

FACTUAL HISTORY

On April 13, 2008 appellant, then a 59-year-old mail handler, filed a traumatic injury claim alleging that, on March 25, 2008, while pulling heavy equipment, she sustained a muscle spasm, a swollen knee and pain down her leg from sciatica. On August 28, 2008 the Office accepted appellant's claim for sprain right of knee, sciatica right, tear of medial meniscus of knee, current -- right and baker's cyst -- right.

In an April 11, 2008 report, Dr. Patrick Cummings, a Board-certified surgeon, assessed appellant with internal derangement of her right knee and right radiculopathy secondary to herniated disc disease at L5-S1.

A lumbar myelogram conducted on August 4, 2008 was interpreted by Dr. Thomas M. Calvy, a Board-certified radiologist, as showing mild anterior spondylolisthesis of L5 with respect to S1 with moderate facet arthropathy. Dr. Calvy also noted mild posterior disc protrusion at the L5-S1 level of two to three millimeter and a mild indentation of the lateral recesses and foramina.

In an August 12, 2008 report with regard to appellant's right leg pain, Dr. Patrick Cummings, a Board-certified orthopedic surgeon, noted that her diagnosis was consistent with right radiculopathy secondary to degenerative lumbar disc disease with herniation at L5-S1 with x-ray evidence of facet degeneration and stenosis associated with a mild Grade 1 spondylolisthesis at L5-S1.

In an August 31, 2008 report, Dr. James R. Lloyd, a Board-certified neurosurgeon, indicated that further evaluations were required to determine if the lower back pain and leg pain was due to disc disease of appellant's lumbosacral spine. He noted that he was scheduling her to undergo nerve conduction velocity studies of her lower extremities as well as a functional anesthetic discography L3-4, L4-5, L5-S1.

On September 22, 2008 due to appellant's complaints of right leg radicular pain, Dr. Robert Purtock, a Board certified anesthesiologist with a subspecialty in pain medicine, performed a discography. In his operative report, he noted that this was a significantly positive functional anesthetic discogram and labeled the L5-S1 disc as the disc that is causing the most significant and probably all of appellant's back pain and radicular pain.

In a September 30, 2008 report, Dr. Lloyd noted that, for the most part, appellant's lower back and right leg discomforts have remained. He noted that review of appellant's anesthetic discography L3-4, L4-5, L5-S1 and postprocedure computed tomography scan of her lumbosacral spine reveals a markedly positive study at the L5-S1 level. Dr. Lloyd opined that her disc disease at L5-S1 is the cause of her continued symptoms. Given the lack of response to conservative measures, he opined that surgical intervention is now warranted, specifically L5-S1 laminectomy, discectomy and fusion procedure using carbon fiber interbody fusion cages and spinal instrumentation with pedicle screw fixation *via* a minimally invasive approach.

On October 3, 2008 Dr. Lloyd responded to questions from the nurse assigned to appellant's case. He noted that his diagnosis was disc herniation L5-S1 and recommended a

L5-S1 laminectomy, discectomy and fusion. Dr. Lloyd opined that the disc herniation at L5-S1 was directly caused by the work injury of March 25, 2008.

On October 28, 2008 the Office referred appellant's file to the Office medical adviser, for his opinion on whether the L5-S1 laminectomy, discectomy and fusion should be accepted as due to consequential injuries of her accepted work-related conditions. In a November 5, 2008 report, the Office medical adviser opined that the L5-S1 laminectomy, discectomy and fusion cannot be considered necessitated by a consequential injury. Furthermore, he noted that he saw no objective evidence that appellant had a herniated L5-S1 disc. The Office medical adviser explained that the magnetic resonance imaging (MRI) scan report does not note a herniated disc, nor does it identify any significant disc disease at L5-S1. He stated that, although the discogram was interpreted as positive, these examinations have a relatively high rate of false positives and therefore in the face of a normal MRI scan, should be given less weight in the overall picture. The Office medical adviser concluded that he did not find objective evidence in the medical narrative to be convinced that appellant has any degenerative disc disease or disc herniation at L5-S1.

By decision dated December 12, 2008, the Office denied appellant's request for the surgical procedure for a L5-S1 laminectomy, discectomy and fusion.

On March 2, 2009 appellant requested reconsideration.

In a February 3, 2009 report, Dr. Cummings diagnosed residual right knee symptoms secondary to previous arthroscopic surgery and osteoarthritis and right radiculopathy secondary to lumbar disc disease at L5-S1 with Grade 1 spondylolisthesis.

By letter to appellant dated March 27, 2009, the Office indicated that the opinion of Dr. Lloyd was in conflict with the opinion of the Office medical adviser with regard to whether appellant had sustained a back condition causally related to her federal employment. It noted that it would refer her for an impartial medical examination.

