

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DOUGLAS J. DEVER and U.S. POSTAL SERVICE,
POST OFFICE, Cincinnati, OH

*Docket No. 02-1437; Submitted on the Record;
Issued October 1, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion when refusing to authorize appellant's request for surgery.

On September 18, 2000 appellant, a 40-year-old letter carrier, sustained a lumbosacral strain while in the performance of duty. On August 3, 2001 appellant's physician, Dr. Michael L. Swank, a Board-certified orthopedic surgeon, recommended that appellant undergo posterior lumbar interbody fusion with instrumentation. After further development of the record, the Office issued a March 13, 2002 decision denying authorization of the recommended surgical procedure. The Office based its decision on the opinion of Dr. Alan R. Kohlhass, a Board-certified orthopedic surgeon and impartial medical examiner, who found that appellant's lumbar strain had resolved and surgery was not indicated.¹

The Board finds that the Office properly exercised its discretion in refusing to authorize appellant's request for surgery.

Section 8103(a) of the Federal Employees' Compensation Act provides for the furnishing of "services, appliances, and supplies prescribed or recommended by a qualified physician" which the Office, under authority delegated by the Secretary, "considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of monthly

¹ The Office referred appellant to Dr. Kohlhass for examination in order to resolve a conflict in the medical opinion evidence between Dr. Swank and Dr. Richard T. Sheridan, a Board-certified orthopedic surgeon and an Office referral physician. In a report dated October 31, 2001, Dr. Sheridan indicated that the diagnosis referable to the September 18, 2000 employment injury was "resolved acute low back strain." He further noted that appellant had no concrete objective findings on physical examination. With respect to appellant's herniated disc at L5-S1, Dr. Sheridan explained that, based on the mechanism of injury, it was not likely that the herniated disc was caused, aggravated or accelerated by the September 18, 2000 employment injury. He concluded that as appellant had no evidence of radiculopathy in the lower extremities, he had no surgical indications.

compensation.”² In interpreting section 8103(a), the Board has recognized that the Office has broad discretion in approving services provided under the Act to ensure that an employee recovers from his or her injury to the fullest extent possible in the shortest amount of time.³ The Office has administrative discretion in choosing the means to achieve this goal, and the only limitation on the Office’s authority is that of reasonableness.⁴

While the Office is obligated to pay for treatment of employment-related conditions, appellant has the burden of establishing that the expenditure is incurred for treatment of the effects of an employment-related injury or condition.⁵

In the instant case, the Office determined that a conflict of medical opinion existed based on the opinions of Drs. Swank and Sheridan.⁶ Therefore, the Office properly referred appellant to an impartial medical examiner who concluded that any type of surgery was not indicated because appellant had a normal physical examination without neurological changes.⁷ The Board finds that the Office properly relied on the impartial medical examiner’s opinion as a basis for denying authorization for surgery.⁸ Dr. Kohlhass’ opinion is sufficiently well rationalized and based upon a proper factual background. He not only examined appellant, but also reviewed appellant’s medical records. Dr. Kohlhass also reported accurate medical and employment histories. Accordingly, the Office properly accorded determinative weight to Dr. Kohlhass’ findings.

² 5 U.S.C. § 8103(a).

³ *Dale E. Jones*, 48 ECAB 648, 649 (1997).

⁴ *Daniel J. Perea*, 42 ECAB 214, 221 (1990) (holding that abuse of discretion by the Office is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or administrative actions which are contrary to both logic and probable deductions from established facts).

⁵ *Debra S. King*, 44 ECAB 203, 209 (1992).

⁶ *See supra* note 1.

⁷ The Act provides that if there is disagreement between the physician making the examination for the Office and the employee’s physician, the Office shall appoint a third physician who shall make an examination. 5 U.S.C. § 8123(a); *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

⁸ In cases where the Office has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight. *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

The March 13, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
October 1, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

A. Peter Kanjorski
Alternate Member