

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VIRGIL L. DAVIS and NATIONAL AERONAUTICS & SPACE
ADMINISTRATION, KENNEDY SPACE CENTER, FL

*Docket No. 03-180; Submitted on the Record;
Issued March 4, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for authorization for back surgery.

On August 19, 1996 appellant, then a 51-year-old electrical design engineer, filed a traumatic injury claim alleging that, on August 2, 1996, he felt a sharp pain in the middle of his back when he reached back to open a dead bolt while going out the door. He stated that the pain progressively worsened. The Office accepted appellant's claim for a lumbar strain.¹

The Office received a March 22, 2000 report from Dr. Alfred O. Bonati, an orthopedic surgeon and appellant's treating physician, indicating that appellant had been treated by his institute since April 1997 for back and leg pain from various work-related injuries since 1995. He stated that after being followed by several physicians with conservative treatment, appellant continued to experience pain in his lumbar spine radiating to his left foot. Dr. Bonati also stated that following extensive neurological testing of appellant's lower extremities, findings were made suggestive of left S1 radiculopathies and sural neuropathy. He opined that, after reviewing these reports, appellant's low back and foot pain resulted in symptoms with some disability. Dr. Bonati further opined that in all medical probability, these findings were causally related to the work injuries sustained by appellant. In addition, he opined that surgery was warranted and justified in appellant's treatment.

On August 15, 2002 an Office medical adviser reviewed appellant's medical records, including Dr. Bonati's report, and determined that the surgery was not warranted. The Office medical adviser stated that the last magnetic resonance imaging (MRI) scan, taken on

¹ The record reflects that appellant sustained an injury on April 6, 1989, accepted for a back contusion, on June 16, 1994 for a lumbar strain, on December 7, 1995 for a lumbar strain, on February 21, 1996 for a lumbar strain and on April 19, 1996 for a lumbar strain.

February 1, 2000, did not reveal evidence of nerve root compression and a neurosurgery consult did not confirm the need for surgery.²

By letter dated October 27, 2000, the Office referred appellant along with medical records, a statement of accepted facts and a list of specific questions to Dr. Jack L. Gresham, a Board-certified orthopedic surgeon, for a second opinion examination to determine whether the proposed back surgery was necessary due to appellant's August 2, 1996 employment injury.

Dr. Gresham submitted a November 8, 2002 report noting a history of multiple back injuries sustained by appellant and his complaint of low back pain, limited motion with pain radiating down the left side of his leg, and foot and numbness along the lateral aspect of the left leg and foot. Dr. Gresham indicated his findings on physical examination, a review of appellant's medical records and a diagnosis of chronic low back pain. He found negative straight leg raising bilaterally and no neurologic deficit. Dr. Gresham opined that appellant did not have a surgical lesion in his back. He stated that appellant had multiple minor injuries over the years and made much more of them than should be reasonably expected. Dr. Gresham stated that appellant's presenting a clinical picture that was more of hypochondriasis than one of a disabling back problem. He opined that appellant made a complete recovery from any injury that he might have sustained at work on August 2, 1996. In response to the Office's questions, Dr. Gresham indicated a diagnosis of resolved lumbar strain and stated that there were no objective findings that substantiated any continuing problem as a result of the August 2, 1996 lumbar strain. He further stated that he could not, with any degree of medical probability, relate the need for arthroscopic laser surgery to the back as a result of the August 2, 1996 employment injury. In an accompanying work capacity evaluation form, Dr. Gresham provided appellant's physical restrictions and noted that chronic low back pain might limit appellant's physical capacity, but not prohibit him from regular gainful employment.

By decision dated December 11, 2000, the Office denied appellant's request for back surgery based on Dr. Gresham's report.

The Office received an addendum letter dated December 27, 2000 from Dr. Gresham clarifying his previous statement regarding appellant's work injuries. He stated that appellant made a complete recovery from all of the accepted work injuries sustained from April 1989 to December 1999. Dr. Gresham further stated that the multiple lumbar strains that appellant sustained at work have all resolved, therefore, there were no current residuals from any work injury.

In letters dated January 4 and February 12, 2001, appellant requested an oral hearing before an Office representative. A hearing was held on June 25, 2001.

² The February 1, 2000 MRI scan by Dr. Gary M. Weiss, a Board-certified radiologist, revealed very small central herniated nucleus pulposus at L5-S1 without nerve root compression. The July 6, 1999 report of Dr. Fairuz Matuk, a Board-certified neurologist, indicated that, on the basis of his clinical evaluation and the MRI scan findings, appellant did not require any surgical intervention. He concluded that appellant should continue with physical therapy.

In a September 6, 2002 decision, the hearing representative affirmed the Office's decision.

The Board finds that the Office properly denied appellant's request for authorization for back surgery.

In this case, it is undisputed that appellant sustained an injury while in the performance of his federal duties on August 2, 1996. The Office accepted his claim for a lumbar strain. The record reflects other injuries to appellant's back, also accepted by the Office. Appellant then sought authorization for back surgery.

Section 8103(a) of the Federal Employees' Compensation Act 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 of the period of disability or aid in lessening the amount of the monthly compensation.³ 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 the broad administrative discretion in choosing the 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.⁴ 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.⁵ Thus, in order for surgery to be authorized, appellant must submit evidence to show that such surgery is 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.

Dr. Gresham, a Board-certified orthopedic surgeon, who provided a second opinion evaluation for the Office, advised that the requested surgery was not warranted. In his November 8, 2002 report, Dr. Gresham reviewed the history of appellant's back injuries, his findings on physical examination and a review of appellant's medical records and diagnostic tests. He diagnosed a resolved lumbar strain and stated that there were no objective findings that substantiated any continuing problem as a result of the August 2, 1996 employment injury. Dr. Gresham concluded that he could not relate the need for arthroscopic back surgery to the August 2, 1996 employment injury within any degree of medical probability. He reiterated his opinion that appellant's multiple lumbar strains had resolved and he had no current employment-

³ 5 U.S.C. § 8103(a).

⁴ *France H. Smith*, 46 ECAB 392 (1995); *Daniel J. Perea*, 42 ECAB 214 (1990).

⁵ *See Debra S. King*, 44 ECAB 203 (1992); *Bertha L. Arnold*, 38 ECAB 282 (1986).

related residuals requiring surgical intervention. Dr. Gresham provided a rationalized medical opinion that the proposed back surgery was not causally related to appellant's August 2, 1996 employment injury.

Dr. Bonati, an orthopedic surgeon and appellant's treating physician, indicated that his findings of S1 radiculopathies and sural neuropathy were causally related to appellant's employment injuries and recommended back surgery. However, Dr. Bonati did not explain how or why his findings and the proposed surgery were causally related to appellant's August 2, 1996 employment injury or the other injuries accepted in this case. Appellant, therefore, failed to establish that back surgery is medically warranted.

The September 6, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
March 4, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member