U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ODEAN P. LAWRENCE and U.S. POSTAL SERVICE,
POST OFFICE, Tujunga, CA

Docket No. 03-77; Submitted on the Record;
Issued March 13, 2003

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether appellant has met his burden of proof in establishing that he was entitled to compensation for wage loss subsequent to May 14, 1999 causally related to his federal employment; and (2) whether appellant is entitled to reimbursement for surgery or a wheelchair.

This is the second time this case has been before the Board. To briefly summarize the facts, appellant, a 30-year-old letter carrier, injured his left groin while lifting a tray of mail on December 30, 1995; the Office of Workers' Compensation Programs accepted his claim for pyriformis muscle strain. The Office paid appellant compensation for appropriate periods and appellant ultimately returned to work on light duty. On January 9, 1998 appellant requested compensation for loss of wages for the period from December 11, 1997 through February 10, 1998. By decision dated December 18, 1998, the Office denied appellant's claim for a recurrence of disability, finding that he failed to submit medical evidence sufficient to establish that his current left groin condition was caused or aggravated by the December 30, 1995 employment injury. In a decision dated June 8, 2000, the Board affirmed the Office's December 18, 1998 decision.[1]

Appellant submitted reports dated December 6, 1999 and February 2, 2002 from Dr. John T. Harbaugh, a Board-certified family practitioner. In his December 6, 1999 report, he stated that appellant had a chronic condition, with little chance of improvement. Dr. Harbaugh outlined work restrictions of no lifting, no prolonged walking, sitting or standing, all of which should be done only for 10- to 15-minute intervals and stated that he should be allowed to sit, lie down or stand at will to relieve his left groin pain. He advised that appellant should not be required to stress his left leg, engage in repetitive lifting or engage in pushing or machine work. Finally, Dr. Harbaugh stated that appellant should be permitted to stay home one or two days a week to obtain pain relief and to take medication.

[1] Docket No. 99-998 (issued June 8, 2000).

In his February 2, 2001 report, Dr. Harbaugh noted that appellant underwent surgery to remove his left testicle on April 2, 1999, which the attending surgeon/urologist believed was causally related to his employment. He reiterated his prior work restrictions and added limitations on sitting for prolonged periods in a car, working a late shift and working for more than four hours a day. Dr. Harbaugh also recommended using a wheelchair at work to minimize the increased pain caused by walking.

On June 21, 2001 the Office scheduled appellant for a second opinion examination with Dr. Mark W. Vogel, Board-certified in urology.[2]

In a report dated July 5, 2001, Dr. Vogel reiterated the diagnosis of chronic left groin pain causally related to his employment injury, but advised that the nature of his work injury generally does not require the use of a wheelchair. He further stated that there was no medical reason why appellant could not return to some light-duty work given the nature of his injuries, that he was permanent and stationary and that there was no evidence of continued injuries from this type of industrial accident, which would require permanent disability. He opined that appellant was capable of performing some type of work, although he recommended appellant be restricted to desk-type work which did not require any lifting or physical labor.

In a report dated August 2, 2001, Dr. Vogel stated that there was no good urologic explanation for chronic groin pain and that if his injuries were limited to his left testis and the testis was removed, this should have resulted in complete resolution of his symptoms, yet he continued to complain of severe groin pain and inability to ambulate as a result. He reiterated that he could find no specific urologic cause for his groin pain and continued disability. Dr. Vogel, therefore, concluded that from a urologic standpoint appellant was permanent and stationary and without objective findings.

In a report dated August 16, 2001, Dr. Harbaugh noted continued complaints of chronic left groin pain, that appellant used a wheelchair, which helped his mobility by preventing pain aggravation. He opined:

> "I recommend a wheelchair to help [appellant] ambulate -- both to improve mobility and to avoid aggravation of his left groin pain. Since this chair is needed because of his work injury and only because of that injury, I think that the Department of Labor should properly cover the purchase of a wheelchair for [appellant]."

In reports dated October 10, 2001 and February 9, 2002, Dr. Harbaugh reiterated his previous findings and conclusions regarding appellant's work restrictions, the work relatedness of appellant's condition and whether appellant's need for a wheelchair was causally related to his employment.

