

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSEPH D. DILLARD and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Youngstown, OH

*Docket No. 03-1479; Submitted on the Record;
Issued August 11, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs properly denied authorization for back surgery; and (2) whether the Office properly terminated appellant's entitlement to all further medical treatment for his accepted conditions.

This is the second appeal in this case.¹ On the first appeal, the Board reviewed the Office's July 27, 2001 decision, by which the Office denied appellant's claim for an April 11, 2001 recurrence of disability, and further denied appellant's request for back surgery, stating that medical treatment at the Office's expense was not authorized and that all prior authorization for medical treatment was terminated.² By decision dated November 7, 2002, the Board affirmed the Office's denial of appellant's claim for an April 11, 2001 recurrence of disability. With regard to appellant's request for authorization for back surgery, however, the Board found that appellant had submitted evidence sufficient to establish a *prima facie* case and to require further development of the evidence. Specifically, the Board noted that appellant had submitted a report dated October 19, 2000, from Dr. Joseph D. Cordova, his treating Board-certified family practitioner, who noted that, based on appellant's complaints of radicular pain and magnetic resonance imaging (MRI) scan findings,³ appellant might be a candidate for surgery and recommended that he be evaluated by Dr. Morris Pulliam, a Board-certified neurosurgeon. In a report dated February 15, 2001, Dr. Pulliam noted that appellant's work duties involved a lot of lifting, twisting and bending, and that he had a history of having sustained multiple employment-

¹ Docket No. 02-612 (issued November 7, 2002).

² On February 8, 1999 appellant, then a 48-year-old mail processor, filed a claim for traumatic injury, Form CA-1, alleging that on January 26, 1999 he sustained a back injury while pulling mail out of a bin. The Office accepted appellant's claim for lumbar sprain. Appellant subsequently filed additional claims for back injuries sustained on June 25 and July 23, 1999 and July 10, 2000, which were accepted by the Office for aggravation of lumbar sprain, lumbar strain and lumbar strain and sprain, respectively.

³ The MRI scan performed on October 10, 2000, revealed moderate spondylostenosis at L4-5 and diffuse annular disc bulge with encroachment of the left lateral recess more than the right.

related back injuries, with the initial injury occurring on January 26, 1999. Dr. Pulliam concluded that, based on the MRI scan results which showed significant degenerative disease at L4-5, with a narrowed bulging disc, surgical intervention was appropriate. In a follow-up report dated May 3, 2001, Dr. Pulliam explained the type of surgical procedure he recommended, but did not discuss the cause of appellant's condition.

The Board found that, while the medical reports of Drs. Cordova and Pulliam were not sufficiently well rationalized to establish appellant's claim for back surgery, as neither physician explained why the requested surgery was related to appellant's accepted back condition and not to the degenerative disease revealed on the MRI scan, Drs. Cordova and Pulliam's uncontradicted reports, taken together with appellant's history of four accepted back injuries, raised an inference of causal relationship between appellant's need for surgery and his accepted employment injuries and were sufficient to require further development of the case record by the Office.⁴ Consequently, the Board set aside that portion of the Office's July 27, 2001 decision denying appellant's request for authorization for back surgery and remanded the case to the Office for the preparation of a statement of accepted facts, and referral of appellant for a second opinion evaluation on the issue of whether the requested surgery, or the need for any additional medical treatment, is causally related, either directly or by way of aggravation, acceleration or precipitation, to the combined effect of appellant's four accepted back conditions. The complete facts of this case are set forth in the Board's November 7, 2002 decision and are herein incorporated by reference.

On remand, by letter dated January 15, 2003, the Office referred appellant, together with the case record, a list of questions to be resolved and a statement of accepted facts to Dr. Oscar F. Sterle, a Board-certified orthopedic surgeon, to determine whether the requested back surgery, or the need for any additional medical treatment, is causally related, either directly or by way of aggravation, acceleration or precipitation, to the combined effect of appellant's four accepted back conditions.

In his February 13, 2003 medical report, Dr. Sterle provided a history of appellant's employment and medical conditions, reviewed the relevant medical evidence of record and provided his own findings on physical examination. Dr. Sterle diagnosed lumbar spinal and disc degeneration, with no lumbar radiculopathy. Based on his findings and his review of the record, Dr. Sterle stated:

"It is my medical opinion, considering the mechanism of injury that the combined effects of the four accepted back conditions did not accelerate, aggravate or precipitate the claimant's preexisting condition of lumbar spinal disc degeneration (arthritis of the lumbar spine). This condition is preexisting, nonwork related and degenerative in nature. It is my medical opinion that the recommended stealth guided lumbar laminectomy L4-5 with fusion, screws and harvested iliac crest graft is not causally related to the combined effect of the claimant's four accepted back conditions by causation, aggravation, acceleration or precipitation. The condition of lumbar strain and sprain is considered permanently resolved and the

⁴ See *John J. Carlone*, 41 ECAB 354 (1989).

surgery recommended is for the nontraumatic, nonwork-related preexisting degenerative condition of the lumbar spine.”

Dr. Sterle concluded that appellant’s soft tissue, self-limiting condition of sprain and strain had resolved, that appellant’s “present symptoms and objective findings relate to the nonwork-related condition of arthritis of the lumbar spine” and that he had “no recommendation for continued treatment of the allowed condition of lumbar sprain and strain.”

