

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MARTHA J. DEPPE and U.S. POSTAL SERVICE,  
POST OFFICE, State College, PA

*Docket No. 00-1638; Submitted on the Record;*  
*Issued March 13, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
PRISCILLA ANNE SCHWAB

The issue is whether appellant's August 11, 1998 cervical spine surgery was causally related to her accepted March 23, 1998 work-related injury.

On March 23, 1998 appellant, then a 51-year-old letter carrier, filed an occupational disease claim alleging that, while picking up a container of mail to place in another hamper, she felt a pain in the left side of her neck, left shoulder and arm.

A magnetic resonance imaging (MRI) of the cervical spine dated March 27, 1998 was interpreted by Dr. Franklin B. Olney, a Board-certified diagnostic radiologist, as showing central posterior herniation C3-4 disc, right posterior herniation C6-5 disc and C6-7 disc degeneration.

Appellant commenced treatment with Dr. Stephen K. Powers, a Board-certified neurosurgeon, on April 1, 1998. In a report of that date, Dr. Powers noted that he suspected appellant may have had an acute radiculopathy initiated by bending over at work to pick up an object weighting approximately 35 pounds, with closure of the left C6 neural foramen and some root compression. Dr. Powers did not see evidence of a recent disc herniation and noted that she had "primarily uncovertebral joint changes noted at C5-6 and C6-7, as well as C4-5, that are chronic in nature." He advised appellant to stay off work for two weeks.

On July 1, 1998 Dr. Powers examined appellant and evaluated an MRI that was conducted that day. He noted some degree of cord compression at C5-6 and elements of radiculopathy involving the right C6 root. Dr. Powers recommended that appellant consider anterior cervical discectomy with fusion at C5-6.

On July 14, 1998 the Office of Workers' Compensation Programs accepted appellant's claim for cervical strain and radiculopathy.

By letter dated July 6, 1998, appellant requested that the Office approve surgery on her cervical spine, and submitted a July 6, 1998 report from Dr. Powers, who stated that appellant would require surgery for treatment of neck and bilateral arm pain. He noted:

"[Appellant's] most recent MRI scan done on July 1, 1998 demonstrates evidence of angulation centered at C5-6 with anterior collapse of the disc space and slight lipping of the C5 on the C6 body. Her exam[ination] suggests that she has some degree of cord compression at C5-6 and elements of radiculopathy involving the right C6 root.

"The surgery for treatment of this condition will be an anterior cervical discectomy with fusion at C5-6."

Dr. Powers anticipated that appellant would not be able to work for four to six weeks after her surgery. On August 11, 1998 Dr. Powers performed an anterior C5-6 microdiscectomy and interbody fusion with autologous iliac crest bone graft (left iliac crest) on appellant. In a report dated September 3, 1998, he stated: "[B]ased on the information that I have been provided, [appellant's] injury and subsequent surgery are due to a work-related injury."

Meanwhile, on July 13, 1998 an Office medical adviser opined that, while appellant's radiculopathy was related to appellant's employment, she had not established that the herniated nucleous pulposus was the cause of her symptoms. He noted that transient radiculopathy can be caused by a muscle strain and the swelling which accompanies a strain can press on the nerve root and give rise to pain. However, he stated that, when the swelling subsides, the pain does also. The medical adviser noted that appellant had underlying degenerative joint disease, which predisposed her to being injured.

In response to the Office's request, Dr. Seymour Schomchik, a Board-certified orthopedic surgeon, reviewed appellant's records and stated in a July 24, 1998 report:

"There are several points which need to be addressed in this case. [Appellant] was apparently experienced. The fact that she strained the left side of her neck and had pain in her left arm, in all probability, was secondary to improper lifting of the mail tray, which, incidentally, was not excessively heavy. If one assumes that the soft tissues on the left side of the neck were strained as a result of that lifting incident, then that strain would be resolved within several days. The MRI study of March 27, 1998 was quite revealing. The changes seen on that study show that there was significant degenerative disc disease at two levels, as well as right C6 neural foraminal narrowing and arthrosis of the facet joint that level. The small herniations seen at C3-4 and C-6 were central and to the right side and could in no way be responsible for the radicular symptoms, of which she complained, on the left. The degenerative changes described have taken years to develop and, during the course of time, I would have expected [appellant] to have clinical signs and symptoms related to the cervical spine. The MRI study dated July 1, 1998, as described by Dr. Powers, demonstrates an anterior collapse of the disc at C5-6, which is the result of an ongoing degenerative process, which began years before the incident of March 23, 1998.

"It is my opinion that the facts are clear that the proposed surgery of anterior cervical discectomy and fusion at C5-6 is inappropriate for the effects of the work injury of March 23, 1998."

On August 26, 1998 appellant was referred to Dr. Herbert J. Kunkle, Jr., a Board-certified orthopedic surgeon, for a second opinion. In a report dated September 25, 1998, Dr. Kunkle noted:

"[Appellant] appears to have not suffered any residuals of the injury. I would classify the injury as a cervical sprain, especially because it was more on the left side. It appears th[at] Dr. Powers proposed surgery that would also address the degenerative findings of her neck along with the foraminal stenosis and the bulging and right herniation at C5-6. I feel that the bulk of [appellant's] problems are of a degenerative nature. If, indeed, her most specific complaint was right sided, C6 radicular pain, then a certain component of this is from the dis[c] herniation. Whether this occurred at work or prior to work could never be determined as there is no MRI prior to the injury. However, according to the data given me, most of [appellant's] initial complaints were left sided and she did not have a herniation on this side. [She] did not describe any preexisting problems or neck or shoulder complaints. [Appellant] has already had her surgery; it appears that [she] is doing well at this point in time, though she has not returned to work.

