

FACTUAL HISTORY

This case has previously been before the Board. In a July 13, 2011 decision, the Board found that OWCP met its burden of proof to terminate appellant's wage-loss compensation effective October 25, 2009 on the grounds that she was no longer disabled from her date-of-injury position.² In a March 8, 2012 decision, the Board found that it properly denied appellant's request for authorization of back surgery. The Board noted that OWCP found a conflict in medical opinion between OWCP's medical adviser and Dr. David R. Robson, an attending Board-certified orthopedic surgeon, regarding the need for requested surgery. Appellant was referred to Dr. Peter Anderson, Board-certified in orthopedic surgery, for an impartial evaluation. Based on Dr. Anderson's opinion, in a June 1, 2011 decision, OWCP denied surgery.³ The law and facts of the previous Board decisions are incorporated herein by reference.

On September 19, 2011 appellant wrote OWCP asking that her benefits be reinstated, because she was not able to work. On June 19, 2012 appellant, through her attorney, attached March 15, 2012 correspondence addressed to the Board in which, she requested that the Board reconsider its July 13, 2011 decision.⁴

The medical evidence submitted subsequent to OWCP's June 1, 2011 decision includes a disability slip dated August 18, 2011 in which Dr. Robson advised that appellant should remain off work until seen in six months. In treatment notes dated November 8, 2011 and February 21, 2012, Dr. Robson provided physical examination findings and diagnosed lumbar spinal stenosis. He recommended lumbar surgery. A July 10, 2012 computerized tomography (CAT) scan of the lumbar spine demonstrated mild canal stenosis at T12-L1 and L1-2 due to disc bulging. An August 2, 2012 CAT scan of the sacrum demonstrated no evidence of fracture and postsurgical changes at L5 with minimal degenerative changes at the sacroiliac joints bilaterally.

In a merit decision dated August 24, 2012, OWCP found that the proposed surgery would not relieve spinal stenosis or was causally related to the accepted employment injury.

² Docket No. 10-2145 (issued July 13, 2011). OWCP accepted that on October 3, 1979 appellant, then a 28-year-old clerk typist, sustained lumbar and thoracic strains, subluxations of L1, L2 and L3 and an L4-5 disc herniation when her chair fell backwards. Appellant underwent a laminectomy at L4-5 on June 16, 1980 and a fusion procedure from L4 to S1 on October 29, 1980. She returned to private employment until September 20, 1989 and was thereafter placed on the periodic compensation rolls. On May 9, 1990 appellant had a posterior spinal fusion at L4-5 and lumbar laminectomy and decompression from L3 to L5 and on October 23, 2007 underwent removal of instrumentation and exploration of a fusion mass at L4-5; bilateral L2-3 and L3-4 laminectomy, facetectomy and foraminotomy and pedicle screw fixation and fusion at L2-5.

³ Docket No. 11-1581 (issued March 8, 2012). The Board notes that the decision contains a typographical error in the "Issue" statement because it indicates that OWCP denied authorization for cervical surgery. A careful reading of the decision, however, indicates that the requested surgery was for the lumbar spine.

⁴ There is no evidence that this correspondence was received by the Board. It was scanned into the record by OWCP on June 22, 2012.

LEGAL PRECEDENT

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.⁵ 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.⁶

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.⁷ 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.⁸ 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.⁹ 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.¹⁰

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.¹¹ When 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 on a proper factual background, must be given special weight.¹²

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

⁶ *Kennett O. Collins, Jr.*, 55 ECAB 648 (2004).

⁷ *See D.K.*, 59 ECAB 141 (2007).

⁸ *Minnie B. Lewis*, 53 ECAB 606 (2002).

⁹ *M.B.*, 58 ECAB 588 (2007).

¹⁰ *R.C.*, 58 ECAB 238 (2006).

¹¹ 5 U.S.C. § 8123(a); *see Geraldine Foster*, 54 ECAB 435 (2003).

¹² *Manuel Gill*, 52 ECAB 282 (2001).

ANALYSIS

The Board finds that the weight of the medical evidence remains with the opinion of the referee physician, Dr. Anderson, who opined that the requested lumbar surgery was not medically warranted. 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.¹³ The accepted conditions in this case are lumbar and thoracic strains, subluxations of L1, L2 and L3 and an L4-5 disc herniation.

In a May 24, 2011 report, Dr. Anderson found that appellant should not have the recommended surgery because it probably would not work. He recommended physical therapy and conservative treatment. While Dr. Robson continued to recommend that appellant have lumbar surgery, he was on one side of the conflict in medical evidence. The Board has long held that an additional report from a claimant's physician, which essentially repeats earlier findings and conclusions, is insufficient to overcome the weight accorded to an impartial medical specialist's report.¹⁴ The Board finds that Dr. Anderson's opinion that the recommended lumbar spine surgery was not medically warranted is entitled to the special weight accorded a referee examiner and represents the weight of the evidence.¹⁵ The evidence establishes that the lumbar spine surgery was not medically necessary. OWCP did not abuse its discretion in denying authorization.¹⁶

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 OWCP properly denied authorization for the recommended lumbar spine surgery. Upon return of the case record, OWCP should adjudicate appellant's timely request for reconsideration of the Board's July 13, 2011 decision.

¹³ *Supra* note 10.

¹⁴ *Roger G. Payne*, 55 ECAB 535 (2004).

¹⁵ *Supra* note 12.

¹⁶ *L.D.*, *supra* note 5.

ORDER

IT IS HEREBY ORDERED THAT the August 24, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 13, 2013
Washington, DC

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

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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