By letter dated March 4, 2003, the Office forwarded a copy of Dr. Sterle’s report to appellant’s current treating internist, Dr. Samir Saxena. The Office summarized Dr. Sterle’s findings and asked Dr. Saxena whether he agreed with Dr. Sterle’s conclusions, and, if not, to provide a detailed supplemental report containing his medical opinion, supported by physical objective reasoning, as to why he disagreed with Dr. Sterle. Dr. Saxena did not respond.

In a decision dated April 7, 2003, the Office denied appellant’s request for authorization for back surgery, and further denied his entitlement to any additional medical treatment.

The Board finds that the Office properly denied appellant’s request for back 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 compensation.”⁵ 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.⁶ 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.⁷

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. To be entitled to reimbursement of medical expenses by the Office, appellant must establish a causal relationship between the expenditure and the treatment by submitting rationalized medical evidence supporting such a connection and demonstrating that the treatment is necessary and reasonable.⁸

The Board finds that, with respect to whether appellant has established the need for back surgery, the February 17, 2003 report of Dr. Sterle constitutes the weight of the medical

⁵ 5 U.S.C. § 8103(a).

⁶ *Dale E. Jones*, 48 ECAB 648, 649 (1997).

⁷ *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).

⁸ *Dale E. Jones*, *supra* note 6.

evidence, as his is the only report of record that adequately addresses both appellant's accepted conditions and his preexisting back condition, as demonstrated on MRI scan to exist. As noted above, neither Dr. Cordova nor Dr. Pulliam explained why the requested surgery was related to appellant's accepted back condition and not to his degenerative disease. Subsequently, appellant submitted an additional report from Dr. Cordova dated October 15, 2001, in which the physician reiterated that the proposed surgery was recommended to treat appellant's ongoing back problems at L4-5 which were the direct result of appellant's work-related injuries. As in his earlier reports, however, Dr. Cordova again failed to address appellant's preexisting degenerative back condition. In addition, appellant submitted treatment notes from his current treating physician, Dr. Saxena, dated December 18, 2002 and January 27, 2003. In these reports, Dr. Saxena lists his diagnosis as lumbar strain with herniated disc at L4-5 with radiculopathy, and states that appellant is awaiting authorization for surgery, but does not address appellant's preexisting degenerative back condition. In contrast, Dr. Sterle, who reviewed all of the medical evidence and provided results on examination, clearly explains that appellant's accepted soft tissue injuries were self-limiting and have since resolved, and that the recommended surgery is for the treatment of appellant's nontraumatic, nonwork-related preexisting degenerative condition of the lumbar spine. Dr. Sterle also clearly states that there is no relationship, either directly, or through acceleration, aggravation or precipitation between appellant's four accepted back conditions and his preexisting lumbar condition. The medical evidence required to establish a causal relationship, generally, is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical 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 the claimant.⁹ The Board finds that while Drs. Cordova, Pulliam and Saxena failed to address appellant's preexisting back condition and its relationship to his current need for surgery, Dr. Sterle provided a reasoned medical report that addresses the issues presented, including appellant's preexisting back condition, and provides an opinion that appellant does not require surgery, or any other medical treatment, for his accepted lumbar conditions as the conditions have resolved. Despite a request from the Office for a supplemental medical report from appellant's treating physician, Dr. Saxena, appellant has not submitted any current medical evidence providing a contrary opinion. Accordingly, the Board finds that appellant has not established that he requires back surgery for his accepted back conditions.

The Board further finds, however, that the Office did not meet its burden of proof to terminate appellant's entitlement to any additional medical treatment.

The April 7, 2003 Office decision clearly terminates all further entitlement to medical benefits.

⁹ *Claudio Vazquez*, 52 ECAB 496 (2001).

The Office's procedures state in pertinent part:

"b. *Notice Required to Terminate Medical Benefits.* The [Office] must provide notice before terminating any of the following:

- (1) *An authorization for treatment* (e.g., Form CA-16) which was issued 60 days or less in the past.
- (2) *The services of a specific physician....*
- (3) *A specific service* which the claimant has received, or expects to receive, on a fairly regular basis for 60 days or more, and for which the Office of Workers' Compensation Programs has paid....
- (4) *All medical treatment.* Such terminations are usually associated with disallowance of all compensation payments because the claimant is no longer disabled, or the disability is no longer related to the work injury.... The CE [claims examiner] should include specific reference to medical benefits in preparing the pretermination notice."

* * *

"d. *Notice Not Required to Terminate Medical Benefits.* Pretermination notice is not needed when:

- (1) *The physician indicates that further medical treatment* is not necessary or that treatment has ended.
- (2) *The [Office] denies payment for a particular charge on an exception basis....*"¹⁰

In the present case, the April 7, 2003 decision terminated all medical benefits, which requires that a pretermination notice be issued under Office procedures. Neither of the exceptions to the requirement for a pretermination notice is present here; the Board notes that none of the attending physicians indicated that all treatment for an employment-related condition had ended.

The Board accordingly finds that under the Office's procedures a pretermination notice should have been sent to appellant advising that the Office proposed to terminate all medical benefits and allowing appellant an opportunity to respond. Since there is no evidence that the Office provided notice and an opportunity to respond prior to termination of all medical benefits, the termination was improper in this case.¹¹

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.6(b)(4) (March 1997); *see also* FECA transmittal No. 93-38 (issued July 1993) (providing that the Office must issue a pretermination notice when it proposes to terminate medical benefits by formal decision).

¹¹ *Marsha K. Stanowski*, 48 ECAB 607 (1997).

The April 7, 2003 decision of the Office of Workers' Compensation Programs is affirmed with respect to denial of authorization for surgery and reversed with respect to termination of all medical benefits.

Dated, Washington, DC
August 11, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member