

FACTUAL HISTORY

On October 10, 2006 appellant, then a 56-year-old letter carrier, filed an occupational disease claim alleging that he developed neck and right shoulder conditions from carrying his mailbag in the performance of duty. He stated that he had developed spinal stenosis and right rotator cuff tear.

Based on the November 6, 2006 report from Dr. Alexander Neel, a Board-certified orthopedic surgeon, OWCP accepted appellant's claim for sprain of the right shoulder and rotator cuff as well as cervical spondylosis with myelopathy on December 11, 2006. Appellant returned to regular work duties on January 7, 2008. He underwent an additional cervical magnetic resonance imaging (MRI) scan on April 11, 2008 which demonstrated advance spondylosis changes of the cervical spine.

On March 16, 2011 a cervical MRI scan demonstrated progression of moderate-to-severe cervical spondylosis with multilevel central and neural foraminal stenosis. In a note dated April 14, 2011, Dr. Nazih Mourfarrij, a Board-certified neurosurgeon, recommended a three-level anterior cervical discectomy and fusion. He stated, "There is confusion as to whether his case is workers' compensation or not." Dr. Mourfarrij diagnosed symptomatic degenerative disc disease with deformation and compression of the spinal cord as well as headache and axial neck pain due to degenerative disc disease.

OWCP requested additional information from appellant regarding his requested spine surgery on April 19, 2011 and allowed 30 days for a response. On March 15, 2011 appellant sought medical treatment due to incoordination and feeling light-headed. Dr. Ulices Perez-Feliz, an internist, diagnosed spinal stenosis.

OWCP's medical adviser reviewed the record on May 17, 2011 and opined that spinal surgery was not established as medically appropriate. He reviewed Dr. Perez-Feliz's note and found no symptoms that were suggestive of a cervical spine myelopathy or radiculopathy. The medical adviser reviewed Dr. Mourfarrij's April 14, 2011 note and opined that there was insufficient discussion of findings relevant to appellant's cervical spine. He stated that Dr. Mourfarrij did not include Spurling's test, reverse Spurling's test or other important tests in cervical spinal cord or nerve root disease.

By decision dated June 17, 2011, OWCP denied appellant's request for cervical spine surgery and recurrence of disability. It found that he had not submitted sufficient medical opinion evidence to establish that his current condition and requested surgery were causally related to his accepted employment injuries.

Dr. Mourfarrij performed an anterior cervical discectomy and fusion at C4-5, C5-6 and C6-7 on April 22, 2011.

Appellant requested a review of the written record by an OWCP hearing representative on June 30, 2011. He testified at the oral hearing on October 11, 2011. Following the oral hearing, Dr. Mourfarrij submitted a note dated September 20, 2011 stating, "In my expert opinion, I believe that carrying mail for 28 years [h]as contributed to aggravating a preexisting

degenerative disc disease of the cervical spine. This led to severe symptoms, as well as MRI [scan] findings, that necessitated a three-level anterior cervical discectomy and fusion.”

In a decision dated December 15, 2011, OWCP’s hearing representative found that appellant had not met his burden of proof in establishing that his 2011 cervical condition and surgery was causally related to his employment. He found that there was no rationalized medical opinion evidence supporting appellant’s claim.

Counsel requested reconsideration on June 21, 2012 and submitted a report from Dr. Neel dated May 9, 2012. Dr. Neel noted appellant’s work requirement of carrying a mailbag and stated that wearing a loaded unilateral mail carrying bag caused the mail carrier to lift to one side with a compensatory deviation of the neck away from the side on which the bag is worn. He stated, “I believe that this constant strain of the muscles and carrying the neck in a laterally tilted fashion could certainly lead to accelerated cervical arthritis and arthrosis which in turn can certainly lead to foraminal encroachment and central stenosis.” Dr. Neel also noted that appellant had no recreational activities which would contribute to these conditions or major neck injuries.

By decision dated November 1, 2012, OWCP reviewed the merits of appellant’s claim and denied modification of its prior decision.

