United States Department of Labor
Employees' Compensation Appeals Board

KENNETT O. COLLINS, Jr., Appellant	)	
and	)	**Docket No. 04-1018**
	)	**Issued: August 23, 2004**
DEPARTMENT OF THE NAVY, NAVAL SHIPYARD, Portsmouth, NH, Employer	)	

Appearances:
Bradley M. Lown, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On March 8, 2004 appellant filed an appeal of a merit decision of the Office of Workers' Compensation Programs dated February 9, 2004, denying payment for surgery performed on October 28, 1997. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether the Office properly refused to pay for appellant's surgery performed on October 28, 1997.

FACTUAL HISTORY

On December 12, 1985 appellant, then a 47-year-old former warehouse worker, who retired on disability on August 16, 1985, filed a claim for compensation for an occupational disease of anxiety and depression. The Office initially accepted appellant's claim for anxiety reaction by aggravation, but then rescinded its acceptance by decision dated April 22, 1987. The

Board, in an April 7, 1992 decision,[1] found the rescission improper. The Office obtained a second opinion on appellant's condition. On July 9, 1993 it accepted that he sustained a panic disorder and generalized anxiety disorder related to his employment.

By decision dated June 25, 1996, the Office terminated appellant's compensation on the basis that he had no continuing residuals causally related to his employment that prevented him from performing his date-of-injury position. An Office hearing representative, in a June 17, 1997 decision, found that the medical evidence was not sufficient to warrant termination of appellant's compensation. The Office reinstated his compensation for temporary total disability and authorized treatment for his psychiatric condition.

On October 5, 1998 appellant filed a claim for compensation for an occupational disease of irritable bowel syndrome, which he attributed to his untreated psychiatric condition. By decision dated March 22, 1999, the Office found that the medical evidence did not relate this condition to appellant's past employment or as a consequential injury. He requested a hearing and submitted a July 12, 1999 report from Dr. William K. Gilbert, a Board-certified family practitioner, stating that appellant had irritable bowel syndrome since 1984, that this condition was directly related to stress and that the irritable bowel syndrome was "directly related to appellant's anxiety and panic disorder which has been determined to be work related." Dr. Gilbert also noted that appellant had "an acute flare up of his irritable bowel syndrome in October 1997, which required hospitalization and further diagnostic tests. No other cause of his abdominal symptoms was found."

In an August 20, 1999 decision, an Office hearing representative found that Dr. Gilbert's report was sufficient to require further development of most of the medical evidence. The Office referred appellant to Dr. Michael B. Roberts, a Board-certified gastroenterologist, who concluded in a November 22, 1999 report, as follows:

> "I certainly do not believe that events in 1984 *initiated* an irritable bowel syndrome. On the other hand, the symptoms of irritable bowel syndrome are very much affected by anxiety, stress and panic symptoms. Therefore, I would argue that the exacerbations of his irritable bowel syndrome which occur on a daily basis are attributable to a psychiatric disorder, his panic disorder and generalized anxiety disorder and/or depression, which have already been accepted by your office as work related." (Emphasis in original.)

By letter dated December 29, 1999, the Office informed appellant that it accepted his occupational disease claim for aggravation of irritable bowel syndrome.

By letter dated June 28, 2000, appellant, through his attorney, requested payment of bills incurred beginning in October 1997, contending that these bills were for necessary and reasonable treatment for his accepted irritable bowel syndrome. Medical evidence describing the treatment from October 27 to November 4, 1997 was provided. Appellant was seen by Dr. Roger M. Epstein, a Board-certified gastroenterologist, in the emergency department on October 27, 1997 for recurrent abdominal pain and cramps which began the previous evening

[1] Docket No. 91-976 (issued April 7, 1992).

and lasted all night. A small bowel and abdominal series of x-rays showed no evidence of obstruction. Dr. Epstein admitted appellant because of a fever of 102 degrees and continuing discomfort. He questioned "whether this is an inflammatory process such as a mild recurring diverticulisis, appendicitis." Dr. Epstein referred appellant to Dr. Philip Anderson, a Board-certified surgeon, whose impression on October 27, 1997 was "Recurrent abdominal pain associated with nausea, leukocytosis, fever and diarrhea -- rule out inflammatory bowel disease, rule out chronic appendicitis -- doubt. Rule out intermittent diverticulitis. Rule out gastroenteritis." Dr. Anderson scheduled appellant for a diagnostic laparoscopy with appendectomy, which he performed the following day. During the surgery the appendix was found to be acutely inflamed; the postoperative diagnosis was acute appendicitis with peritonitis. In a discharge report dated November 4, 1997, Dr. Anderson noted that a computerized tomography (CT) scan of appellant's abdomen was performed on November 2, 1997 because his abdominal discomfort continued after the surgery. He stated that appellant had no discomfort the following day and was discharged on November 4, 1997.

