

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BONITA L. PELAEZ and U.S. POSTAL SERVICE,
MARTINSBURG POST OFFICE, Martinsburg, WV

*Docket No. 99-1616; Submitted on the Record;
Issued September 7, 2000*

DECISION and ORDER

Before DAVID S. GERSON, A. PETER KANJORSKI
VALERIE D. EVANS-HARRELL

The issue is whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for surgery.

On April 15, 1998 appellant, then a 34-year-old rural letter carrier, was making a turn in her postal vehicle when it was struck in the rear by another vehicle. Appellant filed a claim for a "tailbone fracture." The Office accepted appellant's claim for thoracic subluxation, cervical strain and contusions of both knees. She received continuation of pay for the period May 23 through July 3, 1998 and temporary total disability compensation for the period July 4 through August 24, 1998, with intermittent compensation thereafter.

In a December 4, 1998 office note, Dr. Dennis Wise, a Board-certified orthopedic surgeon, noted that he had injected appellant's coccyx but the effects had worn off. He stated that appellant was a candidate for a coccygectomy. In a December 20, 1998 note, an Office medical adviser indicated that the surgery would not be authorized without a second opinion.

The Office referred appellant, together with a statement of accepted facts and the case record, to Dr. Frank G. Nisenfeld, a Board-certified orthopedic surgeon, for an examination and opinion on whether appellant needed surgery. In a February 9, 1999 report, Dr. Nisenfeld diagnosed post-traumatic coccydynia which he stated was directly related to the April 15, 1998 employment injury. He commented that appellant's prognosis was good but noted that improvement from this condition could take two to three years. Dr. Nisenfeld indicated that treatment would consist of over-the-counter anti-inflammatory medication and continuing cushions. He stated that surgery was not recommended.

In a March 5, 1999 decision, the Office denied appellant's request for surgery on the grounds that the weight of the medical evidence established that the treatment was not appropriate.

The Board finds that the Office did not abuse its discretion in denying appellant's request for surgery.

Section 8103 of the Federal Employees' Compensation Act provides, in part:

“(a) 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.”¹

In interpreting section 8103, the Board has recognized that the Office, acting as the delegated representative of the Secretary of Labor, has broad discretion in approving services provided under the Act.² The Office has the general objective of ensuring that an employee recovers from his or her injury to the fullest extent possible in the shortest amount of time. The Office therefore has broad administrative discretion in choosing means to achieve this goal.³ The only limitation on the Office's authority is that of reasonableness.⁴ 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 known facts.⁵

In this case, Dr. Wise recommended a coccygectomy, noting appellant's continued pain in the coccyx. However, he did not give any rationale in support of his recommendation. He did not specify how the surgery would cure, give relief, or lessen appellant's period of disability for an employment-related condition. His report therefore has diminished probative value. Dr. Nisenfeld stated that surgery was not recommended. He indicated that appellant's coccydynia could be treated by cushions and anti-inflammatory medication although improvement in the condition would continue for two to three years. Based on Dr. Nisenfeld's report, the Office concluded that surgery was not needed for treatment of appellant's employment-related coccydynia. There is no evidence of record to show that the Office abused its discretion in denying appellant's request for surgery.

¹ 5 U.S.C. § 8103(a).

² *Daniel Wietchy*, 34 ECAB 670 (1983).

³ *Patsy R. Tatum*, 44 ECAB 490 (1993).

⁴ *Joe E. Williamson*, 36 ECAB 494 (1985).

⁵ *Daniel J. Perea*, 42 ECAB 214 (1990).

The decision of the Office of Workers' Compensation Programs, dated March 5, 1999 is hereby affirmed.

Dated, Washington, D.C.
September 7, 2000

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

Valerie D. Evans-Harrell
Alternate Member