

FACTUAL HISTORY

On February 2, 2005 appellant, a 52-year-old commissary management specialist, sustained an injury in the performance of duty when she lifted a case of groceries from a pallet to a cart. OWCP accepted her claim for lumbar strain and paid compensation for a period of wage loss.

In 2013 Dr. Larry M. Parker, appellant's Board-certified orthopedic surgeon, requested authorization to perform low back surgery. Appellant had a history of chronic back pain and right lower extremity pain. She had received multiple lumbar epidural steroid injections and she took chronic pain medication. Appellant had associated spinal stenosis and lumbar radicular syndrome at L5 in the right lower extremity. She had advanced degenerative disc disease with bone on bone at L5-S1. Dr. Parker found that she was a candidate for an anterior lumbar interbody fusion at that level.

An OWCP medical adviser reviewed the matter and believed that any benefits from spinal fusion surgery would be untimely. He noted that appellant was 60 years old with an employment-related lumbar strain, a recent imaging study that was entirely benign and a neurological examination that was completely within normal limits.

Dr. Parker, in a later report, disagreed with findings that appellant was a candidate for surgery given the fact that she failed 10 years of conservative management.

In a decision dated December 23, 2013, OWCP denied authorization for surgery. It explained that it could not grant authorization for surgery based on its medical adviser's review of the evidence.

LEGAL PRECEDENT

Section 8103(a) 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 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.³ OWCP must therefore exercise discretion in determining whether the particular service, appliance or supply is likely to affect the purposes specified in FECA.⁴ The only limitation on OWCP's authority is that of reasonableness.⁵

³ *Id.* at § 8103(a).

⁴ See *Marjorie S. Geer*, 39 ECAB 1099 (1988) (OWCP has broad discretionary authority in the administration of FECA and must exercise that discretion to achieve the objectives of section 8103).

⁵ *Daniel J. Perea*, 42 ECAB 214 (1990).

ANALYSIS

OWCP accepted that the February 2, 2005 incident at work caused a lumbar strain and nothing more. It paid her compensation benefits on the basis of the accepted soft-tissue injury.

Eight years later, Dr. Parker, appellant's orthopedic surgeon, requested authorization to perform low back surgery. Appellant had a history of chronic back pain and right lower extremity pain. She had associated spinal stenosis and lumbar radicular syndrome at L5 in the right lower extremity. Appellant had advanced degenerative disc disease with bone on bone at L5-S1. She had failed 10 years of conservative treatment.

Although Dr. Parker made the case for an anterior lumbar interbody fusion at the L5-S1 level, he did not explain what this had to do with a lumbar muscle strain in 2005, nor did he make it clear how spinal fusion surgery was likely to cure, give relief, reduce the degree or the period of any disability or aid in lessening the amount of any monthly compensation paid on account of appellant's 2005 lumbar strain.

Based upon his review of the medical evidence of record, OWCP's medical adviser concluded that, based on appellant's age, a benign imaging study and a normal neurological examination, appellant would not benefit from surgery.

Dr. Parker did not provide a full history of appellant's back condition from the time of injury to his recommendation for surgery in 2013. He did not fully address the diagnostic testing to explain how a soft tissue strain of the lumbar spine, as accepted by OWCP, developed or contributed to the degenerative disc disease found at L5-S1 for which surgery was advised. Absent sufficient explanation on the issue of causal relationship, as noted by the medical adviser, the Board finds that OWCP did not abuse its discretion by denying Dr. Pollen's surgical recommendation.

CONCLUSION

The Board finds that OWCP properly denied authorization for surgery.

ORDER

IT IS HEREBY ORDERED THAT the December 23, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 15, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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