United States Department of Labor
Employees' Compensation Appeals Board

V.C., Appellant	)	
and	)	**Docket No. 08-436**
	)	**Issued: June 12, 2008**
DEPARTMENT OF THE NAVY, CHARETTE HEALTH CARE CENTER, Portsmouth, VA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 26, 2007 appellant filed a timely appeal from an August 23, 2007 decision of the Office of Workers' Compensation Programs that denied his request for surgery. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the denial of surgery.

ISSUE

The issue is whether the Office properly refused to authorize appellant's request for surgery.

FACTUAL HISTORY

On July 23, 2002 appellant, then a 38-year-old respiratory therapist, filed a traumatic injury claim stating that he injured his back in the performance of duty on July 18, 2002. He twisted his back while lifting a patient and experienced severe back pain with radiation into his leg and buttock. Appellant stopped work on July 22, 2002 and returned on October 14, 2002.

In an August 1, 2002 report, Dr. Thomas C. Markham, a Board-certified orthopedic surgeon, diagnosed a large right-sided disc herniation at the L5-S1 level.[1] On August 7, 2002 he requested authorization to perform an L5-S1 discectomy. In a report dated the same day, Dr. Markham advised appellant of the risks of surgery, including the risk for disc degeneration ultimately requiring further intervention. On August 29, 2002 he performed a right L5-S1 discectomy. In a September 12, 2002 report, Dr. Markham explained that appellant's continuing back pain was normal following his surgery. The Office accepted appellant's claim for back strain and herniated disc and approved the lumbar discectomy.

In a January 8, 2003 report, Dr. Markham advised that appellant had "good days and bad days" but that his physical examination findings were normal. He released appellant to regular duty.

In a March 30, 2004 report, Dr. Steven C. Blasdell, a Board-certified orthopedic surgeon, noted appellant's history of injury at work in July 2002, and his subsequent surgery. He reported that appellant complained of continuing back pain with radicular symptoms, which were aggravated by prolonged standing. On physical examination, Dr. Blasdell found a well-healed lumbar laminectomy scar and noted that appellant could touch his fingertips to his toes and had 15 degrees of back extension. He diagnosed status post right L5-S1 discectomy and right partial laminectomy and chronic low back pain. On April 20, 2004 Dr. Blasdell reported that appellant complained of continuing pain and radiation into his right leg and found some lumbosacral tenderness. In a May 7, 2004 note, he indicated that a magnetic resonance imaging (MRI) scan revealed a disc protrusion at the L5-S1 level. On September 24, 2004 Dr. Blasdell reported that appellant's back pain had flared up again, approximately a week earlier. On physical examination, he found lumbosacral tenderness.

In a May 4, 2004 lumbar MRI scan report, Dr. Charles Hecht-Leavitt, a Board-certified diagnostic radiologist, diagnosed postoperative changes at the L5-S1 level with mild to moderate diffuse right-sided disc protrusion, as well as a small to moderate disc protrusion at the L4-5 level.

In an August 8, 2006 report, Dr. David Lannik, a Board-certified orthopedic surgeon and an associate of Dr. Blasdell, noted that appellant had complaints of intermittent low back pain radiating to the right leg and ongoing numbness in the L5-S1 distribution. Examination was essentially normal with appellant reporting some tenderness of the low back. Dr. Lannik noted that appellant's visit was related to the July 2002 employment injury.

Appellant subsequently relocated from Virginia to Kansas and began treatment with Dr. Alan Moskowitz, an orthopedic surgeon. In a February 19, 2007 report, Royce A. Morgan, a physician's assistant working for Dr. Moskowitz, noted appellant's history of injury "after lifting and pulling someone up in bed" in 2001. He explained that appellant's symptoms were tolerable but did affect his daily living activities. Mr. Morgan diagnosed degenerative disc disease at the L5-S1 level and chronic low back pain with right lower extremity radiculopathy. On March 8, 2007 Dr. Moskowitz noted that MRI scan testing results showed evidence of degenerative disc

[1] In a July 23, 2002 lumbar x-ray report, Dr. John O'Neil, a Board-certified diagnostic radiologist, diagnosed "earliest changes of degenerative disc disease" developing at the L3-4 and L4-5 levels of appellant's spine.

disease that the L4-5 and L5-S1 levels associated with foraminal narrowing and an apparent cyst formation at L5-S1. He attributed appellant's pain to these findings. Dr. Moskowitz noted that appellant wished to undergo a two-level posterior lumbar interbody fusion at L4-5 and L5-S1.

In a March 1, 2007 lumbar MRI scan report, Dr. Mark Fritze, a Board-certified radiologist, diagnosed mild disc bulging at the L4-5 level and status post right laminectomy at L5-S1 with posterior osteophyte formation and moderate bilateral foraminal narrowing.

