

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

R.K., Appellant)	
)	
and)	Docket No. 18-0486
)	Issued: October 4, 2019
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Elk Grove, IL, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 4, 2018 appellant filed a timely appeal from a November 29, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the November 29, 2017 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether OWCP abused its discretion by denying appellant authorization for cervical surgery.

FACTUAL HISTORY

On October 20, 2015 appellant, then a 55-year-old custodial laborer, filed an occupational disease claim (Form CA-2) alleging that she developed a back condition as a result of lifting a large and heavy garbage bag on August 18, 2015. OWCP converted the claim to a traumatic injury claim, and on December 16, 2015, accepted appellant's claim for lumbar sprain.

A January 22, 2016 magnetic resonance imaging (MRI) scan revealed multilevel degenerative disease of the cervical spine with multilevel stenosis from C3-6.

In a report dated February 22, 2016, Dr. Tibor Boco, a Board-certified neurosurgeon, examined appellant for complaints of neck pain and left upper extremity pain. He noted that, although appellant denied any specific work-related event, her neck and arm symptoms had continued over the past year. Appellant recounted that she suffered a work-related incident on August 18, 2015, which resulted in low back pain after she lifted a heavy garbage bag. Dr. Boco diagnosed appellant with cervical spondylosis with radiculopathy and cervical spinal stenosis. He stated that he believed that the mechanism of injury associated with the lifting of the heavy bag was consistent with exacerbation of an underlying degenerative process.

In a follow-up report dated March 14, 2016, Dr. Boco stated that appellant presented with work-related exacerbation of neck pain and left upper extremity pain. He recommended an anterior cervical discectomy and fusion to address the index level and C5-6 and the adjacent level at C6-7.

On March 16, 2016 Dr. Boco requested authorization for cervical spine surgery.

On May 4, 2016 Dr. Boco performed an unauthorized anterior cervical discectomy at C5-6 and C6-7 with arthrodesis and fusion, as well as insertion of an anterior plate and screw instrumentation from C5 through C7 for augmentation of fusion. The pre- and postoperative diagnoses were cervical spondylotic disease with radiculopathy. On June 7, 2016 OWCP forwarded appellant's medical file and a statement of accepted facts (SOAF) to a district medical adviser in order to determine whether appellant's requested cervical surgery was medically necessary.

On June 9, 2016 Dr. Arnold T. Berman, a Board-certified orthopedic surgeon and district medical adviser, stated that appellant's request for cervical surgery should not be approved because cervical spondylotic disease with radiculopathy was not an accepted condition. He further stated that there was no basis to expand appellant's accepted conditions to include anterior cervical disc abnormality. Dr. Berman elaborated, noting that regardless of cause, the surgery was not indicated because the MRI scan did not indicate any acute injury, herniated disc, or aggravation of herniated disc.

On July 15, 2016 appellant requested retroactive authorization of her cervical surgery.

Appellant returned to work on August 8, 2016 in a full-time, limited-duty capacity.

In a follow-up report dated September 16, 2016, Dr. Boco noted that appellant was approximately four and a half months postoperative for her C5-7 anterior cervical discectomy and fusion. Appellant experienced mild neck discomfort and an incident of pain in her left upper extremity at work, but did not have any symptoms after that time with regard to her arms. He recommended that she continue with her work restrictions.

In a follow-up report dated April 27, 2017, Dr. Boco noted that appellant was approximately one year postoperative for her C5-7 anterior cervical discectomy and fusion. Appellant told Dr. Boco that she had been doing fairly well overall until about two weeks prior when she developed some left upper and lower extremity pain. Dr. Boco stated that she had recently experienced an exacerbation of mechanical neck pain. He recommended an x-ray of her cervical spine to evaluate her fusion.

By decision dated November 29, 2017, OWCP denied authorization for appellant's May 4, 2016 cervical surgery.

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 monthly compensation.³ While OWCP is obligated to pay for treatment of employment-related conditions, the employee has the burden of proof to establish that the expenditure is incurred for treatment of the effects of an employment-related injury or condition.⁴

In interpreting section 8193 of FECA, the Board has recognized that OWCP has broad discretion in approving services provided, with the only limitation on OWCP's authority being that of reasonableness.⁵ 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.⁶ 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 supporting rationalized medical evidence.⁷ In order for a surgical procedure to be authorized, a claimant must submit evidence to show that

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

⁴ *Kennett O. Collins, Jr.*, 55 ECAB 648 (2004).

⁵ *See D.K.*, 59 ECAB 141 (2007).

⁶ *Minnie B. Lewis*, 53 ECAB 606 (2002).

⁷ *M.B.*, 58 ECAB 588 (2007).

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.⁸

ANALYSIS

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

OWCP properly relied on the report of Dr. Berman in its decision denying appellant's request for authorization for the procedures of anterior cervical discectomy at C5-6 and C6-7 with arthrodesis and fusion and an anterior plate and screw instrumentation from C5 through C7 for augmentation and fusion. Dr. Berman correctly noted that no cervical conditions had been accepted under appellant's claim, and explained that the procedure was not medically indicated according to the evidence of record. His report was well rationalized and based on a complete background, his review of the SOAF, the medical record, and examination findings. As such, Dr. Berman's opinion that the requested procedures were not related to a condition accepted under appellant's claim and not medically warranted for the accepted condition of sprain of ligaments of the lumbar spine represents the weight of the evidence.

The only limitation on OWCP's authority in approving or disapproving service under FECA is one of reasonableness.⁹ In the instant case, appellant requested cervical surgery. OWCP obtained a well-rationalized report from Dr. Berman, in which he opined that the requested surgery should not be approved because it was not related to a condition accepted under appellant's claim. There were no rationalized conflicting medical reports of record. OWCP, therefore, had sufficient evidence upon which it made its decision to deny surgery and did not abuse its discretion.

In support of his request appellant submitted reports from Dr. Boco in which he requested authorization for cervical spine surgery. Dr. Boco, however, did not provide an explanation as to why the surgical request was medically necessary or related to the accepted employment injury. The Board thus finds that OWCP properly exercised its discretion in denying the requested authorization for cervical spine surgery.¹⁰

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 when it denied appellant authorization for cervical surgery.

⁸ *R.C.*, 58 ECAB 238 (2006).

⁹ *Supra* note 5.

¹⁰ *M.M.*, Docket No. 19-0491 (issued August 14, 2019).

ORDER

IT IS HEREBY ORDERED THAT the November 29, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 4, 2019
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board