In a June 30, 2000 report, Dr. Epstein stated that he first saw appellant in December 1996 with complaints of abdominal pain and rectal bleeding, that his symptoms at that time "were felt to be in part irritable bowel, but perhaps diverticulitis as well. It was virtually impossible to separate out the two." Dr. Epstein then noted that appellant underwent exploration by Dr. Anderson in October 1997 and stated: "While the appendicitis in and of itself cannot be directly related to the irritable bowel his long-standing symptoms of abdominal pain certainly complicated the diagnosis and definitely played some role in his evaluation and ultimate therapy."

On July 20, 2000 Dr. Paul V. Hellman, a Board-certified gastroenterologist, reviewed the medical evidence as an Office medical consultant. He concluded that appellant's October 27, 1997 hospitalization was the result of his diagnosed acute appendicitis with peritonitis and that these conditions bore no causal relationship to any accepted employment-related condition, including irritable bowel syndrome. Dr. Hellman explained that appellant's October 1997 hospitalization was for a febrile condition, that irritable bowel syndrome is not a febrile disease unlike the inflammatory or infectious conditions suspected by Drs. Epstein and Anderson and that surgery and intravenous antibiotics, the treatment provided during appellant's October 1997 hospitalization, were not treatments for irritable bowel syndrome, but were treatments for the other conditions suspected by the attending physicians. Dr. Hellman stated that irritable bowel syndrome was not a risk factor for developing acute appendicitis or peritonitis, although they shared certain of the same symptomatology, but that the retrocecal location of appellant's appendix may have masked some of the classic, localizing symptoms of appendicitis.

By decision dated August 15, 2000, the Office denied reimbursement for appellant's October 28, 1997 surgery.

Appellant requested a hearing, which was held on October 30, 2001. He testified that on the afternoon of October 25, 1997 into the next day he was sick, that he went to the emergency room on October 27, 1997 and had surgery the next day, which did not relieve his symptoms. Appellant's attorney conceded that the October 28, 1997 surgery was not necessitated by his irritable bowel syndrome, but contended that it was nonetheless covered under the Federal

Employees' Compensation Act as likely to cure or give relief. In a November 2, 2001 report, Dr. Epstein stated:

> "The diagnosis for irritable bowel is primarily one of exclusion and there is nothing that would actually be found surgically that would have definitively diagnosed irritable bowel. A negative laparoscopy however certainly would aid in the confirmation of irritable bowel. This is particularly useful where an individual has persistent symptoms, is refractory to typical therapy for irritable bowel and there is a consideration there may be other entities causing these symptoms.
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> "[Appellant] did not initially have the surgery that we had recommended in July of 1997, but he did ultimately present to the emergency room and have the surgery done on a more emergent basis. There is a significant overlap with his irritable bowel symptoms and the appendicitis that he was found to have at that time. Dr. Anderson did not know at the time that he took [appellant] to surgery whether he would find anything. It so happened that he did have appendicitis determined at that time. As I stated before, it is virtually impossible to assess and tease out which of his symptoms were appendicitis vs. irritable bowel, as certainly a portion of these symptoms are intricately interwoven as evidenced by his persistent symptoms since he has had the surgery. Of note, he continues to see me for this problem intermittently with the most recent visit being in October of this year.
>
> "So to answer the question as posed, the exploratory surgery was done at least partially to determine whether there was a specific etiology and if not that would have confirmed irritable bowel as the likely explanation. As it turns out [appellant] had appendicitis which was responsible for some of the symptoms and most likely the fever and white blood count at the time he presented at the hospital."

By decision dated January 8, 2002, an Office hearing representative found that Dr. Epstein's November 2, 2001 report was sufficient to require further development of the medical evidence.

