U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DOÑA M. MAHURIN and DEPARTMENT OF THE ARMY, FORT RICHARDSON FIRE DEPARTMENT, Anchorage, AK

Docket No. 01-1032; Submitted on the Record;
Issued January 6, 2003

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON, MICHAEL E. GROOM

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

On October 26, 1994 appellant, then a 47-year-old firefighter, sustained injuries to her groin and back while in the performance of duty. On January 4, 1995 the Office accepted appellant's claim for groin and lumbar strains. Prior to her 1994 employment injury, appellant had undergone a lumbar laminectomy in 1972 followed by a 1991 lumbar fusion with instrumentation. While neither surgical procedure was employment related, the Office later accepted that appellant's October 26, 1994 injury aggravated her 1991 lumbar fusion.[1]

On June 24, 1998 appellant underwent further surgery to remove the Steffee plates inserted in her spine in 1991. The Office had previously advised appellant by telephone that surgery for removal of the hardware would not be authorized. In a decision dated July 16, 1998, the Office formally denied authorization for the requested surgery.

Appellant subsequently requested reconsideration and in a decision dated November 16, 2000, the Office denied modification.

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"

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[1] This case was previously before the Board. In a decision dated April 9, 1996, the Office denied appellant's claimed recurrence of disability on or about December 23, 1995. In a subsequent decision dated May 7, 1996, the Office denied appellant's request for reconsideration. On appeal, the Board found that appellant failed to establish that she sustained a recurrence of disability causally related to her October 26, 1994 employment injury. The Board affirmed both Office decisions on September 25, 1998. Docket No. 96-2551.

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."[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 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.[6] 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.[7]

Appellant reportedly experienced a worsening of her back and leg pain in October 1997 when she fell at home. In response to a December 1997 request by her treating physician, the Office authorized an evaluation and consultation by Dr. Jens R. Chapman, a Board-certified orthopedic surgeon. In a report dated February 11, 1998, Dr. Chapman offered for consideration "hardware removal of the TRSH system" in appellant's back. However, he emphasized that the elective surgical procedure would not guarantee any improvement. Dr. Chapman later performed the surgery on June 24, 1998.

In June 1998, the Office consulted with its medical adviser to ascertain whether the proposed surgery was both medically necessary and causally related to appellant's October 26, 1994 employment injury. In a report dated June 5, 1998, the Office medical adviser noted that Dr. Chapman's February 11, 1998 report stated that the hardware was intact, well placed and showed no signs of loosening. He also noted that the computerized tomography myelogram confirmed well placed hardware and solid fusion mass from L4 through S1. The Office medical adviser explained that he did not question Dr. Chapman's approach regarding the possibility of

[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 Debra S. King*, 44 ECAB 203 (1992); *Bertha L. Arnold*, 38 ECAB 282 (1986).

[7] *Cathy B. Millin*, 51 ECAB 331, 333 (2000).

reducing some of appellant's pain by hardware removal. However, the Office medical adviser stated that the available record did not support appellant's claim that her current problems were due to her injury of October 26, 1994 or that the accepted work-related condition was the cause of her alleged difficulty with previously placed surgical plates. He reiterated that he did not contest Dr. Chapman's suggestion that the plate removal may help, but noted that Dr. Chapman told appellant that pain relief was not guaranteed. The Office medical adviser did not find medical evidence that the plate removal was related to appellant's accepted injury and advised that the procedure should not be authorized as work related.

Dr. Chapman did not specifically attribute appellant's current condition and the elective hardware removal surgery to her October 26, 1994 employment injury. In fact, he noted in his February 11, 1998 report that he discussed with appellant the "difficulty in identifying justifiable causes for her current deterioration," and he emphasized repeatedly that there was no guarantee of any improvement if appellant elected to proceed with the surgery. Although Dr. Chapman was apparently perplexed over the cause of appellant's pain, the record is replete with references to the fact that appellant had a nonemployment-related fall in October 1997, which coincided with the onset of her worsening back and leg pain. His February 11, 1998 treatment records stated that appellant's October 1997 fall at home "exacerbated her symptoms so much that she has been in bed … for a good part of the intervening time since then." Appellant also reportedly fell in early February 1998 just prior to her examination by Dr. Chapman. Accordingly, the relevant medical evidence of record fails to establish a causal relationship between appellant's October 26, 1994 employment injury and the hardware removal surgery performed on June 24, 1998.

On reconsideration, appellant's counsel submitted a May 28, 1998 decision from the Social Security Administration (SSA) Office of Hearings and Appeals. The administrative law judge found, among other things, that appellant had been under a disability, as defined in the Social Security Act, 20 C.F.R. §§ 404.1520 and 416.920, "since October 24, 1994." According to the SSA, the onset of appellant's disability predated her accepted employment injury by two days.

The findings of other government agencies are not dispositive with regard to questions of disability arising under the Act. The administrative law judges decision that appellant was disabled under the Social Security Act is not determination of her disability under the Federal Employees' Compensation Act. Entitlement to benefits under SSA does not establish entitlement to benefits under the Federal Employees' Compensation Act. The statutes have different standards of medical proof on the question of disability.[8] Therefore, the May 28, 1998 decision of the administrative law judge is not determinative of appellant's disability under the Federal Employees' Compensation Act.

[8] *Daniel Deparini*, 44 ECAB 657 (1993).

The November 16, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
January 6, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member