

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOSEPH T. ROMAN and U.S. POSTAL SERVICE,  
GENERAL POST OFFICE, Buffalo, NY

*Docket No. 02-1176; Submitted on the Record;  
Issued September 25, 2002*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion in denying authorization for back surgery.

Appellant's initial claim was accepted for a lumbosacral strain after he hurt his back on July 1, 1999 trying to pick up a pallet of mail. He returned to regular duty on July 14, 1999. On January 12, 2000 appellant filed a recurrence of disability claim, but returned to limited duty until March 3, 2000, when he filed a second recurrence of disability claim.

In support of his claims, appellant submitted a February 26, 2000 report from Dr. P. Jeffrey Lewis, a Board-certified neurosurgeon, who diagnosed a suspected herniated disc at L4-5 and radiculopathy. A January 10, 2000 x-ray was interpreted as "unremarkable" for lumbosacral spine, with normal disc spaces and vertebra alignment. A May 15, 2000 computerized tomography (CT) scan showed no evidence of disc herniation or stenosis and was interpreted as normal.

On April 13, 2000 the Office denied appellant's claims and he requested a hearing, which was held on January 30, 2001. The hearing representative affirmed the denial of a recurrence of disability but remanded the case for the Office to develop a new injury claim. On remand, the Office accepted a lumbar strain as work related.<sup>1</sup>

In an August 21, 2000 report, Dr. Lewis stated that he had reviewed the magnetic resonance imaging (MRI) scan and did not agree with the radiologist's interpretation. He stated that the scan showed mild stenosis at L3-4 and mild to moderate stenosis at L4-5. Dr. Lewis noted facet joint hypertrophy and narrow canal space at the lower lumbar segments.

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<sup>1</sup> In a June 14, 2000 report, Dr. Lewis noted that the CT scan was negative and did not show a herniated disc. He recommended an MRI.

On May 30, 2001 Dr. Lewis again requested authorization to perform a decompression lumbar laminectomy at L3-5, noting that the MRI scan clearly showed spinal stenosis at those disc levels.

On August 22, 2001 the Office medical adviser reviewed the scan and stated that it showed no stenosis at any disc level. He concluded that a decompression laminectomy was not warranted, noting that even a small degree of stenosis would not require a laminectomy unless combined with a herniated disc. The Office medical adviser added that the spinal x-rays were also read as normal.

The Office referred appellant to Dr. Thomas Pastore, a Board-certified orthopedic surgeon, to resolve the conflict between Dr. Lewis and the Office medical adviser over whether the requested surgery was necessary for treatment of the work-related lumbar strain.

Based on Dr. Pastore's March 4, 2002 report, the Office denied the request for surgery on March 14, 2002.<sup>2</sup>

The Board finds that the Office properly refused authorization for appellant's requested back surgery.

Section 8103(a) of the Federal Employees' Compensation Act states in pertinent part:

"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 the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of disability or aid in lessening the amount of the monthly compensation."<sup>3</sup>

The Office's obligation to pay for medical treatment under this section extends only to treatment of employment-related conditions and appellant has the burden of establishing that the treatment is for the effects of an employment injury.<sup>4</sup>

In interpreting this section of the Act, the Board has recognized that the Office has broad discretion in approving services provided under the Act.<sup>5</sup> The Office has the general objective of ensuring that an employee recovers from his injury to the fullest extent possible in the shortest

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<sup>2</sup> The Office issued a notice of proposed termination of compensation and medical benefits on March 14, 2002, also based on Dr. Pastore's conclusions. The Office provided appellant with 30 days to submit additional evidence. No final decision on the proposed termination is in the record before the Board, which, therefore, has no jurisdiction over this issue. See *John Reese*, 49 ECAB 397, 400 (1998) (the Board has jurisdiction of final Office decisions issued within one year prior to the date of the filing of an appeal).

<sup>3</sup> 5 U.S.C. § 8103(a).

