United States Department of Labor
Employees' Compensation Appeals Board

KARA L. NASCIMENTO, Appellant	)	
and	)	**Docket No. 06-173**
	)	**Issued: February 7, 2006**
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, Providence Airport, RI, Employer	)	

Appearances:
Kara L. Nascimento, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On December 31, 2005 appellant filed a timely appeal from a July 18, 2005 merit decision of the Office of Workers' Compensation Programs denying her request for authorization for surgery. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this decision.

ISSUE

The issue is whether the Office abused its discretion by denying appellant authorization for back surgery.

FACTUAL HISTORY

On August 26, 2003 appellant, a 27-year-old transportation security screener, filed a traumatic injury claim alleging that she injured her lower back on that date while putting a bag on a conveyer belt. The Office accepted the claim for acute left sacroiliac sprain. Appellant stopped work on August 26, 2003 and received wage-loss compensation. By letter dated November 17, 2004, appellant was placed on the periodic rolls for temporary total disability.

A December 21, 2004 magnetic resonance imaging (MRI) scan noted mild central L4-5 stenosis, narrowing neural foraminal, and "L5-S1 disc desiccation with rightward disc herniation with disc fragment distorting right ventral thecal sac with moderate to severe stenosis."

In a report dated December 22, 2004, Dr. Samuel H. Greenblatt, an examining Board-certified neurological surgeon, diagnosed "a rather obvious disc herniation centrally and to the right at L5-S1." He noted "some high signal changes in the T2 studies around the discs at L4-5 and L5-S1" based upon a December 21, 2004 MRI scan. He recommended surgery.

In a report dated January 19, 2005, Dr. Gerhard M. Friehs, an examining physician specializing in neurological surgery, diagnosed lumbar intervertebral disc displacement without myelopathy. He recommended an L5-S1 microdiscectomy.

The Office consulted with its medical adviser in order to ascertain whether the proposed surgery was both medically necessary and causally related to appellant's August 26, 2003 employment injury. In an April 21, 2005 report, Dr. Barry W. Levine, an Office medical consultant and Board-certified internist, opined that the proposed procedure was necessary because of spinal stenosis, which was unrelated to the accepted August 26, 2003 employment injury. He noted that appellant had an ongoing preexisting condition of scoliosis and retrolisthesis which made her vulnerable to recurrent disc disease.

By decision dated July 18, 2005, the Office denied authorization for the requested L5-S1 discectomy on the grounds that the procedure was not related to appellant's accepted August 26, 2003 work-related injury.[1]

LEGAL PRECEDENT

Section 8103 of the Federal Employees' Compensation Act[2] 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.[3] The language of section 8103 contains the term "shall" in authorizing the furnishing of services, appliances and supplies, but this directive is qualified by the phrase "which the Secretary of Labor considers likely to cure, give relief, reduce the degree or period of disability or aid in lessening the amount of monthly compensation." This phrasing underscores the intent of Congress that discretion be delegated to the Secretary and hence to the Office in determining whether to grant or reimburse an employee for prescribed services, appliances and supplies under section 8103.[4]

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[1] As the Office has not issued a final decision pursuant to the preliminary findings made in the June 8, 2005 letter, the Board has no jurisdiction to consider on this appeal whether appellant received an overpayment in the amount of $1,649.40 and any issues related to these overpayments. 20 C.F.R. § 501.2(c).

[2] 5 U.S.C. §§ 8101-8193.

[3] 5 U.S.C. § 8103(a); *see Kennett O. Collins, Jr.*, 55 ECAB ___ (Docket No. 04-1018, issued August 23, 2004).

[4] *James R. Bell*, 49 ECAB 642 (1998).

In interpreting section 8103, 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 or her 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.[5] 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.[6]

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.[7] Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.[8] Therefore, in order to prove that the surgical procedure is warranted appellant must submit evidence to show that the procedure was 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.[9]

ANALYSIS

In the instant case, the Office accepted appellant's claim for acute left sacroiliac sprain. The Board finds that the Office did not abuse its discretion by refusing to authorize the L5-S1 microdiscectomy recommended by Drs. Greenblatt and Friehs. Dr. Levine, an Office medical consultant and Board-certified internist, concluded that the proposed surgery was for treatment of appellant's spinal stenosis and unrelated to the accepted August 26, 2003 employment injury. Neither Dr. Greenblatt nor Dr. Friehs provided any opinion as to whether the recommended surgery was causally related to the accepted August 26, 2003 employment injury. The record contains no opinion supporting a causal relationship between appellant's accepted August 26, 2003 employment injury and the proposed surgery. The only opinion addressing this issue found the surgery unrelated to the accepted injury. The Board finds that the Office properly denied appellant authorization for the surgery.

CONCLUSION

The Board finds that the Office did not abuse its discretion when it denied appellant authorization for back surgery.

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[5] *Dr. Mira R. Adams*, 48 ECAB 504 (1997).

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

[7] *See Dona M. Mahurin*, 54 ECAB 309 (2003); *see also Debra S. King*, 44 ECAB 203 (1992).

[8] *See Debra S. King*, *supra* note 7; *Bertha L. Arnold*, 38 ECAB 282 (1986).

[9] *See Dona M. Mahurin*, *supra* note 7; *see also Cathy B. Millin*, 51 ECAB 331 (2000).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 18, 2005 is affirmed.

Issued: February 7, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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