By letter dated April 3, 2009, the Office referred appellant to Dr. Stephen Robbins, a Board-certified orthopedic surgeon, for an impartial medical examination. In a May 5, 2009 report, Dr. Robbins stated that her complaints of low back pain are reflective of her preexisting condition of discogenic change. He found that appellant did not have sciatica and that she was not a candidate for any type of surgical intervention as it related to this injury. Dr. Robbins would not recommend surgical intervention for her discogenic changes as he did not believe the discography was conclusive in this case as it was essentially normal. He opined that appellant did not sustain any work injury that warranted this type of lumbar procedure and that it would be best managed with ongoing conservative care. Dr. Robbins stated that the surgical procedure recommended by Dr. Lloyd has an unpredictable outcome and that appellant did not require any further treatment for her low back other than a home exercise program. Appellant has not sustained any permanent partial disability of the lumbar spine as a result of her lumbar strain. Dr. Robbins also noted that she plateaued in her healing from the lumbar strain that developed as a result of the injury on March 25, 2008 as of June 25, 2008. He concluded that appellant's symptoms are reflective of a preexisting condition and not related to the claimed industrial injury.

By decision dated May 18, 2009, the Office found that the evidence was not sufficient to accept any additional low back diagnoses, nor was the evidence sufficient to warrant the authorization of low back surgery under the Federal Employees' Compensation Act.¹

LEGAL PRECEDENT -- ISSUE 1

Where an employee claims that a condition not accepted or approved by the Office was due to an employment injury, she bears the burden of proof to establish that the condition is causally related to the employment injury.² Causal relationship is a medical issue and the medical issue generally required to establish causal relationship is rationalized medical opinion evidence.³ Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.⁴ The opinion of the physician must be based on a complete factual and medical background of the claimant⁵ explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁶

Where there exist 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 upon a proper factual background, must be given special weight.⁷

ANALYSIS -- ISSUE 1

In the instant case, the Office accepted appellant's claim for sprain of the right knee, sciatica (right), tear of the medial meniscus of the right knee and right baker's cyst. However, it rejected her claim that her work injury resulted in an injury to her back which required surgery.

The Board finds that the Office properly denied appellant's claim for a work-related back injury. Dr. Lloyd opined that she sustained a disc herniation at L5-S1 which was directly caused by the work injury of March 25, 2008, but the Office medical adviser disagreed. The Office medical adviser disputed Dr. Lloyd's finding that appellant had a herniated L5-S1 disc and further stated that he did not believe that she had any significant disc disease at L5-S1. Due to the conflict between the opinions of her physician, Dr. Lloyd and the Office medical adviser, the Office properly referred her to an impartial medical examiner, Dr. Robbins, who reported that

¹ 5 U.S.C. §§ 8101-8193.

² *Jaja K. Asaramo*, 55 ECAB 200 (2004).

³ *John J. Montoya*, 54 ECAB 306 (2003).

⁴ *Conrad Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

⁵ *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

⁶ *Judy C. Rogers*, 54 ECAB 693 (2003).

⁷ *Darlene Kennedy*, 57 ECAB 414 (2006).

appellant's complaints of low back pain were reflective of her preexisting condition of discogenic change. Dr. Robbins opined that appellant did not sustain any work-related aggravation or acceleration, noting that the discography was essentially normal. He further found that she had not sustained any permanent partial disability of the lumbar spine as a result of her lumbar strain and concluded that her current symptoms were reflective of a preexisting condition and the natural progression of the underlying condition without contribution by the employment injury.

When a case is referred to an impartial medical examiner to resolve a conflict in evidence, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁸ The Board finds that, the report of the impartial medical examiner, Dr. Robbins constitutes the special weight of the evidence. The medical report of Dr. Robbins is well reasoned and well rationalized and establishes that appellant did not sustain an L5-S1 disc herniation causally related to her accepted employment injury.

LEGAL PRECEDENT -- ISSUE 2

Section 8103 of the Act⁹ 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 of the period of disability or aid in lessening the amount of the monthly compensation.¹⁰ 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. It has discretion in choosing means to achieve this goal. The only limitation on the Office's authority is that of reasonableness.

For a surgery to be authorized, a claimant must submit evidence to show that the requested procedure is for a condition causally related to the employment injury and that it is medically warranted. Both of these criteria must be met in order for the Office to authorize payment.¹¹

ANALYSIS -- ISSUE 2

As the Board has determined that appellant has not established that she sustained a back injury causally related to her accepted injury, the Office was within its discretion when it denied authorization for appellant's L5-S1 laminectomy, discectomy and fusion.¹²

⁸ *Id.*

⁹ 5 U.S.C. § 8103.

¹⁰ *Id.*, D.A., 61 ECAB __ (Docket No. 09-936, issued January 13, 2010).

¹¹ *R.C.*, 58 ECAB 238 (2006).

¹² *Cathy B. Mullin*, 51 ECAB 331 (2000).

CONCLUSION

The Board finds that the Office properly determined that appellant's claim should not be expanded to include an L5-S1 disc herniation and was within its discretion when it properly denied authorization for an L5-S1 laminectomy, discectomy and fusion.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated May 18, 2009 and December 12, 2008 are affirmed.

Issued: May 10, 2010
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board