<sup>4</sup> *Dale E. Jones*, 48 ECAB 648, 649 (1997).

<sup>5</sup> *Yvonne R. McGinnis*, 50 ECAB 272, 274 (1999).

amount of time and, therefore, must exercise its administrative discretion in choosing the means to achieve this goal.<sup>6</sup> The only limitation on the Office's authority is that of reasonableness.<sup>7</sup>

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.<sup>8</sup> It is not enough to show that the evidence could be construed so as to produce a contrary factual conclusion.<sup>9</sup>

In this case, the Office accepted a lumbar strain and paid appropriate compensation and medical expenses. When a conflict of medical opinion arose over whether the requested back surgery was warranted, the Office properly referred appellant to Dr. Pastore to resolve it.<sup>10</sup>

Dr. Pastore stated in his February 25, 2002 report, that the requested surgery was not needed because appellant's work-related lumbar strain was a temporary aggravation of his preexisting degenerative arthritis that had resolved without residuals. He noted that the January 10, 2000 spinal x-ray was normal and that the MRI scan showed some slight bulging discs but no clear-cut stenosis, as found by Dr. Lewis. Dr. Pastore explained that while appellant had degenerative disc disease he did not have any neuro-claudication indicative of leg pain with ambulation. In fact, Dr. Lewis stated, appellant's findings on examination were of "questionable credibility" and did not follow any anatomic or physiologic pattern.

In situations where opposing medical opinions on an issue are of virtually equal evidentiary weight and rationale, the case shall be referred for an impartial medical examination to resolve the conflict in medical opinion.<sup>11</sup> The opinion of the specialist properly chosen to resolve the conflict must be given special weight if it is sufficiently well rationalized and based on a proper factual background.<sup>12</sup>

Dr. Pastore reviewed the case record and various reports, including Dr. Lewis' report on appellant's medical treatment since the initial 1999 strain. He examined appellant thoroughly, discussed the diagnostic testing, explained his clinical findings and provided medical rationale for his conclusion that the requested back surgery was not needed. Thus, Dr. Pastore provided an opinion that was sufficiently well rationalized to support his conclusion and deserves the special weight of a specialist. The Board finds that Dr. Pastore's report represents the weight of

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<sup>6</sup> *David Spearman*, 49 ECAB 445, 449 (1998).

<sup>7</sup> *James R. Bell*, 49 ECAB 642, 644 (1998).

<sup>8</sup> *Gustavo H. Mazon*, 49 ECAB 156, 161 (1997).

<sup>9</sup> *Bell*, *supra* note 7.

<sup>10</sup> 5 U.S.C. § 8123(a) states in pertinent part: "If there is a 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."

<sup>11</sup> *Richard L. Rhodes*, 50 ECAB 259, 263 (1999).

<sup>12</sup> *Sherry A. Hunt*, 49 ECAB 467, 471 (1998).

the medical opinion evidence and establishes that appellant required no further treatment for the accepted work injury.<sup>13</sup>

Further, the Board finds that the Office acted within its discretion in denying authorization for the requested surgery. While appellant had to wait almost two years before his request was answered, there is no evidence in the record that the Office acted unreasonably in requiring that appellant establish a causal relationship between the accepted lumbar strain and the proposed surgery.<sup>14</sup>

The March 14, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC  
September 25, 2002

Colleen Duffy Kiko  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>13</sup> *David Alan Patrick*, 46 ECAB 1020, 1023 (1995) (impartial medical examiner's opinion was based on a complete review of the medical record and a thorough examination and was sufficiently rationalized to establish that appellant had no work-related residuals of his diagnosed cervical condition; thus his opinion was entitled to special weight).

<sup>14</sup> *See Sheila Peckenschneider*, 49 ECAB 430, 432 (1998) (finding that the Office was not required to pay for appellant's acupuncture treatments because no physician supported the need for such therapy with a rationalized medical opinion).