"Again, my thoughts are that [appellant] has underlying degenerative dis[c] disease and degenerative arthritis of the lower cervical spine. It is unfortunate that the work relatedness of this was not addressed prior to the proposed surgery. [She] seems sincere and says that she felt well prior to this injury on March 23, 1998 and pretty bad after the injury; however, her symptoms could be from a cervical strain which is most consistent with her initial complaints, the exam[ination] data given to me and MRI findings."

In a decision dated March 3, 1999, the Office denied appellant's request that the claim be expanded to include the condition of herniated disc at C5-6, based on the fact that the weight of the medical evidence established that the claimed condition was not related to the work injury and that, therefore, the surgery performed on August 11, 1998 would not be covered.

By letter dated March 24, 1999, appellant requested an oral hearing. At the hearing held on September 28 1999, she testified that she had been employed with the employing establishment since 1994 and described her duties as a letter carrier. Appellant further described the injury of March 23, 1998 and her treatment for that injury. She stated that she returned to work on November 1, 1998.

At the hearing, appellant submitted a packet of information, which included a brief by appellant's attorney and preinjury medical records. Appellant also submitted an August 26, 1998 report from Dr. Powers, who stated:

"[I]t [i]s my belief that the patient, although she may have had an underlying degenerative condition in her neck, this was certainly aggravated by the type of work that she performs and in looking back over my original note to you, it is clear that she injured herself on March 23, 1998, while working for the postal service and picking up a 35 to 45-pound basket off the floor. From the information presented to me, this is clearly a work-related injury and the patient should be covered by Work[er]s' Compensation."

In a report dated September 23, 1998, Dr. Powers noted that appellant was doing much better. In a report dated October 21, 1998, he stated that she could work eight hours a day with certain restrictions and released her from his care.

In a decision dated March 2, 2000, the hearing representative found that appellant had not submitted any detailed rationalized medical evidence to support that the claimed herniated disc C5-6 and resultant surgery were related to the accepted employment-related injury.

The Board finds that appellant's cervical spine surgery on August 11, 1998 was not causally related to her employment injuries.

Section 8103(a) of the Federal Employees' Compensation Act 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 the Office 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>1</sup> 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.

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.<sup>2</sup>

In this case, the well-rationalized medical evidence establishes that appellant's surgery of August 11, 1998 was not causally related to her accepted work-related injury of March 23, 1998. In his opinion of July 24, 1998, Dr. Schomchik, after a review of appellant's medical records, determined that the proposed surgery of anterior cervical discectomy and fusion at C5-6 was inappropriate for the effects of the work injury on March 23, 1998. He reasoned that if appellant's soft tissues on the left side of the neck were strained as a result of the work-related

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<sup>1</sup> 5 U.S.C. § 8103(a).

<sup>2</sup> *Francis H. Smith*, 46 ECAB 392 (1995); *Daniel J. Perea*, 42 ECAB 214 (1990).

lifting incident, then the strain would have resolved within several days. Dr. Schomchik noted that the MRI of March 27, 1998 revealed that the small herniations at C3-4 and C6-7 were central and to the right side and that there was no way they could be responsible for radicular symptoms, which appellant complained affected her left side. He noted that the MRI study of July 1, 1998, as described by Dr. Powers, demonstrated an anterior collapse of the disc at C5-6, which was the result of an ongoing degenerative process which began years before the incident of March 23, 1998.

Dr. Kunkle doubted that appellant's work-related injury resulted in the surgery. He noted that most of her initial complaints were left sided and that she did not have a disc herniation on this side. Dr. Kunkle believed that appellant had underlying degenerative disc disease and degenerative arthritis of the lower cervical spine.

The only evidence appellant submitted to indicate the work relatedness of the surgery were the reports by her treating surgeon, Dr. Powers. In his September 3, 1998 report, he indicated that appellant's surgery was due to the work-related injury. Furthermore, in his report dated August 26, 1998, Dr. Powers stated that, although appellant may have had an underlying degenerative condition in her neck, it was certainly aggravated by the type of work she performed and that it was clear that she injured herself on March 23, 1998, while working for the employing establishment and picking up a 35 to 45-pound basket off the floor.

However, nowhere in the record does Dr. Powers explain how he reached this conclusion. The medical evidence required to establish causal relationship is, generally, rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.<sup>3</sup> Dr. Powers' opinions that the surgery was necessary because of the work-related injury do not provide such rationale. Accordingly, the Board finds that the Office properly determined that the weight of the medical evidence established that appellant's surgery of August 11, 1998 was not related to her work-related injury of March 23, 1998.

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<sup>3</sup> *Charles E. Burke*, 47 ECAB 185, 189-90 (1995).

The March 2, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
March 13, 2001

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

Priscilla Anne Schwab  
Alternate Member