U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ADDIE P. WILLIAMS and DEPARTMENT OF VETERANS AFFAIRS, PERRY POINT VETERANS HOSPITAL, Perry Point, MD

Docket No. 98-2087; Submitted on the Record;
Issued February 26, 2001

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for authorization of surgery.

On February 27, 1992 appellant, then a 37-year-old nursing assistant, stated that she suffered injuries to her neck, right shoulder, right arm and lower back at work. The employing establishment placed her in limited duty on a different unit with a no-lifting restriction. Appellant returned to full patient care, including lifting, on December 17, 1996.

Appellant filed an occupational disease claim on December 25, 1996 for the above injuries. The claim was assigned case number A25-500419 and accepted for right shoulder tendinitis and low back sprain. On December 26, 1996 appellant filed a traumatic claim for sharp pain in her neck and right shoulder, which occurred while assisting a patient. The claim was assigned case number A25-507244 and accepted for a resolved right shoulder sprain. Appellant filed an occupational disease claim on May 12, 1997 stating that her magnetic resonance imaging (MRI) scan on May 7, 1997 revealed degenerative disc and joint disease and disc herniation of the cervical spine. The claim was assigned case number A25-508038 and accepted for aggravation of degenerative disc disease, C4-5, C5-6 and C6-7. The Office then doubled appellant's previous cases into the master file of A25-508038. By decision dated May 28, 1998, the Office denied appellant's request for surgical intervention to correct cervical disc disease.[1]

The Board finds that the Office properly denied appellant's request for authorization for a three-level cervical discectomy and fusion.

[1] The Office, in a decision dated July 17, 1997, found that appellant was not entitled to continuation of pay during her absence from work as her Form CA-7 was not filed within 30 days. The Board notes that appellant is not contesting this decision and this issue will not be addressed. Appellant retired on October 1, 1997.

In order to be entitled to reimbursement for medical expenses, a claimant must establish that the expenditures were incurred for treatment of the effects of an employment-related injury. Proof of causal relation in a case such as this must include supporting rationalized medical evidence.[2] Therefore, to prove that the requested surgical procedure was 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 for the Office to authorize payment.

The relevant medical evidence in this case includes a number of reports from appellant's treating physicians. In an April 8, 1997 report, Dr. George Pirpirus, a Board-certified orthopedic surgeon, noted a history of injury, conducted an orthopedic physical examination of appellant and reviewed x-rays of both the cervical and lumbar spine. A diagnosis of right cervical radiculitis, lower lumbosacral neuropathy and possible sympathetic reflex problems was rendered. Dr. Pirpirus recommended that an MRI scan be conducted.

In a May 16, 1997 report, Dr. P.L. Sitaras, a Board-certified neurologist, noted that the MRI scan of the cervical spine demonstrated a large disc herniation at C6-7 on the right with compression. Spondylosis and bulging discs in the mid-cervical spine and lower lumbar spine were also noted. Dr. Sitaras stated that appellant's lumbar spondylosis with mild radiculopathy appeared to be resolving. Appellant also had evidence of a significant structural abnormality at C6-7 on the right from a laterally herniated disc, but was not acute at the present time. Dr. Sitaras recommended that appellant be returned to sedentary work with no patient exposure. Conservative measures such as a home cervical traction unit and cervical collar with a medication regime should be followed.

In a September 3, 1997 report, Dr. David M. Cook, a Board-certified neurosurgeon, provided the results of his neurological examination and stated that the MRI showed fairly marked changes in the neck. He advised that at C6-7 on the right side, appellant had an acute right disc herniation which caused her acute symptoms in May. At C4-5 and at C5-6, appellant had chronic changes with spondylosis and degenerative changes with marked stenosis of the spinal canal and some possible compression. Appellant had no signs of a myelopathy or cervical cord compression. Dr. Cook diagnosed multilevel disc disease and stated that appellant had clear-cut indications for surgery at the C6-7 level. He felt that decompression at the C4-5 and C5-6 levels was also needed. Dr. Cook referred appellant to Dr. Ira L. Fedder, a Board-certified orthopedic surgeon, for a second opinion.

In a September 17, 1997 report, Dr. Fedder reviewed the history of injury and provided the results of his orthopedic examination. He noted that the MRI revealed multilevel degenerative changes with severe spinal stenosis at C4-5, C5-6 and C6-7. Dr. Fedder advised that appellant had some subtle evidence of myelopathy with a positive Hoffman's and some weakness in the right upper extremity, probably related to her cervical spondylosis and stenosis. He agreed with Dr. Cook that appellant would need some sort of decompression at some point. Dr. Fedder also stated that appellant's neck and shoulder pains were probably related to some soft tissue pathology.

[2] *See Debra S. King*, 44 ECAB 203 (1992); *Bertha L. Arnold*, 38 ECAB 282 (1986).

In a November 25, 1997 report, Dr. Fedder stated that appellant has three-level, C4-5, C5-6 and C6-7, disc disease with severe spinal stenosis. He stated that appellant was having a lot of neck and arm pain. Furthermore, appellant's handwriting was deteriorating and a positive Hoffman's on the right side was noted. Dr. Fedder advised he would like to perform a three-level cervical discectomy.

The Office sent a copy of appellant's file along with a statement of accepted facts to an Office medical adviser to determine whether the requested surgical procedure was warranted. On January 10, 1998 the Office medical adviser stated that the recommended surgery was to treat degenerative conditions. The injuries appellant suffered at work were to the soft tissues and included aggravation of degenerative disc disease. The Office medical adviser stated that this aggravation would have been temporary and would have resolved without permanency.

By letter dated February 12, 1998, the Office advised appellant of the medical information and rationale needed from her treating physician to support an authorization for the surgery. The Office noted that its Office medical adviser had reviewed all the medical and factual documentation and had advised against approval for surgery.

In a March 2, 1998 report, Dr. Fedder stated that appellant required surgical intervention for cervical spinal stenosis secondary to cervical disc disease. He diagnosed cervical disc herniation with myelopathy and advised what the surgical process would include. Dr. Fedder stated that the surgery was required because appellant has cervical spinal cord compression and myelopathy.

The Board finds that the Office properly relied on the opinion of its Office medical adviser in denying the requested surgery. The medical evidence of record, in particular Dr. Fedder's reports, fails to demonstrate or discuss what relationship, if any, the proposed surgery has to appellant's accepted conditions. Appellant and her physician, Dr. Fedder, were advised that the requested surgery was denied because it was not related to the accepted conditions. The Office stated, in its February 12, 1998 letter, that the "surgery recommended by your treating physician is for your preexisting degenerative condition. The injur[ies] you suffered at work were to soft tissues" including an aggravation of degenerative disc disease, which "would have been temporary and would resolve without permanent damage."

The March 2, 1998 response from Dr. Fedder failed to provide any medical rationale or explanation that related the diagnosed conditions or the surgery being requested to the accepted conditions in this case. Inasmuch as the Office medical adviser provided a comprehensive report in which he explained why the surgery did not relate to appellant's accepted conditions, his report is accorded great weight. Appellant, therefore, failed to establish that her August 1998 surgical procedure was employment related and medically warranted.

The May 28, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.[3]

Dated, Washington, DC
February 26, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member

[3] The Board notes that the record contains medical evidence subsequent to the issuance of the May 28, 1998 decision. The Board's review is limited to the evidence that was before the Office at the time of its final decision. The Board, therefore, cannot consider this evidence. Appellant may request reconsideration before the Office pursuant to 5 U.S.C. § 8128(a). 20 C.F.R. § 10.606(b) (1999).