

She returned to light-duty work on December 16, 2013. On January 6, 2014 OWCP accepted appellant's claim for lumbar and neck sprains.

Appellant's attending physician, Dr. Huey R. Kidd, an osteopath, examined her on March 3, 2014 and noted that she did not feel she was improving with physical therapy. He recommended a magnetic resonance imaging (MRI) scan due to neck sprain. Appellant underwent a cervical MRI scan on March 10, 2014. On March 17, 2014 Dr. Kidd reported that appellant had pain on the right side of her neck with numbness and tingling into her right fingertips. He reviewed the MRI scan and found bulging discs at C5-6 and a herniated disc at C6-7. Dr. Kidd requested a neurosurgical consultation.

Dr. Timothy Holt, a Board-certified neurosurgeon, examined appellant on April 17, 2014 and noted her history of injury. He diagnosed neck pain, cervical radiculitis, and herniated cervical disc. On examination Dr. Holt found weakness of the right wrist on motor testing with loss of range of motion. He examined appellant's x-rays and found large anterior osteophytes at C5-6 with collapse of the discs at both levels. Dr. Holt stated, "At this time I think that [appellant] does have cervical stenosis. She has tried all conservative measures. She does have moderate disease at C5-6 and mild to moderate at C6-7, but both correlate to her symptoms." He recommended a spinal fusion at C5-6 and C6-7. In a note dated April 22, 2014, Dr. Kidd stated that appellant was scheduled for surgery on June 20, 2014.

OWCP accepted that appellant also sustained displacement of cervical intervertebral disc without myelopathy on May 9, 2014. An OWCP medical adviser reviewed the evidence on May 9, 2014 and found that surgery was not appropriate. He stated that appellant demonstrated some weakness in her right upper extremity, but no hard neurologic radicular signs. The medical adviser reviewed the cervical MRI scan and found that the report was "not particularly striking." He stated that surgical intervention did not offer significant benefits and that conservative management was preferable.

By decision dated May 21, 2014, OWCP denied the requested spinal fusion surgery. Appellant requested reconsideration of the May 21, 2014 decision on June 3, 2014.

Dr. Kidd submitted a report dated May 22, 2014 and diagnosed cervical radiculopathy. On June 5, 2014 he diagnosed neck sprain, lumbago, bulging disc C5-6, and cervical radiculopathy. In a note dated June 20, 2014, Dr. Kidd stated that appellant was experiencing increased pain with radiation into her right arm. On July 8, 2014 he diagnosed herniated disc and cervicalgia. Dr. Kidd stated that appellant had "a potentially correctible problem by surgery." He noted that she had continued pain and symptoms consistent with her findings on the MRI scan. Dr. Kidd submitted a report dated July 22, 2014 and stated that appellant remained symptomatic despite physical therapy. He recommended that she continue physical therapy and consult with Dr. Holt.

Appellant submitted a written request to change physicians on June 26, 2014. She stated that Dr. Kidd was her treating physician and that he had recommended three courses of physical therapy. Appellant stated that she continued to experience a lot of pain and requested that Dr. Holt become her treating physician.

In a letter dated July 14, 2014, OWCP stated that additional medical evidence was needed to support authorization of the requested surgery and provided appellant with a list of questions regarding her condition. It allowed 30 days for a response.

By decision dated July 31, 2014, OWCP denied appellant's request to change physicians finding that she had not submitted a compelling reason to find treatment from Dr. Kidd was anything other than proper and adequate.

On August 22, 2014 Dr. Holt resubmitted his treatment note, appellant's MRI scan findings, and Dr. Kidd's notes. The medical adviser reviewed the medical evidence on August 20, 2014 and found no evidence of objective neurological deficit. He stated, "The MRI [scan] report is very bland." The medical adviser concluded that conservative care was preferable.

By decision dated September 8, 2014, OWCP denied modification of its prior decisions finding that appellant had not submitted the necessary medical evidence supporting a need for surgery.

LEGAL PRECEDENT -- ISSUE 1

The payment of medical expenses incident to securing medical care is authorized under section 8103 of FECA. The pertinent part provides that an employee may initially select a physician to provide medical services, appliances, and supplies in accordance with such regulations and instruction as the Secretary considers necessary.²

When the physician originally selected to provide treatment for a work-related injury refers the employee to a specialist for further medical care, the employee need not consult OWCP for approval. In all other instances, however, the employee must submit a written request to OWCP with her reasons for desiring a change of physician. OWCP will approve the request if it determines that the reasons submitted are sufficient. Requests that are often approved include those for transfer of care from a general practitioner to a physician who specializes in treating conditions like the work related one or the need for a new physician when an employee has moved.³

Any transfer of medical care should be accomplished with due regard for professional ethics and courtesy. No transfer or termination of treatment should be made unless it is in the best interest of the claimant and the government. Employees who want to change attending physicians must explain their reasons in writing and OWCP must review all such requests. OWCP may approve a change when: the original treating physician refers the claimant to another physician for further treatment; the claimant wants to change from the care of a general practitioner to that of a specialist in the appropriate field or from the care of one specialist to another in the appropriate field; or the claimant moves more than 50 miles from the original

² 5 U.S.C. § 8101-8193; § 8103(a).

