

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALBERT J. BROMILEY and DEPARTMENT OF THE NAVY,
PHILADELPHIA NAVAL SHIPYARD, Philadelphia, PA

*Docket No. 02-253; Submitted on the Record;
Issued February 24, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for authorization of back surgery.

This case is before the Board for the second time. In the first appeal, the Board set aside the Office's July 9, 1998 decision denying appellant's request for surgical authorization after finding a conflict in medical opinion.¹ The Board remanded the case for the Office to refer appellant for an impartial medical examination on the issue of whether he required surgery for his back condition and, if so, whether the need for surgery resulted from his accepted July 23, 1992 employment injury. The findings of fact and conclusions of law from the Board's prior decision are hereby incorporated by reference.

By letter dated October 5, 2000, the Office referred appellant to Dr. William F. Young, a Board-certified neurosurgeon, for an impartial medical evaluation.

In a decision dated March 19, 2001, the Office denied appellant's request for authorization for spinal surgery. The Office found that Dr. Young's opinion represented the weight of the medical evidence and established that appellant did not need surgery on his back.

By letter dated March 21, 2001, appellant, through his representative, requested a hearing. A hearing was held on September 27, 2001. By decision dated November 16, 2001, the hearing representative affirmed the Office's March 19, 2001 decision.

The Board finds that the Office properly denied appellant's request for surgical authorization.

¹ *Albert J. Bromiley*, Docket No. 98-2365 (issued August 29, 2000).

Section 8123 of the Federal Employees' Compensation Act² provides that where there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Office shall appoint a third physician who shall make an examination. In situations where there exists a conflict in medical opinion 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, is entitled to special weight.³

In a report dated December 14, 2000, Dr. Young, a Board-certified neurosurgeon selected as the impartial medical specialist, discussed appellant's history of injury and reviewed the medical evidence of record, including the results of objective studies. He opined that appellant's July 23, 1992 employment injury caused cervical and lumbar strain without evidence of radiculopathy or nerve impingement. Dr. Young stated:

"I could find nothing on my physical examination to substantiate evidence of chronic nerve impingement. Of note is that [appellant's] CT [computerized tomography] myelogram shows narrowing primarily of the right C5-6 neural foramina. It should be noted that [appellant] complains entirely of left[-]sided upper extremity symptoms. Therefore, I think that the findings on his cervical MRI [magnetic resonance imaging] [scan] and cervical CT myelogram are incidental and have no relationship to his complaints. Moreover his CT myelogram did not show any evidence of a bulging disc at any level. His MRI scans performed prior to the CT myelogram show only disc protrusions. I think that the CT myelogram more definitively demonstrates that there is no evidence of a cervical disc herniation or foramina encroachment.

"I think that [appellant] has developed a chronic pain syndrome resulting in marked psychological overlay. I do not think surgery on his cervical or lumbar regions is indicated. Of note is that [appellant's] initial examination by Dr. Zimmerman after the second accident showed no change in his physical examination. Therefore[,] I think that his symptoms are also related to aggravation of his low back problems related to the initial accident in 1986. I think that [appellant's] symptoms at this juncture are primarily functional and do not relate to any structural abnormalities."

The Board has carefully reviewed the opinion of Dr. Young and finds that it has reliability, probative value and convincing quality with respect to his finding that appellant did not require surgery for his back condition. Dr. Young provided a thorough factual and medical history and accurately summarized the relevant medical evidence. He further supported his conclusion that appellant did not require surgery with medical rationale, noting that the objective tests did not show evidence of "a cervical disc herniation or foramina encroachment" and that appellant's symptoms were not caused by structural problems. Accordingly, Dr. Young's opinion is entitled to the special weight accorded an impartial medical examiner.

² 5 U.S.C. § 8107 *et seq.*

³ *Leanne E. Maynard*, 43 ECAB 482 (1992).

Appellant submitted reports dated July 13 and January 22, 2001 from Dr. Emil L. Matarese, a Board-certified neurologist and his attending physician, who noted findings of “chronic neck and low back pain from cervical and lumbar radiculopathy due to underlying disc dysfunction.” He again recommended surgery. However, as Dr. Matarese was on one side of the medical conflict that the impartial specialist resolved, his reports are insufficient to overcome the specialist weight accorded the impartial specialist or to create a new medical conflict.⁴

In a report dated September 25, 2001, Dr. Minati Pattanayak, who is Board-certified in family practice, diagnosed chronic back pain, neck pain, cervical and lumbar radiculopathy, migraine headaches, post-traumatic cephalgia and post-traumatic depression and anxiety. Dr. Pattanayak recommended surgery “to correct [appellant’s] everyday discomfort and pain disorder.” She, however, did not list any findings on examination or provide any rationale supporting her opinion that appellant required surgery. Therefore, Dr. Pattanayak’s opinion is of little probative value and insufficient to overcome the weight accorded to Dr. Young as the impartial medical specialist.⁵

The decisions of the Office of Workers’ Compensation Programs dated November 16 and March 19, 2001 are affirmed.

Dated, Washington, DC
February 24, 2003

Alec J. Koromilas
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁴ *Barbara J. Warren*, 51 ECAB 413 (2000).

⁵ *Caroline Thomas*, 51 ECAB 451 (2000) (a medical opinion not fortified by medical rationale is of little probative value).