

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSEPH FEDDEN, JR. and DEPARTMENT OF THE NAVY,
NAVAL AIR STATION, Meridian, MS

*Docket No. 03-847; Submitted on the Record;
Issued August 5, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
DAVID S. GERSON

The issue is whether the Office of Workers' Compensation Programs properly denied authorization for a lumbar laminectomy.

On May 28, 2002 appellant, then a 60-year-old ground electronics technician, sustained a back injury while moving machinery in the performance of duty. Appellant stopped work on June 3, 2002 and returned to light duty on June 10, 2002. The Office accepted appellant's claim for lumbar strain.

A June 5, 2002 magnetic resonance imaging (MRI) scan of the lumbar spine revealed moderate lower lumbar degenerative disc and degenerative facet disease with resultant canal and foraminal distortion at L3-4 and L4-5. On July 8, 2002 appellant's treating physician, Dr. David S. Malloy, a Board-certified neurosurgeon, diagnosed lumbar spinal stenosis at L3-4 and L4-5 and also noted evidence of left L4-5 radiculopathy. At the time, Dr. Malloy recommended physical therapy to strengthen appellant's left lower extremity. He further noted that, if there were no improvement, appellant might have to consider surgical intervention. Appellant underwent several weeks of physical therapy and, in his September 6, 2002 treatment notes, Dr. Malloy noted that appellant had improved with respect to pain in his lower extremity, but continued to complain of significant weakness particularly in hip flexion. He diagnosed lumbar radiculopathy secondary to lumbar spinal stenosis and noted that given the persistence of appellant's motor weakness, it was reasonable to consider surgical intervention; specifically a lumbar laminectomy at L3-4 and L4-5. On September 10, 2002 Dr. Malloy requested authorization to perform a lumbar laminectomy, scheduled for September 18, 2002.

The Office medical adviser reviewed the claim file and, in a report dated September 13, 2002, recommended that the Office deny Dr. Malloy's request for a lumbar laminectomy. The Office medical adviser explained that the accepted condition was for a strain only, which should subside in several weeks and surgery was not indicated for a strain.

The Office subsequently referred appellant to Dr. H. Leslie Fowler, a Board-certified orthopedic surgeon, for a second opinion, who examined appellant on November 5, 2002, and in a similarly dated report he noted that appellant's chief complaint was weakness in the left leg. He also reported that appellant's lower extremity examination was within normal limits with the exception of weakness to the quadriceps musculature on the left. Additionally, x-rays obtained that day revealed degenerative changes in the lumbar spine. Dr. Fowler diagnosed lumbar radiculopathy with resultant quadriceps weakness. He stated that, while the proposed lumbar laminectomy was medically necessary, its necessity was not a direct result of the May 28, 2002 work-related injury. Dr. Fowler explained that the recent x-rays and prior MRI scan indicated a spinal stenosis as the underlying cause of the problem and this condition could not have developed over the short period since appellant's May 28, 2002 employment injury. He concluded that appellant obviously has a problem that needs to be addressed, but the etiology was the chronic degeneration present in appellant's lumbar spine creating a spinal stenosis.

The Office forwarded a copy of Dr. Fowler's November 5, 2002 report to Dr. Malloy for his comments. Dr. Malloy did not respond within the allotted timeframe.

By decision dated January 31, 2003, the Office denied authorization for a lumbar laminectomy.

The Board finds that the Office properly denied authorization for a lumbar laminectomy.

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.¹ In order to be entitled to reimbursement for medical expenses, a claimant must establish that the expenditures were incurred for treatment of the effects of an employment-related injury. Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.² Therefore, in order to prove that the surgical procedure is warranted, appellant must submit evidence to show that the procedure was for a condition causally related to the employment injury and that the surgery was medically warranted. Both of these criteria must be met in order for the Office to authorize payment.³

In this case, the Office accepted appellant's claim for lumbar strain. However, Dr. Malloy, appellant's treating physician, recommended a lumbar laminectomy based on his diagnosis of lumbar radiculopathy secondary to lumbar spinal stenosis; conditions which the Office had not accepted as employment related. Furthermore, Dr. Malloy failed to provide a rationalized medical opinion establishing a causal relationship between appellant's work-related injury and the need for surgical intervention.

Dr. Fowler, the Office referral physician, provided a rationalized medical opinion that established that appellant's need for a lumbar laminectomy was not causally related to his May 28, 2002 employment injury. In his November 5, 2002 report, Dr. Fowler stated that,

¹ *Debra S. King*, 44 ECAB 203, 209 (1992).

² *Id.*; *Bertha L. Arnold*, 38 ECAB 282 (1986).

³ *Cathy B. Millin*, 51 ECAB 331, 333 (2000).

although appellant's condition warranted a lumbar laminectomy, it was not based on his May 28, 2002 employment-related lumbar strain. He explained that the etiology of appellant's condition was the chronic degeneration present in his lumbar spine creating a spinal stenosis.

Appellant failed to support the request for authorization for a lumbar laminectomy with a rationalized medical opinion establishing a causal relationship between the accepted condition of lumbar strain and the need for the surgery.

The January 31, 2003 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
August 5, 2003

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member