³ 20 C.F.R. § 10.316.

physician (since OWCP has determined that a reasonable distance of travel is up to a roundtrip distance of 100 miles). It must use discretion in cases where other reasons are presented.⁴

The Board has recognized that OWCP, acting as the delegated representative of the Secretary of Labor, has broad discretion in approving services provided under FECA. OWCP has the general objective of ensuring that an employee recovers from his or her injury to the fullest extent possible in the shortest amount of time. It, therefore, has broad administrative discretion in choosing the means to achieve this goal. The only limitation on OWCP's authority is that of reasonableness. 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 show merely that the evidence could be construed to produce a contrary conclusion.⁵

ANALYSIS -- ISSUE 1

On June 26, 2014 appellant submitted a written request to receive medical treatment from Dr. Holt. She noted that her treating physician, Dr. Kidd, had recommended three courses of physical therapy, but continued to have pain and requested that Dr. Holt become her treating physician. OWCP denied appellant's request as there was no evidence to indicate that the treatment from Dr. Kidd was anything other than proper and adequate.

The Board finds that OWCP did not abuse its discretion by denying appellant's request to change physicians to Dr. Holt. The Board notes that Dr. Kidd has provided the medical treatment recommended by OWCP medical adviser and a change of medical treatment providers does not appear to be in appellant's best interest. While appellant offered reasons for requesting to see Dr. Holt, OWCP provided sufficient reason for denying her request. It has broad discretion in approving services provided under FECA and the only limitation on OWCP's authority is that of reasonableness.⁶ In this case, there is no evidence of manifest error, clearly unreasonable judgment or illogical action on the part of OWCP. Appellant did not demonstrate that OWCP's decision to deny the change in physicians was an abuse of discretion.

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.

LEGAL PRECEDENT -- ISSUE 2

Section 8103 of FECA⁷ provides that OWCP shall provide a claimant with the service, appliances, and supplies prescribed or recommended by a qualified physician which are likely to

⁴ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Authorizing Examination and Treatment*, Chapter 3.300.5.c (February 2012).

⁵ *Daniel J. Perea*, 42 ECAB 221 (1990); *J.W.*, Docket No. 13-1852 (issued January 23, 2014).

⁶ *Id.*

⁷ 5 U.S.C. §§ 8101-8193, § 8103.

cure, give relief, reduce the degree or period of disability, or aid in lessening the amount of monthly compensation. In interpreting section 8103, the Board has recognized that OWCP has broad discretion in approving services provided under FECA. OWCP has the general objective of ensuring that an employee recovers from his or her injury to the fullest extent possible in the shortest amount of time. It therefore has broad administrative discretion in choosing means to achieve this goal. The only limitation on OWCP's authority is that of reasonableness.⁸ 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.⁹

To establish that a medical procedure is warranted, a claimant must submit evidence to show that the procedure is for a condition causally related to the employment injury and that the procedure is medically warranted. Both of these criteria must be met in order for OWCP to authorize payment.¹⁰

ANALYSIS -- ISSUE 2

OWCP accepted that appellant sustained lumbar and neck sprain as well as displacement of cervical intervertebral disc without myelopathy. On April 17, 2014 Dr. Holt diagnosed neck pain, cervical radiculitis, and herniated cervical disc. He found motor weakness in the right wrist as well as loss of range of motion. Dr. Holt reviewed appellant's x-rays and found large anterior osteophytes at C5-6 with collapse of the discs at both levels. He concluded that appellant had cervical stenosis with moderate disc disease at C5-6 and C6-7 and recommended a spinal fusion at C5-6 and C6-7.

An OWCP medical adviser reviewed Dr. Holt's reports as well as appellant's MRI scan and noted that appellant demonstrated some weakness in her right upper extremity. He further found no clear neurologic radicular signs. The medical adviser reviewed appellant's MRI scan and found that the report was "not particularly striking" and was "very bland." He concluded that surgical intervention did not offer significant benefits and that conservative management was preferable.

Based on the evidence of record, the Board finds that OWCP did not abuse its discretion by denying the proposed surgical procedure for a cervical fusion. The evidence of record fails to establish the necessity for surgery was medically warranted. While Dr. Holt asserted that appellant required surgery for moderate disc disease, the medical adviser reviewed his report and noted that he had not provided specific detailed physical findings in support of his conclusions. Dr. Holt did not explain how and why he believed that surgery was necessary and a better treatment for appellant. Without medical opinion evidence establishing that the proposed

⁸ *Daniel J. Perea, supra* note 5.

⁹ *Id.*

¹⁰ *T.C.*, Docket No. 14-878 (issued November 24, 2014).

surgery was medically warranted, Dr. Holt did not establish the need for spinal surgery and OWCP did not abuse its discretion in denying this requested treatment.

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 to change physicians or by denying her request for spinal surgery.

ORDER

IT IS HEREBY ORDERED THAT the September 8 and July 31, 2014 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 16, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board