The Office referred appellant and his medical records to Dr. Richard D. Antal, a Board-certified gastroenterologist, for a second opinion. In a report dated March 11, 2002. He stated:

> "In my opinion, the laparoscopic appendectomy with peritoneal lavage on October 28, 1997 was absolutely and incontrovertibly medically warranted, but was in no way caused by or was the result of the claimant's work-related irritable bowel syndrome. These are two separate medical problems neither of which caused the other. Because many different intra-abdominal medical problems can present with similar symptoms, there can sometimes be confusion initially as to what is the correct diagnosis and how it is best dealt with. In [appellant's] case, the confusion stemmed from the fact that [appellant] apparently declared that the symptoms and pain that he was experiencing on the hospitalization commencing

> on October 27, 1997 were the same as those symptoms he had experienced in the past and which had been identified as an irritable bowel syndrome. The medical records clearly indicate that, when he was operated on October 28, 1997, 'pus was encountered in the cul de sac and this was aspirated' and that 'the appendix was retrocecal in position and when visualized was found to be acutely inflamed.' The pathologist's report signed by Dr. Anne Moran indicates that [appellant's] appendix clearly showed changes consistent with acute appendicitis and periappendicitis.
>
> "Therefore, there is no question in my mind but this man actually did have appendicitis on that hospitalization and that the laparotomy and peritoneal were absolutely warranted. An irritable bowel syndrome is a neuromuscular disorder, wherein patients experience increased sensitivity to distention and dilation of the wall of the intestine and a resulting increase in the frequency and intensity of muscle spasms that occur in the intestine. Irritable bowel syndromes do not cause appendicitis. Appendicitis does not cause irritable bowel syndromes. These are two separate conditions and this man unfortunately had both."

By decision dated March 22, 2002, the Office found that the medical evidence did not establish that appellant's appendectomy on October 28, 1997 was causally related to his accepted aggravation of irritable bowel syndrome.

Appellant requested a hearing, which was held on October 29, 2003. His attorney contended that the issue was not whether the appendectomy was causally related to the irritable bowel syndrome, but rather, "whether it was reasonable to go ahead with the surgery on the basis of the symptoms" or "whether those symptoms reasonably indicated that it was related to the … accepted condition."

By decision dated February 9, 2004, an Office hearing representative found that the weight of the medical evidence, represented by the opinion of Dr. Antal, failed to establish that the exploratory surgery was related to any accepted condition.

LEGAL PRECEDENT

Section 8103(a) of the Act states in pertinent part: "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 Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of disability or aid in lessening the amount of the monthly compensation."[2] 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.[3]

[2] 5 U.S.C. § 8103(a).

[3] *Dale E. Jones*, 48 ECAB 648, 649 (1997).

ANALYSIS

The medical evidence does not establish that the October 28, 1997 surgery was, in the words of the Act, "likely to cure [or] give relief" from the accepted employment-related condition of irritable bowel syndrome. There is no medical evidence that indicates that surgery is a reasonable and accepted means of treating the employment-related condition of irritable bowel syndrome.[4] Dr. Hellman, a Board-certified gastroenterologist, pointed out that the surgery was not a treatment for this condition. Another Board-certified gastroenterologist, Dr. Antal, concluded that the October 28, 1997 surgery "was in no way caused by or was the result of the claimant's work-related irritable bowel syndrome," noting that these were separate conditions that did not cause each other.

The fact that the symptoms of appellant's appendicitis were similar in some respects to those of irritable bowel syndrome is not enough to obligate the Office to pay for the surgery for the appendicitis. The reports at the time of appellant's admission and surgery do not indicate that treatment was being rendered to rule out irritable bowel syndrome, but rather to rule out infectious or inflammatory conditions. Although Dr. Epstein, a Board-certified gastroenterologist, pointed out that the absence of another pathology shown during the surgery would aid in the confirmation of irritable bowel syndrome, this does not show that the surgery was performed because of the irritable bowel syndrome. As noted by Dr. Hellman, the surgery was performed for a febrile condition, shown by appellant's temperature of 102 degrees and irritable bowel syndrome is not a condition that causes a fever. Appellant's October 28, 1997 surgery was performed because of his abdominal pain and fever, not to determine whether he in fact had irritable bowel syndrome. The Office properly refused to pay for this surgery.

CONCLUSION

The Office properly refused to pay for appellant's October 28, 1997 surgery, for the reasons that it was not likely to cure or give relief from the accepted employment-related condition of irritable bowel syndrome and it was not a reasonable and accepted means of treating this condition.

[4] *See Melissie Powers*, 41 ECAB 541 (1990).

ORDER

IT IS HEREBY ORDERED THAT the February 9, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 23, 2004
Washington, DC

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member