

The MRI scan report provided diagnoses including an extrusion type of disc herniation at L5-S1, L4-5 canal stenosis, protrusion disc herniation at T11-12 and T8-9.

On January 10, 2005 appellant underwent a discogram of the lumbar spine.¹ In a report dated January 20, 2005, the attending orthopedic surgeon, Dr. Mark Grubb, reported degenerative changes at L4-5 and L5-S1. He discussed treatment options with appellant. Dr. Grubb stated that a discectomy or nucleoplasty at L4-5 and a discectomy at L5-S1 were discussed, and appellant would like to proceed with surgery.

The Office prepared a statement of accepted facts and referred the case for a second opinion examination to Dr. Prasanna Soni, a Board-certified orthopedic surgeon. One of the questions posed to Dr. Soni was whether the proposed surgery was medically necessary as a result of the September 10, 2004 injury. By report dated April 13, 2005, Dr. Soni stated in pertinent part that the proposed surgery “is not going to help [appellant] very much at all. He does not have radicular symptoms. I do not believe this surgery is medically necessary.” Dr. Soni explained that the physical findings and the MRI scan findings did not correlate, and the MRI scan findings predated the employment injury based on the limited amount of trauma in the employment injury compared to the magnitude of the MRI scan findings.

On the issue of whether the proposed surgery was medically necessary, the Office found a conflict in the medical evidence existed and the case was referred to Dr. Dennis Glazer, a Board-certified orthopedic surgeon, to resolve the conflict. In a report dated July 18, 2005, Dr. Glazer provided a history and results on examination. He stated in pertinent part:

“I could find no evidence that [appellant] has a radiculopathy. His MRI [scan] is not consistent with a disc herniation compressing neural tissue. There [are] several variations in the size and shape of his disc commonly referred to as a ‘bulge’ but no compression of neural tissue. Likewise his examination shows no reflex changes or motor weakness. There is no sensory deficit. It is for this reason that I do not believe that it is likely that any type of surgical procedure is going to help him.”

By decision dated August 9, 2005, the Office denied authorization for the proposed back surgery. The Office found that the weight of the evidence was represented by Dr. Glazer.

Appellant requested a hearing before an Office hearing representative, which was held on March 28, 2006. Prior to the hearing, appellant submitted medical evidence from Dr. Mark Coggins, an orthopedic surgeon. In a report dated December 9, 2005, Dr. Coggins diagnosed lumbar degenerative disc disease with L4-5 herniated disc and stated that it was “not unreasonable” to consider surgery for relief of buttock and leg pain.

In a decision dated June 12, 2006, the hearing representative affirmed the August 9, 2005 decision. The hearing representative found that the weight of the medical evidence on the issue was represented by Dr. Glazer.

¹ A discogram is an enhanced x-ray examination using fluoroscopy.

LEGAL PRECEDENT

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 or the period of disability, or aid in lessening the amount of the monthly compensation.² 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.³

In order for a surgery to be authorized, appellant must submit evidence to show that the requested procedure is for a condition causally related to the employment injury and that it is medically warranted. Both of these criteria must be met in order for the Office to authorize payment.⁴

It is well established that, when a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.⁵

ANALYSIS

The Office found a conflict in the evidence with respect to the need for back surgery.⁶ The attending orthopedic surgeon, Dr. Grubb, had proposed discectomy surgery. A second opinion physician, Dr. Soni, opined that the surgery was not medically necessary. The referee examiner, Dr. Glazer, provided a reasoned medical opinion that the surgery would not be beneficial. He found no compression of neural tissue, no radiculopathy, sensory deficit or motor weakness. Based on these findings, Dr. Glazer concluded that the proposed surgery was not likely to provide benefit to appellant.

² 5 U.S.C. § 8103(a).

³ *Francis H. Smith*, 46 ECAB 392 (1995); *Daniel J. Perea*, 42 ECAB 214 (1990).

⁴ *Cathy B. Mullin*, 51 ECAB 331 (2000).

⁵ *Harrison Combs, Jr.*, 45 ECAB 716, 727 (1994).

⁶ The Act provides that, if 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 the examination. 5 U.S.C. § 8123(a). The implementing regulation states that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an Office medical adviser, the Office shall appoint a third physician to make an examination. This is called a referee examination and the Office will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case. 20 C.F.R. § 10.321 (1999).

As noted above, a reasoned opinion from a referee examiner is entitled to special weight. Appellant argued at the hearing that Dr. Glazer did not accept a subluxation as required by the statement of accepted facts. Dr. Glazer stated only, with regard to his current diagnosis, that he found no evidence of subluxation. The Board finds that Dr. Glazer provided a reasoned opinion based on a complete background on the issue presented. His opinion is entitled to special weight and represents the weight of the evidence in this case. Dr. Coggins did not discuss the issue in detail and his report is not sufficient to overcome the weight of the referee examiner. The evidence does not establish that the proposed surgery was medically necessary for treatment of an employment-related condition. Accordingly, the Office did not abuse its discretion under 5 U.S.C. § 8103 in denying authorization for the proposed discectomy surgery.

CONCLUSION

The evidence of record did not establish that the proposed back surgery was medically necessary for the accepted work injuries and therefore the Office properly denied authorization.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 12, 2006 and August 9, 2005 are affirmed.

Issued: December 26, 2006
Washington, DC

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

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board