

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BONNIE L. GIBSON and U.S. POSTAL SERVICE,
POST OFFICE, Harrisburg, PA

*Docket No. 01-387; Submitted on the Record;
Issued August 6, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

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

The Office accepted that on November 19, 1997 appellant, then a 53-year-old rural mail carrier, sustained cervical strain and a left rotator cuff sprain due to a motor vehicle accident. Appellant underwent a left rotator cuff repair on February 18, 1998. On May 4, 1998 appellant returned to limited-duty employment for four hours per day.

In a report dated December 7, 1998, Dr. Robert A. Morrow, a Board-certified attending neurosurgeon, diagnosed cervical radiculopathy and spondylolisthesis and recommended that appellant undergo an anterior fusion of the cervical vertebrae at C4-6 with plating. He indicated that the date of appellant's injury was November 19, 1997.

The Office referred appellant to Dr. Peter A. Feinstein, a Board-certified orthopedic surgeon, for a second opinion evaluation on the issue of whether the proposed cervical fusion was necessary due to appellant's accepted employment injury.¹

In a report dated January 8, 1999, Dr. Feinstein noted that a computerized tomography (CT) scan and myelogram revealed findings of "extensive degenerative changes which are long-standing in nature and not traumatic." Dr. Feinstein found that the proposed surgery was reasonable but unrelated to appellant's November 19, 1997 motor vehicle accident.

The Office determined that a conflict existed between Dr. Feinstein and Dr. Morrow on the issue of whether appellant required surgery due to her accepted employment injury. By letter dated March 9, 1999, the Office referred appellant, together with the case record and a statement

¹ Dr. Feinstein previously provided a second opinion evaluation regarding the extent of appellant's employment-related limitations.

of accepted facts, to Dr. Thomas D. DiBenedetto, a Board-certified orthopedic surgeon, for an impartial medical evaluation.

In a report dated April 23, 1999, Dr. DiBenedetto discussed appellant's history of injury, reviewed the results of objective studies, and listed findings on examination. He stated:

"I believe that she does, indeed, have C4-5 degenerative subluxation with spinal stenosis and foraminal stenosis. She does have abnormal EMG [electromyogram]. I believe that surgery for this problem is reasonable and necessary; however, I do not believe, within a reasonable degree of medical certainty that surgery is related to her automobile accident of November 19, 1997. I believe that the surgery is needed for a preexisting degenerative condition. I base this opinion on the evidence that I found in the records provided.

"No where in Dr. Morrow's records does he say that this condition is related to the accident of November 19, 1997 within a reasonable degree of medical certainty. [Appellant] has had preexisting back surgery for a degenerative condition. She has also had bilateral shoulder problems prior to her injury. I have filled out the work capacities evaluation. I do agree with her working four hours of light duty because of her medical condition. Again, as I said before, this condition was not caused by her automobile accident of November 19, 1997."

By decision dated July 6, 1999, the Office denied authorization for surgery based on the opinion of Dr. DiBenedetto.²

In a report dated January 31, 2000, Dr. Morrow stated that he had again questioned appellant about her November 19, 1997 motor vehicle accident and related:

"She was stopped at a yield area, when she was rear-ended by another vehicle of comparable size having made no attempt to stop, apparently not having seen her at the yield area. This would lead to an abrupt hyperextension followed by a rapid flexion of [appellant's] cervical spine. Such mechanisms are well known to injure not only cervical nerve roots in patients with cervical spondylosis but to frequently cause damage to the spinal cord. The canal and the foramen acutely narrow at the time of impact and the subsequent injury leads to edema, swelling and inflammation causing the patient to suffer more chronic symptomatology. Large numbers of patients with cervical spondylosis have minimal to no symptomatology unless some traumatic event causes them to become symptomatic. I continue to believe this is the case with [appellant]."

Dr. Morrow noted that the delay in authorizing surgery decreased appellant's chances of a complete recovery.

² The Office subsequently asked Dr. DiBenedetto whether appellant had any residuals of her employment injury and, based on his response, issued a notice of proposed termination of compensation on May 16, 2000. The Office has not finalized the proposed termination of compensation.

In a report dated August 27, 1999, Dr. Morrow expressed disagreement with Dr. DiBenedetto's findings. He related that "as a direct result of the motor vehicular accident this preexisting condition was aggravated into an intractable clinical syndrome which will now require surgery rather than simple conservative measure to properly treat."

In a report dated June 1, 2000, Dr. Douglas C. Nathanson, a Board-certified neurologist, described the circumstances surrounding the motor vehicle accident and its effect on appellant. He opined that appellant's radiculopathy was "directly related to the motor vehicle accident of November 19, 1997."

By letter dated September 19, 2000, appellant requested reconsideration of her claim. In a decision dated October 19, 2000, the Office denied modification of its July 6, 1999 decision.

The Board finds that the case is not in posture for decision.

Section 8103 of the Federal Employees' Compensation Act³ provides that the Office shall provide a claimant with the services, appliances, and supplies prescribed or recommended by a qualified physician which are likely to cure, give relief, reduce the degree or period of disability, or aid in lessening the amount of monthly compensation. In interpreting section 8103, the Board has recognized that the Office has broad discretion in approving services provided under the Act. The Office has the general objective of ensuring that an employee recovers from 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. The only limitation on the Office's authority is that of reasonableness.⁴

When the Office secures an opinion from an impartial medical specialist for the purpose of resolving a conflict in the medical evidence and the opinion from the specialist requires clarification or elaboration, the Office has the responsibility to secure a supplemental report from the specialist for the purpose of correcting a defect in the original report. When the impartial medical specialist's statement of clarification or elaboration is not forthcoming or if the specialist is unable to clarify or elaborate on the original report or if the specialist's supplemental report is also vague, speculative or lacks rationale, the Office must submit the case record together with a detailed statement of accepted facts to a second impartial specialist for a rationalized medical opinion on the issue in question.⁵ Unless this procedure is carried out by the Office, the intent of section 8123(a) of the Act will be circumvented when the impartial medical specialist's medical report is insufficient to resolve the conflict of medical evidence.⁶

The Office found that the weight of the medical evidence rested with the opinion of Dr. DiBenedetto, the impartial medical specialist selected to resolve the conflict between appellant's attending physician, Dr. Morrow, and the Office referral physician, Dr. Feinstein.

³ 5 U.S.C. §§ 8101-8193.

⁴ *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

⁵ *See Nathan L. Harrell*, 41 ECAB 402 (1990).

⁶ *Harold Travis*, 30 ECAB 1071 (1979).

The Board finds, however, that Dr. DiBenedetto's opinion is of limited probative value because it lacks sufficient rationale to establish that appellant does not need a cervical fusion due to her accepted employment injury. Dr. DiBenedetto based his opinion that appellant needed surgery due to a preexisting condition rather than her employment injury "on the evidence that [he] found in the records provided." However, he did not specify what information in the record supported his conclusion other than to note that appellant had previously undergone back surgery for a degenerative condition. Dr. DiBenedetto's conclusion is too brief and unexplained to resolve the outstanding issue of appellant's need for surgery. It is well established that medical conclusions unsupported by rationale are of little probative value.⁷ Additionally, Dr. DiBenedetto did not address the issue of whether appellant's motor vehicle accident aggravated her preexisting cervical condition such that she required surgery. Consequently, the case is remanded for the Office to obtain a supplemental report from Dr. DiBenedetto and, following such further development of the evidence as may be necessary, for an appropriate final decision.

The decision of the Office of Workers' Compensation Programs dated October 19, 2000 is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Dated, Washington, DC
August 6, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Member

⁷ *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).