

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

A.L., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Port Pleasant Beach, NJ, Employer**

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**Docket No. 06-1486
Issued: October 26, 2006**

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 30, 2006 appellant, through counsel, filed a timely appeal from a merit decision of an Office of Workers' Compensation Programs' hearing representative dated January 27, 2006, which affirmed the denial of authorization for surgery. 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 denied appellant's request for surgery.

FACTUAL HISTORY

On October 20, 2003 appellant, a 52-year-old postal clerk, filed an occupational disease claim alleging that on February 28, 2003 he first realized that his torn rotator cuff, bone spur, pinched neck nerve and degenerative arthritis were caused or aggravated by his employment. The Office accepted the claim for right shoulder impingement syndrome with partial rotator cuff tear and authorized right shoulder arthroscopic surgery, which was performed on

September 16, 2003. The Office informed appellant that his neck and preexisting arthritis conditions were not accepted as employment related.

In a report dated February 24, 2004, Dr. Joseph G. Marsicano, a treating Board-certified orthopedic surgeon, diagnosed a C4-5 disc herniation with moderate right nerve root compression and a smaller C5-6 right-sided disc herniation based upon a computerized tomography myelogram. He noted that appellant attributed his condition to an injury sustained 20 years previously “when he fell off a tractor trailer at work injuring his shoulder and neck.”

On March 10, 2004 appellant’s counsel requested that the Office expand acceptance of appellant’s claim to include a neck condition including a C5-6 disc herniation and approve surgery for an anterior cervical decompression and fusion at C5-6 and C4-5 based upon Dr. Marsicano’s report.

In a report dated April 26, 2004, Dr. Irving D. Strouse, a second opinion Board-certified orthopedic surgeon, concluded that appellant’s neck condition was unrelated to his federal employment and was a normal sign of aging.

A May 17, 2004 attending physician’s report by Dr. Marsicano diagnosed cervical radiculopathy and mild cord compression which he checked “yes” as caused or aggravated by appellant’s employment.

The Office found a conflict in the medical opinion evidence between Dr. Marsicano and Dr. Strouse as to whether appellant’s neck condition was employment related and whether the proposed surgery was medically warranted. By letter dated October 27, 2004, the Office referred appellant, together with a statement of accepted facts, the case record and a list of questions to be addressed, to Dr. Robert Dennis, a Board-certified orthopedic surgeon, for an impartial medical examination.

In a report dated November 17, 2004, Dr. Dennis reviewed the medical evidence, statement of accepted facts and provided findings on physical examination. He diagnosed right shoulder degenerative arthritis “producing an impingement syndrome and partial rotator cuff tear which was successfully repaired,” cervical spine degenerative changes and C4-5 and C5-6 stenosis. A review of the objective evidence found “marked degenerative changes of the cervical spine” and long-standing spurs. Dr. Dennis noted x-ray interpretations revealed significant neck disc degenerative changes and disc narrowing consistent with appellant’s age “and very consistent with advanced osteoarthritis regardless of cause.” Appellant described the activities involved in a normal workday and the physician concluded “[t]here is no particular activity that he described to me that would specifically focus on his neck.” Dr. Dennis stated that, with regard to the February 2003 injury, he “went into considerable depth and could not define specific events to specific objective findings on clinical and radiological examination.” With regard to the proposed surgery, he agreed that appellant would benefit from having the surgery, but concluded that it was unrelated to the February 28, 2003 injury. Dr. Dennis noted that the neck condition was not employment related, stating “[t]here was no specific repetitiveness that would focus on his neck” or a specific injury involving the neck. The evidence reviewed did not support a causal relationship between appellant’s neck condition, the neck surgery and his work activities. Dr. Dennis noted that appellant experienced advanced cervical spine degenerative disc

disease with degenerative arthritis which was unrelated to his employment. Dr. Dennis reported that there was no objective evidence to support a causal relationship between appellant's neck condition, the need for neck surgery and appellant's employment activities, which included a 1981 event and subsequent work events. He noted that appellant's work activities would not aggravate his cervical spine or neck condition. Specifically, Dr. Dennis opined that appellant's cervical and neck conditions were "degenerative and age related, not strictly event related."

By decision dated January 14, 2005, the Office denied appellant's request for authorization for anterior cervical discectomy surgery.

In a letter dated February 14, 2005, appellant, through counsel, requested an oral hearing which was held on November 28, 2005.

By decision dated January 27, 2006, an Office hearing representative affirmed the January 14, 2005 denial of appellant's request for surgery.

LEGAL PRECEDENT

Section 8103 of the Federal Employees' Compensation Act¹ 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 monthly compensation.² In interpreting this section of the Act, the Board has recognized that the Office has broad discretion in approving services provided under section 8103, with the only limitation on the Office's authority being that of reasonableness.³ 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.⁵

Proof of causal relationship in a case such as this must include supporting rationalized medical evidence. Thus, 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

¹ 5 U.S.C. §§ 8101-8193

² 5 U.S.C. § 8103; *see Thomas W. Stevens*, 50 ECAB 288 (1999).

³ *James R. Bell*, 52 ECAB 414 (2001).

⁴ *Claudia L. Yantis*, 48 ECAB 495 (1997).

⁵ *Cathy B. Millin*, 51 ECAB 331 (2000).

and that it is medically warranted.⁶ Both of these criteria must be met in order for the Office to authorize payment.⁷

In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.⁸

ANALYSIS

The Office determined that there was a conflict in the medical opinion evidence between Dr. Marsicano and Dr. Strouse as to whether appellant's neck condition was causally related to his federal employment and whether the surgery proposed by Dr. Marsicano was medically warranted. Dr. Marsicano requested authorization for appellant to undergo surgery for anterior cervical decompression and fusion at C5-6 and C4-5. Dr. Strouse opined that the proposed surgeries were not warranted based on his examination of appellant as the cervical degeneration was not related to his employment.

Dr. Dennis, the impartial medical specialist selected to resolve the conflict in medical opinion, found no objective findings to support that appellant's cervical conditions were causally related to the February 28, 2003 employment injury. He concluded that "[t]here is no particular activity that [appellant] described to me that would specifically focus on his neck." Dr. Dennis indicated that appellant had advanced cervical spine degenerative disc disease with degenerative arthritis which was unrelated to his employment and that appellant's work activities did not aggravate his cervical condition. He opined that appellant's cervical conditions were "degenerative and age related, not strictly event related." Dr. Dennis stated that there was no objective evidence to support a causal relationship between appellant's neck condition, the need for neck surgery and appellant's employment activities.

The Board finds that Dr. Dennis' report is based upon a proper factual and medical background such that it is entitled to special weight accorded an impartial medical specialist. Dr. Dennis found that appellant's cervical degeneration was not caused or aggravated by his federal employment. Therefore, the Office did not abuse its discretion in declining to authorize surgery.

CONCLUSION

The Board finds that the Office properly denied authorization for neck surgery.

⁶ *Joseph P. Hofmann*, 57 ECAB ___ (Docket No. 05-1772, issued March 9, 2006).

⁷ *Dona M. Mahurin*, 54 ECAB 309 (2003); *Cathy B. Millin*, *supra* note 5.

⁸ *Darlene R. Kennedy*, 57 ECAB ___ (Docket No. 05-1284, issued February 10, 2006).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 27, 2006 is affirmed.

Issued: October 26, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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