

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

M.P., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Jeannette, PA, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 07-1936
Issued: January 28, 2008**

Appearances:
Jeffrey P. Zeelander, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 11, 2007 appellant filed a timely appeal from a February 1, 2007 Office of Workers' Compensation Programs' merit decision. Under 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 abused its discretion by denying appellant authorization for the purchase of an electric osteogen [spinal cord] stimulator.

FACTUAL HISTORY

Appellant, a 44-year-old letter carrier, filed a Form CA-2 claim on September 23, 2003, alleging that she developed lumbar disc disease and herniated disc conditions causally related to factors of her employment. The Office accepted her claim for herniated disc at L5-S1, lumbar strain, lumbar surgery and headaches.

In a report dated October 9, 2006, Dr. Gregory T. Altman, a specialist in orthopedic surgery, found that appellant had an injury-related disability, including decreased muscle

strength in the lower extremities and decreased reflexes and sensory changes involving the left leg and foot. He opined that appellant had reached maximum medical improvement and that no further treatment such as physical therapy, injections, acupuncture, surgery, chiropractic care, aqua therapy or massage therapy, etc., was required or would improve her conditions.

In a November 27, 2006 report, Dr. David C. Neuschwander, Board-certified in orthopedic medicine, stated:

“[Appellant] clinically has limitations. She has undergone extensive treatment. [Appellant] is walking with a cane. She does have objective weakness of her left as compared to the right lower extremity as documented in her physical examination. [Appellant] has subjective burning pain in her low back radiating into the left leg associated with numbness and tingling.

“Her prognosis for full recovery is poor. I would recommend continued treatment for pain management purposes. I would not recommend any further surgical intervention or any further physical therapy, other than that which she may be able to do on her own.

“It is my opinion that [appellant] is capable of a sedentary-duty position only. I feel that she would be capable of doing so four hours per day, as long as she was able to get up and walk around if she felt stiff from sitting and as long as she was able to sit if she felt she could not stand or walk any longer.

“[Appellant] definitely continues to suffer residuals of her injury. She has persistent pain and has limitations with regard to her physical capabilities as a result of the work-related injury.”

On December 5, 2006 appellant underwent a trial electrical spinal cord stimulation procedure, performed by Dr. John J. Moossy, Board-certified in neurological surgery. The procedure involved having electrodes inserted into appellant’s spinal cord in order to provide stimulation. Dr. Moossy noted that appellant felt uncomfortable during the procedure despite multiple efforts to accommodate her. He discontinued the trial after an hour and a half after concluding that this type of procedure was not likely to produce a beneficial result.

On January 10, 2007 appellant requested authorization to purchase an electric osteogen [spinal cord] stimulator; the purchase price was \$4,995.00.

By letter to appellant dated January 11, 2007, the Office requested a medical report establishing the medical necessity for the requested electric osteogen stimulator. Appellant did not submit any additional medical evidence.

In a report dated October 16, 2006, Dr. Arnold T. Berman, an Office medical adviser and a Board-certified orthopedic surgeon, reviewed the medical record and denied authorization for an electric osteogen spinal cord stimulator. He opined that the medical evidence of record did not indicate the necessity for such a device, noting that Dr. Moossy had attempted to implant a trial stimulating electrode on December 5, 2005 but had given up after an hour and a half.

Dr. Berman further noted that none of the other medical reports of record indicated the need for an electric osteogen stimulator.

By decision dated February 1, 2007, the Office denied authorization for the purchase of an electric osteogen stimulator.

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 the 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 the Act. 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

ANALYSIS

In this case, the Office accepted that appellant had sustained the conditions of herniated disc at L5-S1, lumbar strain, lumbar surgery and headaches. Dr. Altman stated on October 9, 2006 that appellant showed decreased muscle strength in the lower extremities and decreased reflexes and sensory changes involving the left leg and foot. He found that appellant had reached maximum medical improvement and required no additional treatment for her accepted conditions; he noted that appellant would not benefit from further treatment. In his November 27, 2006 report, Dr. Neuschwander noted that appellant had clinical limitations and objective weakness, in addition to burning pain in her left lower extremity. He felt prognosis for full recovery was poor. Dr. Neuschwander noted that appellant required the use of a cane and recommended continued treatment for pain management purposes. He opined that appellant did not require any further surgical intervention or physical therapy, other than that which she may be able to do on her own. While appellant continued to have residuals of her injury, with persistent pain due to the work-related injury, Dr. Neuschwander felt that appellant was capable of doing sedentary work for four hours per day. On December 5, 2005 appellant underwent a trial electrical spinal cord stimulation procedure; however, as noted by Dr. Moossy, the trial was unsuccessful. He opined that this type of procedure was unlikely to ameliorate appellant's condition. Notwithstanding this unsuccessful result, appellant requested authorization from the

¹ 5 U.S.C. § 8101 *et seq.*

² 5 U.S.C. § 8103.

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

Office to purchase an electric osteogen [spinal cord] stimulator on January 10, 2007. The Office requested a medical report establishing the medical necessity for the requested electric osteogen stimulator; however, appellant did not submit such a report.

Appellant's authorization request was reviewed by Dr. Berman, the Office medical adviser, who recommended that the Office deny the request because the record did not establish that appellant required such a device. The Office accordingly denied authorization for the purchase of an electric osteogen stimulator in its February 1, 2007 decision.

As noted above, the only restriction on the Office's authority to authorize medical treatment is one of reasonableness. Appellant failed to submit a medical opinion which contained sufficient medical rationale sufficiently explaining the need for an electric osteogen stimulator. None of the medical opinions of record indicated such a need for such a device. Further, Dr. Moossy indicated in his December 5, 2005 report that he had appellant undergo a trial procedure in which he had attempted to implant a trial stimulating electrode. The procedure, however, was not successful. Given the fact that appellant has failed to submit rationalized, probative medical evidence establishing the need for an electric osteogen stimulator, the Office did not unreasonably deny appellant's request for authorization to purchase this type of equipment. The Office did not abuse its discretion to deny appellant authorization for an electric osteogen stimulator.

CONCLUSION

The Board finds that the Office did not abuse its discretion by denying appellant's request for authorization to purchase an electric osteogen stimulator.

ORDER

IT IS HEREBY ORDERED THAT the February 1, 2007 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: January 28, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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