[2] The record does not contain a claim form from appellant subsequent to the Board's June 8, 2000 decision. However, appellant wrote an April 26, 2001 letter to the Office advising it that he was currently renting a wheelchair and stating that "[h]opefully, I will able to own it. Thank you for your cooperation." The Office subsequently referred appellant for a second opinion examination on May 22, 2001 to determine whether his left testicle removal surgery was causally related and, therefore, medically warranted, after learning that he underwent the surgery without prior authorization.

In a February 8, 2002 report, Dr. Donald Motzkin, a Board-certified urologist, advised that appellant was neither fit for duty nor permanent and stationary. He advised that appellant might benefit from exploratory surgery in his left groin and recommended that he avoid semi-sedentary work unless he felt he could work without surgery, in which case he required retraining. In a report dated March 8, 2002, Dr. Motzkin advised that appellant did not want to undergo nerve entrapment surgery on his left groin, that he needed more effective pain management care and needed to be separated from his wheelchair with an appropriate physical conditioning program. He reiterated that appellant was only capable of semi-sedentary work.

By letter dated April 4, 2002, appellant requested reconsideration of the Office's December 18, 1998 decision, stating that his work-related left groin condition had worsened and that he now required the assistance of a wheelchair, for which he requested reimbursement.

By decision dated May 17, 2002, the Office denied appellant compensation for wage loss subsequent to May 14, 1999, six weeks after his surgery and relying on the opinions of Drs. Motzkin and Vogel that he was capable of performing light duty. The Office also denied him authorization for reimbursement of costs for a wheelchair.

By letter dated July 17, 2002, appellant requested an oral hearing.

In a decision dated August 29, 2002, the Office found that appellant's request for an oral hearing was untimely filed.

The Board finds that this case is not in posture for decision.

Section 8103 of the Federal Employees' Compensation Act[3] 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.[4] Interpreting this section of the Act, the Board has recognized that the Office has broad discretion in approving services provided under the Act. The Office has the general objective of ensuring that an employee recovers from his 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.[5]

The Board finds that there is a conflict in the medical evidence between the opinions of Dr. Harbaugh and Dr. Vogel regarding whether appellant's purchasing of a wheelchair is a reasonable and necessary medical expense and as to whether appellant continues to have any

[3] 5 U.S.C. §§ 8101-8193.

[4] 5 U.S.C. § 8103.

[5] *Daniel J. Perea*, 42 ECAB 214 (1990).

disability causally related to his work injury. As noted above, the only restriction on the Office's authority to authorize medical treatment is one of reasonableness.[6] In this case, the Office accepted that appellant sustained a left groin injury strain in the performance of duty and retroactively authorized surgery for removal of his left testicle. In several reports, Dr. Harbaugh recommended a wheelchair to help appellant ambulate and to relieve his left groin pain and he specifically opined in his August 16, 2001 report that appellant needed the wheelchair due to his employment-related left groin condition. Dr. Vogel reiterated the diagnosis of chronic left groin pain causally related to his employment injury, but stated that the nature of appellant's work injury generally did not require the use of a wheelchair, thereby, creating a conflict in the medical evidence.

When such conflicts in medical opinion arise, 5 U.S.C. § 8123(a) requires the Office to appoint a third or "referee" physician, also known as an "impartial medical examiner."[7] In order to resolve the conflict of medical opinion, the Office should, pursuant to 5 U.S.C. § 8123(a), refer appellant, the case record and a statement of accepted facts to an appropriate, impartial medical specialist or specialists for a reasoned opinion to resolve the aforementioned conflict. Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.[8] After such development as it deems necessary, the Office shall issue a *de novo* decision.

[6] *See Francis H. Smith*, 46 ECAB 392 (1995).

[7] Section 8123(a) of the Act provides in pertinent part: "[I]f there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination." *See Dallas E. Mopps*, 44 ECAB 454 (1993).

[8] *Aubrey Belnavis*, 37 ECAB 206 (1985).

The Office's decision of May 17, 2002 is, therefore, set aside and the case is remanded to the Office for a *de novo* decision in accordance with this opinion.

Dated, Washington, DC
March 13, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member