



On April 6, 2006 appellant's physician diagnosed lumbar facet arthropathy/spondylosis/multilevel with foraminal stenosis, neural foraminal narrowing at L3-S1 and lumbar degenerative disc disease with circumferential disc bulging at L3-S1. He requested authorization for a radiofrequency facet rhizolysis procedure from L2 to S1 to provide appellant a longer-lasting pain reduction than he was receiving through nerve blocks.

On April 21, 2006 Dr. Arnold T. Berman, a Board-certified orthopedic surgeon and Office medical adviser, recommended against the procedure:

“This proposed procedure of the destructive medial branch L2, L3, L4, L5, S1 bilaterally is controversial and is not consistent with classic or standard practice. Therefore, I would recommend that we do not approve this procedure but instead refer the claimant for a second opinion to an orthopedic spinal surgeon at one of the medical school university hospitals in the Philadelphia area for consideration of a spinal fusion procedure and overall second opinion.”

In a decision dated July 12, 2006, the Office denied authorization for the surgery. The Office found that the weight of the medical evidence rested with Dr. Steven J. Valentino, a Board-certified osteopath specializing in orthopedic surgery and an Office referral physician. On November 13, 2006 an Office hearing representative affirmed the July 12, 2006 decision. On the prior appeal,<sup>1</sup> the Board set aside the Office decisions and remanded the case for reconstruction and proper assemblage, as two pages were missing from Dr. Valentino's June 21, 2006 report.

On remand, the Office associated with the record Dr. Valentino's complete report. Dr. Valentino related appellant's complaints, history and treatment. He reviewed appellant's medical records and multiple diagnostic studies. Dr. Valentino noted that appellant did quite well after his 1991 microsurgical discectomy and in June 2000 appellant had an examination that was entirely normal, including adequate range of motion, normal neurologic findings and negative tension signs. After examining appellant and reporting normal objective findings, Dr. Valentino diagnosed resolved lumbar strain and resolved lumbar radiculopathy. He then addressed the rhizotomy procedure:

“Based on today's evaluation and review of records, I find [appellant] has recovered from his work-related injury of lumbosacral strain and lumbar radiculopathy. He underwent facet rhizotomies [on May 1 and 10, 2006] for preexistent lumbar degenerative disc disease which would bear no causal connection to the accepted injury of lumbosacral strain or lumbar radiculopathy.

“Facet arthropathy is not medically connected to the work injury by direct cause, aggravation, precipitation or acceleration and is a nonindustrial-related finding.

“[Appellant] has reached maximum medical improvement and has recovered from his work injury. He does have degenerative changes about the lumbar spine. [Appellant] no longer suffers residuals from his accepted work-related injury of lumbosacral strain or lumbar radiculopathy as his objective findings for these

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<sup>1</sup> Docket No. 07-491 (issued July 18, 2007).

injuries are normal. I find no physical restriction resulting from the work-related injury. However, due to the preexisting and nonindustrial-related degenerative condition, I would suggest a light-duty, full-time gainful employment position.

“I agree with Dr. Berman that the procedure codes 64622 and 64623 (destruction of nerves) should not be authorized as related to the accepted condition. He is not a candidate for spinal fusion procedure.”

In a decision dated November 8, 2007, the Office denied authorization for requested surgical procedure because the medical evidence did not establish that such treatment was medically necessary for the accepted work injury. The Office found that Dr. Valentino’s opinion represented the weight of the medical opinion evidence.

### **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 that the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of any disability or aid in lessening the amount of any monthly compensation.<sup>2</sup> The Office has broad discretionary authority to achieve the objectives of section 8103.<sup>3</sup> The only limitation on the Office’s authority is that of reasonableness.<sup>4</sup>

### **ANALYSIS**

The Office acted reasonably when it denied authorization for the requested rhizolysis procedure. First, the requested procedure was not, on its face, for an accepted work-related condition. The Office accepted that the 1990 work incident caused a herniated disc at L4-5 with radiculopathy, for which appellant underwent a microsurgical discectomy in 1991. The Office did not accept that this incident caused multilevel lumbar facet arthropathy or spondylosis or foraminal stenosis or degenerative disc disease, which appellant’s physician diagnosed in 2006. Second, the Office medical adviser, a Board-certified orthopedic surgeon, warned that the procedure was controversial and inconsistent with classic or standard practice. Third, the Office referral physician, a Board-certified osteopath specializing in orthopedic surgery, found that the requested procedure was for a preexisting and nonindustrial degenerative condition. Dr. Valentino reviewed the record and noted that appellant did quite well after his 1991 microsurgical discectomy. Not only did appellant have an entirely normal examination in 2000, but Dr. Valentino’s own examination in 2006 revealed no objective findings for the accepted employment injury.

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<sup>2</sup> 5 U.S.C. § 8103(a).

<sup>3</sup> See *Marjorie S. Geer*, 39 ECAB 1099 (1988).

<sup>4</sup> *Daniel J. Perea*, 42 ECAB 214 (1990).

Given the medical opinion evidence from both Dr. Berman and Dr. Valentino, the Board finds that the Office acted within its broad discretion under section 8103 of the Act. The Board will affirm the Office's decision to deny authorization for appellant's facet rhizolysis from L2 to S1.

**CONCLUSION**

The Board finds that the Office did not abuse its discretion in denying authorization for a facet rhizolysis procedure.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 8, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 17, 2008  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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