

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MILES M. HIGA and DEPARTMENT OF AGRICULTURE,  
ANIMAL & PLANT HEALTH INSPECTION SERVICE, Waimanalo, HI

*Docket No. 98-2461; Submitted on the Record;  
Issued August 18, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
MICHAEL E. GROOM:

The issue is whether the Office of Workers' Compensation Programs properly declined to authorize appellant's request for surgical lumbar decompression on the basis that appellant failed to establish that the procedure was for treatment of the effects of an employment-related injury or condition.

On December 17, 1993 appellant, then a 37-year-old insect production worker, sustained an injury to his back while in the performance of duty. Appellant ceased working the following day. The Office accepted the claim for temporary aggravation of preexisting L4-5 herniated nucleus pulposus with left leg radiculopathy and appellant received appropriate wage-loss compensation.<sup>1</sup>

As early as May 1996, appellant's treating physician, Dr. Clifford K.H. Lau, a Board-certified orthopedic surgeon, requested that the Office authorize a neurosurgical consultation to ascertain whether appellant had developed a lipoma of the spinal cord with possible impingement of the thecal sac. Dr. Lau also noted the probability that appellant would require surgical decompression. The Office referred appellant for a second opinion examination in January 1997 with Dr. Lee B. Silver, a Board-certified orthopedic surgeon, who examined appellant on February 11, 1997 and, in a report dated March 14, 1997, diagnosed lumbosacral radiculopathy with a history of spinal lipomatosis. Dr. Silver explained that appellant's December 17, 1993 employment injury permanently aggravated his preexisting condition involving the lumbosacral spine. Additionally, Dr. Silver indicated that he was particularly concerned with appellant's complaints of perianal numbness and incontinence of the stool as well as significant atrophy noted to appellant's left calf. He explained that these findings

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<sup>1</sup> Appellant was previously involved in a nonindustrial motor vehicle accident on May 7, 1993, wherein he sustained injuries to his neck and back. Some of the medical evidence obtained by the Office that predated appellant's December 17, 1993 employment injury noted the presence of disc herniation at L4-5 and spinal lipomatosis, as well as left and right radiculopathy at L4-5.

suggested a significant neural compression. Dr. Silver also noted that appellant's magnetic resonance imaging (MRI) scan revealed extensive changes related to an apparent lipomatosis. Consequently, he expressed his agreement with Dr. Lau's recommendation that appellant be referred for a neurosurgical evaluation.

The Office approved Dr. Lau's request for a neurological consultation on April 2, 1997. Dr. Lau subsequently referred appellant to Dr. William G. Obana, a neurosurgeon, who examined appellant on May 15, 1997. Dr. Obana, in a report dated May 16, 1997, noted that he examined appellant and reviewed an MRI scan dated February 6, 1996. He indicated that the MRI scan demonstrated spinal epidural lipomatosis extending from approximately L2 to S1. Dr. Obana further noted that this condition was most severe at L4-S1, causing significant compression of the thecal sac. Regarding the etiology of appellant's spinal lipomatosis, Dr. Obana explained that the condition is usually associated with chronic steroid use. He noted, however, that appellant specifically denied using steroids. Dr. Obana further explained that the condition usually subsides after discontinuation of steroids. He indicated that he was "not sure why [appellant] has this abnormality." As far as treating the condition, he explained that the initial step would involve discontinuing any medications, which might cause the condition to occur. Dr. Obana further recommended weight loss of 20 to 30 pounds. Lastly, he noted that lumbar decompression was another option, which resulted in neurological improvement in up to 90 percent of cases.

In accordance with Dr. Obana's recommendation, Dr. Lau initially pursued a course of weight reduction, however, in November 1997 he recommended that appellant undergo surgical lumbar decompression.

By decision dated January 21, 1998, the Office denied authorization of the recommended lumbar decompression, noting that Dr. Obana indicated that he was unsure of the origin of appellant's spinal lipomatosis. The Office further explained that the record lacked any medical opinion evidence demonstrating a causal relationship between the requested surgery and appellant's accepted condition.

The Board finds that appellant failed to establish that the requested surgical lumbar decompression was for treatment of the effects of appellant's December 17, 1993 employment-related injury.

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."<sup>2</sup> 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.<sup>3</sup> The

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<sup>2</sup> 5 U.S.C. § 8103(a).

<sup>3</sup> *Dale E. Jones*, 48 ECAB 648, 649 (1997).

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.<sup>4</sup>

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.<sup>5</sup> Proof of causal relation must include rationalized medical evidence.<sup>6</sup> The fact that the etiology of a disease is unknown or obscure neither relieves appellant of the burden of establishing a causal relationship by the weight of the medical evidence nor does it shift the burden of proof to the Office to disprove an employment relationship.<sup>7</sup>

Neither Dr. Silver nor Dr. Lau expressed an opinion regarding the cause of appellant's spinal lipomatosis. Dr. Obana indicated that this condition is usually associated with chronic steroid use, he specifically stated he was unsure of the etiology of appellant's spinal lipomatosis. Therefore, Dr. Obana's opinion is clearly insufficient to satisfy appellant's burden. Inasmuch as the record fails to demonstrate that appellant's spinal lipomatosis was either caused or aggravated by his December 17, 1993 employment injury, the Office properly exercised its discretion by refusing to authorize the recommended surgical lumbar decompression.

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<sup>4</sup> *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).

<sup>5</sup> *Debra S. King*, 44 ECAB 203, 209 (1992).

<sup>6</sup> *Id.*

<sup>7</sup> *Judith J. Montage*, 48 ECAB 292, 294-95 (1997).

The January 21, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.<sup>8</sup>

Dated, Washington, D.C.  
August 18, 2000

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

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<sup>8</sup> On appeal, appellant also took issue with the Office's recent vocational rehabilitation efforts. While the record includes a June 25, 1998 notice of proposed reduction of compensation for wage loss based on evidence that appellant has the capacity to earn wages as a customer service/sales clerk, the Board notes that this is not a final decision of the Office. As such, the Board cannot assume jurisdiction over the issue. 20 C.F.R. § 501.2(c).