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 or the period of disability or aid in lessening the amount of the monthly compensation.² While OWCP is obligated to pay for treatment of employment-related conditions, the employee has the burden of establishing that the expenditure is incurred for treatment of the effects of an employment-related injury or condition.³

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.⁴ 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.⁵ To be entitled to reimbursement of medical expenses, a claimant has the burden of establishing that the expenditures were incurred for treatment of the effects of an employment-related injury or condition. Proof of causal relationship in a case such as this must include

² 5 U.S.C. § 8103; *J.H.*, Docket No. 12-1950 (issued February 13, 2013).

³ *Kenneth O. Collins, Jr.*, 55 ECAB 648 (2004).

⁴ *See D.K.*, 59 ECAB 141 (2007).

⁵ *Minnie B. Lewis*, 53 ECAB 606 (2002).

supporting rationalized medical evidence.⁶ In order for a surgical procedure to be authorized, a claimant must submit evidence to show that the surgery is for a condition causally related to an employment injury and that it is medically warranted. Both of these criteria must be met in order for OWCP to authorize payment.⁷

ANALYSIS

In order for a surgical procedure to be authorized, a claimant must submit evidence to show that the surgery is for a condition causally related to an employment injury and that it is medically warranted. Both of these criteria must be met in order for OWCP to authorize payment. The accepted conditions in this case are right shoulder strain rotator cuff and cervical spondylosis with myelopathy in 2006. Prior to his request for cervical fusion surgery in 2011, appellant last received medical treatment in 2008 for his cervical spine.

Dr. Perez-Feliz examined appellant on March 15, 2011 due to incoordination and appellant's feeling light-headed. He diagnosed spinal stenosis. Appellant underwent an MRI scan in conjunction with this examination which demonstrated progression of moderate-to-severe cervical spondylosis with multilevel central and neural foraminal stenosis.

Appellant's attending physicians, Drs. Neel and Mourfarrij have offered opinions that appellant's current cervical condition was due to his employment duties and required cervical fusion. Dr. Neel explained how carrying a mailbag could result in accelerated cervical arthritis and arthrosis which in turn can certainly lead to foraminal encroachment and central stenosis. Dr. Mourfarrij examined appellant and recommended a three-level anterior cervical discectomy and fusion due to symptomatic cervical degenerative disc disease with deformation and compression of the spinal cord as well as headache and axial neck pain due to degenerative disc disease. He opined that carrying mail aggravated appellant's preexisting degenerative disc disease of the cervical spine necessitating the three-level anterior cervical discectomy and fusion.

OWCP's medical adviser found on May 17, 2011 that spinal surgery was not established as medically appropriate. He found that Dr. Perez-Feliz reported no symptoms that were suggestive of a cervical spine myelopathy or radiculopathy. In regard to Dr. Mourfarrij's notes, the medical adviser opined that there was insufficient discussion of findings relevant to appellant's cervical spine. He stated that Dr. Mourfarrij did not include Spurling's test, reverse Spurling's test or other important tests in cervical spinal cord or nerve root disease.

The Board finds that OWCP abused its discretion and that this case is not in posture for decision. The Board finds that, as appellant has requested authorization for an elective spinal surgery, has submitted medical opinion evidence opining that the surgery was causally related to his accepted employment injury and as the medical adviser's opinion was negative. The claims examiner should refer the file for a second opinion evaluation.⁸ On remand, OWCP should

⁶ *M.B.*, 58 ECAB 588 (2007).

⁷ *R.C.*, 58 ECAB 238 (2006).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.10.c and d(1)(3) (September 2010).

request a second opinion report which contains a clinical history, results of a physical examination, results of any diagnostic tests performed and a reasoned opinion regarding the appropriateness of the proposed surgery and its relationship to the accepted work condition based on the statement of accepted facts.⁹ Following this referral and any necessary further development, OWCP shall issue a *de novo* decision on this issue.

CONCLUSION

The Board finds that the case is not in posture for decision as it requires additional development of the medical opinion evidence.

ORDER

IT IS HEREBY ORDERED THAT the November 1, 2012 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further development consistent with this decision of the Board.

Issued: June 18, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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

⁹ *Id.* at Chapter 2.819.10d(4).