U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FANNIE M. STROMAN and DEPARTMENT OF THE TREASURY, COMPUTER SERVICES DIVISION, Hyattsville, MD

Docket No. 98-176; Oral Argument Held April 5, 2000; Issued May 8, 2000

Appearances: *Wayne Marcus Scriven, Esq.*, for appellant; *Miriam D. Ozur, Esq.*, for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS, BRADLEY T. KNOTT

The issue is whether appellant has met her burden of proof to establish that the requested surgical procedure is medically necessary as a result of her accepted May 11, 1989 employment injury.

On May 11, 1989 appellant, then a 47-year-old computer assistant, filed a claim for a traumatic injury in the performance of duty. The Office accepted appellant's claim for a sprain of the left thumb and arthritis of the carpal metacarpal joint of the left thumb. Appellant missed intermittent periods of work between May 12 and August 25, 1989. Appellant stopped work on October 1, 1990 and did not return. The Office authorized a fascial interposition arthroplasty of the left thumb, which appellant underwent on December 16, 1993.

By decision dated November 27, 1995, the Office denied appellant's request for authorization for a fusion of the metacarpophalangeal (MP) joint of the left thumb on the grounds that the weight of the medical evidence, as represented by the opinion of Dr. Edward A. Rankin, a Board-certified orthopedic surgeon, who performed an impartial medical examination, established that it was not medically necessary due to the May 11, 1989 employment injury.

In a letter dated December 21, 1995, appellant, through her representative, requested a hearing before an Office hearing representative. By decision dated November 13, 1996, the hearing representative affirmed the Office's November 27, 1995 decision. On March 10, 1997 appellant requested reconsideration, which the Office denied in a merit decision dated August 7, 1997.

The Board has duly reviewed the case record in the present appeal and finds that the Office did not abuse its discretionary authority in denying appellant's request for surgical authorization.

In the present case, the Office accepted appellant's claim for a sprain of the left thumb and arthritis of the carpal metacarpal joint of the left thumb. Once the Office accepted that appellant's condition was causally related to her federal employment, appellant became entitled to treatment for her condition under the provisions of the Federal Employees' Compensation Act.[1]

Section 8103 of the Act provides, in part:

> "(a) The United States shall furnish to an employee who is injured while in the performance of duty, the service, appliances and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation. These services, appliances and supplies shall be furnished … (3) by or on the order of the United States medical officers and hospitals, or, at the employee's option, by or on the order of physicians and hospitals designated or approved by the Secretary."[2]

In interpreting section 8103, the Board has recognized that the Office, acting as the delegated representative of the Secretary of Labor, has broad discretion in approving services provided under the Act.[3] The Office 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. The Office, therefore, has broad administrative discretion in choosing means to achieve this goal.[4] The only limitation on the Office's authority is 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]

[1] 5 U.S.C. §§ 8101-8193.

[2] 5 U.S.C. § 8103(a).

[3] *Daniel Wietchy*, 34 ECAB 670 (1983).

[4] *See M. Lou Riesch*, 34 ECAB 1001 (1983).

[5] *Joe F. Williamson*, 36 ECAB 494 (1985).

[6] *Rosa Lee Jones*, 36 ECAB 679 (1985).

In a report dated February 23, 1994, Dr. Norman J. Cowen, a Board-certified orthopedic surgeon and appellant's attending physician, related:

> "It is now [two] months post arthroplasty. There is obvious creptius and hyperextension at the MP joint of her thumb. It is obvious that I should have fused this at the time of the fascial interposition arthroplasty. At that time, we were hoping not to do it because we did not want to give the impression that we were doing unnecessary surgery and there was some chance that we would not have to do it. Unfortunately, this has turned out to be one of those situations where she needs the MP joint fused. It is quite possible, though that this arthritis has been aggravated by the decrease in motion that is present at the carpometacarpal joint and that this fascial interposition arthroplasty brought this MP joint to light."

In a report dated August 19, 1994, Dr. Cowen again requested authorization to perform a fusion of the MP joint of appellant's left thumb.

