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

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| **P.T., Appellant** | ) | |
| **and** | ) | **Docket No. 12-394** |
| | ) | **Issued: July 27, 2012** |
| **DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Albuquerque, NM, Employer** | ) | |

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

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

### *JURISDICTION*

On December 14, 2011 appellant filed a timely appeal from a November 29, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) denying authorization for requested medical treatment. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 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 OWCP abused its discretion by denying appellant's request for surgical authorization.

### *FACTUAL HISTORY*

On September 18, 2009 appellant, then a 53-year-old housekeeping aid, filed a traumatic injury claim alleging that he sustained lower back strain while lifting a pallet at work on

[1] 5 U.S.C. § 8101 *et seq.*

August 31, 2009. He submitted progress notes from his treating physician, Dr. James Thiel, an internist, dated through October 14, 2009.

After appropriate development, OWCP accepted appellant's claim for lumbar sprain in a decision dated October 21, 2009.

On September 20, 2011 appellant requested medical authorization for lumbar spine fusion, extra segment of spine fusion, spine fixation device insertion, Sine Prosth device application, spinal lamina removal, spinal lamina add-on removal, lumbar spine revision, extra spine segment revision and lumbar spine fusion.

Along with the request, appellant submitted a July 25, 2011 x-ray report from Dr. Cynthia C. Johnston, a Board-certified family physician. This report indicated that appellant had degenerative changes of the lumbar spine and that Dr. Johnston had ordered a magnetic resonance imaging (MRI) scan for further evaluation of appellant's condition.

In an August 29, 2011 report, Dr. Nicholas Ransom, Board-certified in orthopedic surgery, noted that appellant was seen for back pain. Regarding the mechanism of injury he stated that appellant had "Recent Reinjury 2009 lifting injury occurred at work," and that appellant had been out of work for two years due to this injury. Dr. Ransom recommended that appellant undergo an MRI scan evaluation.

A September 14, 2011 MRI scan report signed by Dr. Boyd C. Ashdown, a Board-certified neuroradiologist, found that appellant had moderately severe central canal stenosis at L4-5 with moderately severe right and severe left foraminal narrowing, as well as moderate right foraminal L5-S1 narrowing.

On September 19, 2011 Dr. Ransom reviewed the MRI scan report and diagnosed appellant with "spinal stenosis of lumbar region, new" and recommended laminectomy at L4, L5, S1, posterolateral fusion at L4, L5, S1, instrumentation at L4, L5, S1, as well as "TLIF" L4, L5, S1.

Upon receipt of appellant's request, OWCP forwarded appellant's case file to the district medical adviser (DMA) for review on October 12, 2011.

In an October 14, 2011 memorandum, the DMA stated that lumbar sprains do not require surgical fusion and are self-limiting conditions. He further explained that, because the record established that there was no medical treatment between 2009 and 2011, it is medically implausible that the recently diagnosed degenerative disc disease was in any way related to the lumbar sprain in 2009. The DMA concluded that surgery should not be authorized as work related.

On October 19, 2011, upon receipt of the DMA's memorandum, OWCP referred appellant's case to Dr. Mark E. Frankel, a Board-certified physician in orthopedic surgery, for a second opinion examination.

On November 8, 2011 appellant was seen by Dr. Frankel for examination. In preparation for the examination, Dr. Frankel was provided with the relevant factual and medical records.

In his November 8, 2011 medical report, Dr. Frankel discussed appellant's history of work injury and reviewed in detail the medical evidence of record. He concurred with the DMA's opinion that appellant's spinal stenosis was not medically related to the 2009 work injury and that appellant did not suffer any residuals from the work injury. Dr. Frankel explained that, because there was no medical treatment between October 29, 2009 and July 15, 2011, it was medically probable that appellant's lumbar strain had resolved. He further expressed his agreement with the DMA's findings, reasoning that "there has been no medical treatment from the two years previously and the lumbar sprain is self-limited and does not require surgery." Dr. Frankel concluded that, while the requested surgery is appropriate for the spinal stenosis, it is not medically related to appellant's claim.

On November 29, 2011 OWCP denied appellant's request for authorization of the various surgical procedures on the grounds that the weight of the medical evidence did not establish that the treatment was medically necessary for his accepted work injury.

## ***LEGAL PRECEDENT***

Section 8103 of FECA 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 OWCP considers likely to cure, give relief, reduce the degree of the period of disability or aid in lessening the amount of monthly compensation.[2] In interpreting this section of FECA, the Board has recognized that OWCP has broad discretion in approving services provided under section 8103, with the only limitation on OWCP'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 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 and that it is medically warranted. Both of these criteria must be met in order for OWCP to authorize payment.[6]

## ***ANALYSIS***

OWCP accepted that appellant sustained lumbar sprain due to an August 31, 2009 injury. On September 19, 2011 Dr. Ransom diagnosed appellant with spinal stenosis of lumbar region

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

[3] *Joseph P. Hofmann*, 57 ECAB 456 (2006); *James R. Bell*, 52 ECAB 414 (2001).

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

[5] *Cathy B. Mullin*, 51 ECAB 331 (2000).

[6] *Id*.

and recommended surgery procedures to treat this condition. While he mentioned that appellant had sustained a work injury in 2009, he did not explain whether or how the spinal stenosis was related to appellant's accepted condition of lumbar sprain, or whether it was related to appellant's work injury. The Board has consistently held that medical reports lacking rationale on causal relationship are of little probative value.[7] As such, Dr. Ransom's medical report is insufficient to establish that the spinal stenosis condition is causally related to the employment injury.

While appellant also submitted a report from Dr. Johnston, wherein she reviewed appellant's July 25, 2011 x-ray, as well as a report from Dr. Ashdown wherein he reviewed a September 14, 2011 MRI scan, neither of these physicians discussed the need for the proposed surgical treatment.

The second opinion report issued by Dr. Frankel concluded that, while the requested surgery was appropriate treatment for spinal stenosis, it was not medically related to appellant's accepted lumbar sprain. Dr. Frankel concurred with the opinion of the DMA. Further, he asserted that appellant no longer had any residuals from lumbar sprain and that his spinal stenosis condition was unrelated to the work injury. Dr. Frankel explained that he arrived at this conclusion because appellant had no medical treatment for two years since his employment injury and that the lumbar sprain was a self-limiting condition.

The Board finds that, because Dr. Frankel's report is thorough, well rationalized and based on an accurate factual and medical history, his report represents the weight of the medical evidence. Appellant has offered no medical evidence establishing causal relationship between his spinal stenosis condition for which the surgeries was requested and his accepted work condition of lumbar sprain. OWCP properly determined that his requested medical treatment was not work related.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

## ***CONCLUSION***

The Board finds that OWCP did not abuse its discretion by denying appellant's request for surgical authorization.

[7] *See Mary E. Marshall*, 56 ECAB 420 (2005).

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated November 29, 2011 is affirmed.

Issued: July 27, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board