

**United States Department of Labor
Employees' Compensation Appeals Board**

R.E., Appellant

and

**U.S. POSTAL SERVICE, JORDAN STATION,
Amarillo, TX, Employer**

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**Docket No. 06-1125
Issued: August 21, 2006**

Appearances:
R.E., pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On April 13, 2006 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated March 13, 2006, denying his request for surgery. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether the Office abused its discretion in refusing to authorize appellant's request for surgery.

FACTUAL HISTORY

On April 5, 2005 appellant, then a 49-year-old letter carrier, filed a traumatic injury claim alleging that he injured his lower back while pushing a gurney of parcels. On June 2, 2005 the Office accepted his claim for a lumbar sprain/strain and displaced lumbar disc.

In a July 18, 2005 report, Dr. J. John Stasikowski, an attending Board-certified orthopedic surgeon, provided findings on physical examination and diagnosed preexisting degenerative disc disease at L4-5 and L5-S1. He recommended surgery consisting of L4-S1 laminectomy, discectomy, fusions, internal fixation and cage insertion.

In a September 19, 2005 memorandum, Dr. Ronald H. Blum, a Board-certified orthopedic surgeon and an Office medical adviser, noted that appellant had preexisting lumbar degenerative disc disease and had undergone lumbar surgery nine years prior to his April 5, 2005 employment-related lumbar strain and displaced lumbar disc. He stated that the medical evidence did not support a need for the requested surgery.

The Office referred appellant, together with copies of medical records, a statement of accepted facts and a list of questions, to Dr. Don Leon Fong, a Board-certified orthopedic surgeon, for an evaluation of appellant's request for surgery. In a November 18, 2005 report, Dr. Fong provided a history of appellant's condition, findings on physical examination and diagnosed lumbosacral strain and degenerative disc disease at L4-5 and L4-S1 with spontaneous fusions. He noted that appellant had a history of back surgery in 1996 consisting of a laminectomy and discectomy at L4-5 and L5-S1. Dr. Fong stated:

“Based on [appellant's] [h]istory ..., [he] has not had conservative treatment for his injury. He is taking medications OTC [over-the-counter] and not per doctor's advice.... Limited duty as recommended has been proper.

“The past history reveals a preexisting condition in 1996 that had resolved and had no effect on this ... April 5, 2005 [employment injury.]

“Based on [appellant's] physical exam[ination,] which reveals minimal findings, he is not a candidate for fusion surgery. Based on the MRI [magnetic resonance imaging] lumbar, there is only evidence of prior surgery and the L4-5 and L5-S1 [disc levels] are undergoing spontaneous fusion. Therefore, he is not a candidate for fusion surgery.

“Future treatment should be conservative treatment for an injury approximately [six] months ago which has essentially had no treatment. A second attempt should be made to find an ortho[pedist] or neuro[logist] ... to take over his treatment.”

By decision dated March 13, 2006, the Office denied authorization of appellant's request for surgery.¹

¹ Appellant submitted additional evidence subsequent to the Office decision of March 13, 2006. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal.

LEGAL PRECEDENT

Section 8103(a) of the Federal Employees' Compensation Act provides for furnishing an injured employee "the services, appliances and supplies prescribed or recommended by a qualified physician" which the Office, under authority delegated by 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." 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.² 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.³ While the Office is obligated to pay for treatment of employment-related conditions, a claimant has the burden of establishing that the expenditure is incurred for treatment of the effects of an employment-related injury or condition.⁴ Proof of causal relationship must include supporting rationalized medical evidence.⁵ In order to prove that a surgical procedure is warranted, a claimant must submit evidence to show that the procedure was treatment of 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.⁶

ANALYSIS

The Office accepted appellant's claim for a lumbar sprain/strain and displaced lumbar disc.

Dr. Stasikowski diagnosed preexisting degenerative disc disease at L4-5 and L5-S1. He recommended surgery consisting of L4-S1 laminectomy, discectomy, fusions, internal fixation and cage insertion. However, degenerative disc disease is not an accepted condition in this case. Therefore, Dr. Stasikowski's medical report is not sufficient to warrant the Office's authorization for the requested surgery.

Dr. Blum noted that appellant had preexisting lumbar degenerative disc disease and had undergone lumbar surgery nine years prior to his April 5, 2005 employment-related lumbar strain and displaced lumbar disc. He stated that the medical evidence did not support a need for the requested surgical procedure.

² *Dona M. Mahurin*, 54 ECAB 309 (2003); *Dale E. Jones*, 48 ECAB 648 (1997).

³ *Daniel J. Perea*, 42 ECAB 214 (1990) (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).

⁴ *Id.*

⁵ *Debra S. King*, 44 ECAB 203 (1992).

⁶ *Dona M. Mahurin*, *supra* note 2; *Cathy B. Millin*, 51 ECAB 331 (2000).

Dr. Fong provided findings on physical examination and diagnosed lumbosacral strain and degenerative disc disease at L4-5 and L4-S1 with spontaneous fusions. He noted that appellant had a history of back surgery in 1996 consisting of a laminectomy and discectomy at L4-5 and L5-S1. Dr. Fong stated that the preexisting condition had resolved and had no effect on appellant's April 5, 2005 employment injury. He indicated that appellant had not yet received appropriate conservative treatment for his accepted conditions. Dr. Fong stated that there were minimal findings on physical examination and a lumbar MRI scan revealed only evidence of prior surgery and that the L4-5 and L5-S1 disc levels were undergoing spontaneous fusion. Based on the medical record, objective tests and his examination of appellant, Dr. Fong opined that appellant was not a candidate for the surgery he requested through Dr. Stasikowski.

The Board finds that the medical evidence of record does not establish that the Office abused its discretion in denying appellant's request for surgery for his accepted lumbar conditions.

CONCLUSION

The Board finds that the Office properly exercised its discretion in refusing to authorize appellant's request for surgery.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 13, 2006 is affirmed.

Issued: August 21, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board