The Office referred the case to an Office medical adviser for a recommendation regarding the requested surgery. In a report dated August 2, 1994, an Office medical adviser advised that appellant should undergo x-rays of the MP joint of the thumb to determine the degree of arthritis.

In a report dated March 15, 1995, Dr. Robert J. Neviaser, a Board-certified orthopedic surgeon, to whom the Office referred appellant for a second opinion evaluation, discussed appellant's history of injury and listed findings on physical examination. He found that appellant did not have tenderness at the MP joint of the left thumb and further had full grip strength. Dr. Neviaser stated:

> "X-rays she brings with her including those taken late last year show the resection arthroplasty with maintenance of good resection space. There are no changes at the metacarpophalangeal joint.
>
> "At this time, I do not feel the metacarpophalangeal joint arthrodesis is indicated since [appellant] has no symptoms referable to that level. Her weakness and inability to pick up heavy objects with a pinching motion may or may not be improved with such a proposed operation and there is certainly no guarantee that she will ever return to work even if that is done."

The Office determined that a conflict existed between Drs. Cowen and Neviaser regarding the medical necessity of a fusion of appellant's MP joint of the left thumb. By letter dated September 29, 1995, the Office referred appellant, together with the case record and a statement of accepted facts, to Dr. Rankin for an impartial medical evaluation.

In a report dated November 3, 1995, Dr. Rankin reviewed the history of injury, medical reports of record and discussed the results of x-ray findings. He further performed a physical examination. Dr. Rankin diagnosed "[s]tatus postoperative trapezial excision with persisting left thumb, wrist and arm pain." He related:

> "It is my opinion that further surgery on [appellant's] thumb will not materially alter her condition. While she does have some pain referable to the thumb, she does not limit her complaints of pain to the metacarpal phalangeal joint area and indeed complains of significant wrist and arm pain. Additionally, [appellant] did not appear to have a clear understanding of the recommended surgery in terms of the fact that the metacarpal phalangeal joint motion would be completely eliminated. [Appellant] is understandably anxious to have the arm pain eliminated, but I do not believe the proposed surgery will be successful in that regard, hence, I do not recommend it."

In a report dated December 6, 1996, Dr. Cowen stated that during power pinch testing appellant hyperextended the MP joint and "subluxes the carpometacarpal joint which is the site of the arthroplasty. This is absolutely diagnostic of a situation in which a patient needs an MP fusion and ligamentous reconstruction to stabilize the base of the metacarpal." Dr. Cowen further recommended that appellant undergo a nerve conduction study to rule out carpal tunnel syndrome in her hands.

In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[7]

The Board finds that the well-rationalized opinion of Dr. Rankin, a Board-certified orthopedic surgeon and impartial medical specialist, represents the weight of the medical evidence. The Board has carefully reviewed Dr. Rankin's opinion and notes that it has reliability, probative value and convincing quality with respect to the conclusions regarding the relevant issue in the present case. He reviewed the evidence of record, provided a complete and accurate factual and medical history and reached conclusions, which comported with the relevant history as well as his own findings on examination.[8] Dr. Rankin provided rationale for his opinion by explaining that in view of appellant's numerous complaints of pain throughout her left arm, the proposed fusion surgery on her thumb would not "materially alter" her condition. The Office, therefore, did not abuse its discretion in denying appellant's request for surgery on her left thumb as it has not been established that such surgery is "likely to cure or give relief" to her accepted left thumb condition. In light of the weight attributable to the medical opinion of Dr. Rankin, the Office properly denied authorization for the proposed surgical fusion of the MP joint of appellant's left thumb.

[7] *Jack R. Smith*, 41 ECAB 691 (1990).

[8] *See Victor J. Woodhams*, 41 ECAB 345 (1989).

The decisions of the Office of Workers' Compensation Programs dated August 7, 1997 and November 13, 1996 are hereby affirmed.

Dated, Washington, D.C.
May 8, 2000

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member