On April 9, 2007 appellant underwent an authorized epidural steroid injection. Dr. M. Kent Cooper, a Board-certified anesthesiologist, performed the procedure and diagnosed lumbar disc degeneration with secondary lumbar foraminal stenosis. In an April 23, 2007 note, Dr. Moskowitz reported that appellant's epidural injection provided brief relief. He diagnosed degenerative disc disease at L4-5 and L5-S1 and recommended that appellant undergo an anterior discectomy and fusion at L4-5 and L5-S1, rather than the previously recommended interbody fusion.

In an August 2, 2007 report, an Office medical adviser reviewed the record and appellant's request for surgery. He concluded that the request for surgery was based on appellant's diagnosed degenerative disc disease, which was not an accepted condition. The medical adviser explained that the only conditions presently accepted were appellant's back strain and L5-S1 herniated disc, neither of which appeared to warrant the surgery requested. Accordingly, he recommended that the Office deny appellant's request for surgery, as it was indicated by a condition not currently accepted.

By decision dated August 23, 2007, the Office denied appellant's request for surgery to treat his degenerative disc disease.

LEGAL PRECEDENT

Section 8103(a) of the Federal Employees' Compensation Act provides for the furnishing of "services, appliances and supplies prescribed or recommended by a qualified physician" which the Office, under authority delegated by the Secretary, "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 section 8103(a), the Board has recognized that the Office has broad discretion in approving services provided under the Act to ensure that an employee recovers from his or her injury to the fullest extent possible in the shortest amount of time.[3] The Office has administrative discretion in choosing the means to achieve this goal and the only limitation on the Office's authority is that of reasonableness.[4]

[2] 5 U.S.C. § 8103(a).

[3] *Dale E. Jones*, 48 ECAB 648, 649 (1997).

[4] *Daniel J. Perea*, 42 ECAB 214, 221 (1990) (holding that abuse of discretion by the Office is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or administrative actions which are contrary to both logic and probable deductions from established facts).

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.[5] 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. Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.[6] 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.[7]

ANALYSIS

The Office accepted that appellant sustained a back strain and herniated disc in the performance of duty. It authorized a right L5-S1 discectomy and epidural steroid injections for treatment of appellant's employment-related injury. However, the Board finds that the Office properly denied appellant's subsequent request for authorization of an anterior discectomy and fusion at L4-5 and L5-S1 because the surgery was requested to treat appellant's degenerative disc disease, which is not an accepted condition.

As noted above, the Office is obligated to authorize and pay for treatments it reasonably finds likely to cure, give relief, or aid in lessening the period of disability associated with an accepted employment-related condition.[8] However, the Office is not obligated to compensate appellant for treatment of nonaccepted conditions.[9] Before he is entitled to authorization and compensation for his requested L4-5 and L5-S1 anterior discectomy and fusion, he must prove that the condition the surgery is intended to treat is causally related to his employment injury and that it is medically warranted.[10] Dr. Moskowitz's March 8 and April 23, 2007 reports diagnosed degenerative disc disease at L4-5 and L5-S1 and specifically recommended surgery to treat that condition. However, degenerative disc disease has not been accepted as employment related by the Office.[11] Dr. Moskowitz did not demonstrate a specific awareness of the July 18, 2002 employment injury and he did not provide an opinion on causal relationship, fortified with rationale, clearly explaining how the requested surgery was necessitated by the injury accepted for back strain and an L5-S1 herniated disc, or the accepted 2002 surgery. He also did not explain why the diagnosed degenerative disc disease was caused or aggravated by the accepted

[5] *Debra S. King*, 44 ECAB 203, 209 (1992).

[6] *See id.*; *Bertha L. Arnold*, 38 ECAB 282 (1986).

[7] *Cathy B. Millin*, 51 ECAB 331, 333 (2000).

[8] *See supra* note 2.

[9] *See supra* note 7.

[10] *Id.*

[11] *See Jaja K. Asaramo*, 55 ECAB 200 (2004) (for conditions not accepted or approved by the Office as being due to an employment injury, the claimant bears the burden of proof to establish that the condition is causally related to the employment injury).

employment injury. The Board has previously held that a medical report which does not include a physician's rationalized opinion on causal relationship is not probative on that issue.[12]

No other medical reports addressed why the requested surgery was for a condition causally related to the employment injury. For example, Dr. Lannik's August 8, 2006 report noted that appellant had a continuing employment-related condition but he did not recommend any surgery due to the accepted condition.

As appellant has not established that the requested procedure was for a condition causally related to the employment injury and that the surgery was medically warranted, the Office properly denied authorization for the requested procedure.

CONCLUSION

The Board finds that the Office properly refused to authorize appellant's request for surgery.

ORDER

IT IS HEREBY ORDERED THAT the August 23, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 12, 2008
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

[12] *See A.D.*, 58 ECAB ___ (Docket No. 06-1183, issued November 14, 2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).