, 55 ECAB 648 (2004).

In interpreting this section of FECA, the Board has recognized that OWCP has broad discretion in approving services provided under section 8103, with the only limitation on OWCP's authority being that of reasonableness.¹⁶ 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 deductions from established facts. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.¹⁷ To be entitled to reimbursement of medical expenses, a claimant has the burden of establishing that the expenditures were incurred for treatment of the effects of an employment-related injury or condition. Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.¹⁸ In order for a surgical procedure to be authorized, a claimant must submit evidence to show that the surgery is for a condition causally related to an employment injury and that it is medically warranted. Both of these criteria must be met in order for OWCP to authorize payment.¹⁹

ANALYSIS -- ISSUE 2

As noted, appellant did not establish that the degenerative changes in her cervical spine were caused or aggravated by the April 1, 2008 employment injury. OWCP properly denied authorization for the surgery requested by Dr. Stickney for that condition. Appellant did not establish that the recommended surgery was for a condition causally related to an employment injury.²⁰ Dr. Kovach, who provided a referee opinion, found that the cervical surgery was not medically warranted because appellant did not have objective findings to indicate that she would benefit from the recommended surgical procedure. Accordingly, as the evidence establishes that appellant met neither of the criteria required for authorization of recommended surgery, OWCP acted within its discretion in denying authorization.²¹

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.

CONCLUSION

The Board finds that appellant failed to establish that additional cervical conditions were caused or aggravated by the April 1, 2008 employment injury, and that OWCP properly denied authorization for the recommended cervical surgery.

¹⁶ See *D.K.*, 59 ECAB 141 (2007).

¹⁷ *Minnie B. Lewis*, 53 ECAB 606 (2002).

¹⁸ *M.B.*, 58 ECAB 588 (2007).

¹⁹ *R.C.*, 58 ECAB 238 (2006).

²⁰ 5 U.S.C. § 8103; *R.C.*, *id.*

²¹ *L.D.*, *supra* note 14.

ORDER

IT IS HEREBY ORDERED THAT the September 27, 2010 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: August 18, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board