

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAUL S. MacNEILL and DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE, Levittown, P.R.

*Docket No. 97-2243; Submitted on the Record;
Issued May 12, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant established that his proposed lumbar decompression surgery was causally related to the accepted back strain.

The Board has carefully reviewed the case record and finds that appellant has failed to meet his burden of proof in establishing that the proposed surgery was causally related to his work injury.

Section 8103 of the Federal Employees' Compensation Act¹ provides for the furnishing of "services, appliances and supplies prescribed or recommended by a qualified physician" which the Office of Workers' Compensation Programs 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."

While the Office is obligated to pay for treatment of employment-related conditions, appellant has the burden of establishing that the expenditure was incurred for treatment of the effects of an employment-related injury or condition.² Thus, to be entitled to reimbursement of medical expenses by the Office, appellant must establish a causal relationship between the expenditure and the treatment by submitting rationalized medical evidence that supports such a connection and demonstrates that the treatment is necessary and reasonable.³

In this case, appellant, then a 53-year-old detection systems specialist, filed a notice of traumatic injury on October 12, 1995, claiming that on September 15, 1995 he injured his lower back while attempting to secure office equipment in the face of an impending hurricane.

¹ 5 U.S.C. §§ 8101-8193 (1974); 5 U.S.C. § 8103.

² *Mamie L. Morgan*, 41 ECAB 661, 667 (1990); *see* 5 U.S.C. § 8103(a).

³ *Debra S. King*, 44 ECAB 203, 209 (1992).

Appellant sought treatment from Dr. Anahid Berberian, a general practitioner, who diagnosed a lower back strain with damaged muscles causing pressure on the discs and nerves. Appellant also underwent chiropractic manipulation from Dr. Gil Weiner.

In June 1996 appellant was reassigned to Orlando, Florida and on September 15, 1996 he filed a notice of recurrence of disability, claiming that he required through emergency treatment a sciatic block to relieve severe shooting pains in his back and legs so that he could report for work. On September 20, 1996 the Office accepted the claims for a lumbosacral strain.

Subsequently, appellant was examined by Dr. Luis A. Ramos, a general practitioner, who recommended lumbar decompression surgery, based on an October 11, 1996 myelogram and computerized tomographic scan (CT) scan, which showed severe spinal stenosis (narrowing of the disc spaces) at L3-4 and moderate stenosis at L2-3 and L5-S1. Dr. Ramos stated that epidural steroids could alleviate some of appellant's symptoms but not permanently.

The Office referred Dr. Ramos' reports and test results to the Office medical adviser, who opined on December 12, 1996 that appellant's spinal stenosis with disc bulging (not herniation or rupture) at multiple levels was a long-standing degenerative process and not the result of an acute injury on September 15, 1995.

Finding a conflict between the Office medical adviser's opinion and that of Dr. Ramos, the Office referred appellant to Dr. Jose L. Ferrer, a Board-certified orthopedic surgeon, along with a statement of accepted facts and a list of questions, for an impartial medical examination.⁴ Dr. Ferrer examined appellant on February 14, 1997 and reviewed the medical treatment records. He interpreted appellant's current x-rays as showing severe spinal spondylosis and degenerative disc disease, also shown on August 6, 1996 x-rays and severe stenosis as well as arthritic degeneration of both hips.

Dr. Ferrer stated that appellant's spinal stenosis was not caused by the September 15, 1995 back sprain. Rather the underlying condition was made symptomatic and aggravated by the work injury. He added that the back sprain did not cause any permanent impairment more than appellant already had because of this degenerative condition. Dr. Ferrer related that appellant has only moderate back pain intermittently and no evidence of radiculopathy, therefore, surgery was not recommended. Rather, Dr. Ferrer suggested epidural steroid injections, which would be "a reasonable treatment" due to the work injury.

Appellant would also not need any surgery in the future because of the accepted back sprain, but any treatment that appellant had had "up to the present time has been reasonable, necessary and also directly related" to the 1995 injury. Appellant had not reached maximum medical improvement but should continue with conservative measures such as physical therapy, medication, possibly a corset and the steroid injections to relieve his symptoms. Dr. Ferrer recommended restrictions on the duration of standing and sitting and a repetitive lifting limit of

⁴ See *Shirley L. Steib*, 46 ECAB 309, 316 (1994) (noting that 5 U.S.C. § 8123 of the Act provides that if there is disagreement between the physician making the examination for the Office and the employee's physician, the Office shall appoint a third physician who shall make an examination).

no more than 40 pounds, but stated that these were prophylactic because of his degenerative condition and not due to the work injury.

On April 29, 1997 the Office denied authorization for the proposed surgery on the grounds that the medical evidence failed to establish a causal relationship between the procedure and the accepted work injury. The Office accorded determinative weight to Dr. Ferrer's opinion as impartial medical examiner.

The Board finds that the Office properly denied authorization for the proposed lumbar decompression. In his October 7, 1996 report, Dr. Ramos provided an accurate history of the 1995 work injury but offered no opinion on the causal relationship of appellant's current back condition to the accepted back strain. On October 29, 1996 Dr. Ramos recommended lumbar decompression to relieve appellant's spinal stenosis after reviewing the objective testing but again failed to discuss a causal connection between this condition and the 1995 work injury.

Dr. Ferrer concluded in a well-rationalized medical report that surgery was not necessary at this time and that if needed in the future would not be causally related to the 1995 back sprain. Dr. Ferrer did opine that appellant's treatment for back pain from September 1995 through February 1997 was reasonable, necessary and work related. Dr. Ferrer added that with the steroid injections appellant would probably reach maximum medical improvement in four to six weeks and would thereafter have no further impairment due to the work injury.

Inasmuch as the weight of the medical opinion evidence rests with the report of Dr. Ferrer as impartial medical examiner, the Board finds that appellant has failed to meet his burden of proof in establishing that the proposed lumbar decompression was causally related to the accepted work injury.⁵

Appellant argues on appeal that his work injury caused the dislocation of his back discs aggravated the problems associated with the aging process, causing the initial severe pain in 1995, the sciatic pain in June through November 1996 and his current pain and stiffness.

The Board has long held that the fact that work produces pain or discomfort revelatory of an underlying condition does not in itself raise an inference of causal relationship.⁶ Further, a claimant's belief that his condition or injury is caused by work factors is not, absent supporting medical evidence, sufficient to establish the requisite causal relationship.⁷ While appellant may

⁵ See *Wiley Richey*, 49 ECAB ____ (Docket No. 94-2367, issued November 7, 1997) (stating that where a case is referred to an impartial medical specialist to resolve a conflict in the medical opinion evidence, the opinion of the specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight).

⁶ See *John L. Clark*, 32 ECAB 1618, 1624 (1981) (finding that a medical opinion based on a claimant's complaint that he hurt too much to work, with no objective signs of disability being shown, was insufficient to establish a basis for compensation).

⁷ See *Kathryn Haggerty*, 45 ECAB 383, 389 (1994) (finding that neither the fact that appellant's condition became apparent during a period of employment nor appellant's belief that his condition was caused by his employment is sufficient to establish a causal relationship).

well have experienced delay in the Office's processing his claim, the record is still devoid of medical evidence entitling him to proceed with decompression surgery under the Act.

The April 29, 1997 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
May 12, 1999

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member