

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LLOYD WILLIAMS and DEPARTMENT OF JUSTICE, FEDERAL  
BUREAU OF PRISONS, CORRECTIONAL COMPLEX, Beaumont, TX

*Docket No. 03-1018; Submitted on the Record;  
Issued July 1, 2003*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly declined to authorize a repeat cervical laminectomy and decompression.

Appellant, a 42-year-old correctional officer, filed a notice of occupational disease on January 8, 2002 alleging that he developed cervical stenosis due to lifting in the performance of duty. The Office accepted appellant's claim for cervical displacement without myelopathy and cervical stenosis. Appellant's attending physician, Dr. John B. Berry, a Board-certified neurosurgeon, performed a cervical laminectomy and decompression C3-7 on February 15, 2002.<sup>1</sup>

In a report dated July 16, 2002, Dr. Berry recommended that appellant undergo an additional laminectomy and decompression at C3-7. The district medical adviser opined that the information in the record did not support the second surgery and requested a second opinion evaluation to address the issue of instability. The second opinion physician, Dr. Bernard Albina, a Board-certified orthopedic surgeon, stated that there was no need for the second surgery.

By decision dated December 30, 2002, the Office denied appellant's request for surgery relying on Dr. Albina's report.<sup>2</sup>

The Board finds that there is a conflict of medical opinion on the issue of whether an additional cervical laminectomy and decompression should be authorized.

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<sup>1</sup> The record before the Board does not contain a final decision from the Office reimbursement of appellant's initial surgery. Therefore, the Board will not address this issue on appeal. 20 C.F.R. § 501.2(c).

<sup>2</sup> Following the Office's December 30, 2002 decision, appellant submitted additional new evidence. As the Office did not consider this evidence in reaching a final decision, the Board will not review this evidence on appeal. 20 C.F.R. § 501.2(c).

Section 8103 of the Federal Employees' Compensation Act<sup>3</sup> provides that the Office shall provide a claimant with the service, appliances and supplies prescribed or recommended by a qualified physician, which are likely to 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 the Office has broad discretion in approving services provided under the Act. The Office has the general objective of ensuring that an employee recovers from his 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. The only limitation on the Office's authority is that of reasonableness.<sup>4</sup>

Appellant underwent a magnetic resonance imaging (MRI) scan of the cervical spine on May 22, 2002. The report indicated that appellant demonstrated a focal central protrusion of the disc into the spinal canal without cord impingement and mild narrowing of the neural foramina bilaterally at C3-4. At C4-5 there was a small focal central protrusion of the disc into the spinal canal without sac impingement and at C5-6 a dorsal disc protrusion of the disc across the disc space into the spinal canal without cord impingement and at C6-7 foraminal stenosis on the left with a central protrusion of the disc into the spinal canal with mild cord impingement as well as some residual narrowing of the spinal canal with narrowing of the dorsal aspect of the spinal canal.

Appellant's attending physician, Dr. Berry, a Board-certified neurosurgeon, completed a report on July 16, 2002 and stated that appellant was experiencing pain down his left arm with numbness and weakness in the left arm with activity. He stated that appellant's MRI scan revealed persistent stenosis at C6-7 and at C3-4. Dr. Berry found foraminal encroachment at C6-7, which was likely aggravated by flexion. He stated that with flexion appellant was provoking significant radiculopathy and that his MRI scan revealed persistent deformity. Dr. Berry opined that appellant experienced some settling or thickening of the ligaments and scar tissue at the inferior and superior aspect of the surgery. He recommended proceeding with another operation decompressing the areas.

Dr. Albina, the second opinion physician and a Board-certified orthopedic surgeon, completed a report on November 27, 2002, noting that appellant continued to report some numbness in his left hand and arm and weakness with difficulty lifting with his left hand. Dr. Albina reviewed appellant's May 22, 2002 MRI scan and found no cord impingement at C3-4, no sac impingement at C4-5, no cord impingement at C5-6 and some residual narrowing of the spinal canal with a central protrusion of the disc at C6-7. Dr. Albina performed a physical examination and diagnosed findings compatible with cervical laminectomy syndrome. He stated, "I do not see the need for performing a second surgery.... The findings of the MRI [scan] study done on May 22, 2002 do not show any evidence of stenosis or nerve impingement sufficient to justify an additional surgery to decompress the cervical spine from C3-7." Dr. Albina opined that additional surgery would not improve the strength in appellant's left upper extremity and stated that appellant did not seem to fully understand the risks of additional neck surgery.

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<sup>3</sup> 5 U.S.C. §§ 8101-8193, 8103.

<sup>4</sup> *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

Section 8123(a) of the Act,<sup>5</sup> provides, “If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.” In this case, appellant’s attending physician, Dr. Berry, a Board-certified neurosurgeon, reviewed appellant’s MRI scan, performed a physical examination and concluded that surgery was needed. The Office referral physician, Dr. Albina, a Board-certified orthopedic surgeon, likewise reviewed the medical evidence of record and examined appellant and concluded that additional surgery was not justified. Due to the difference of opinion between appellant’s attending surgeon and the Office referral physician, the Board finds that there is a conflict of medical opinion regarding the necessity for surgery to cure, give relief or reduce the degree or period of disability. Therefore, on remand, the Office should refer appellant, a statement of accepted facts and a list of specific questions to an appropriate Board-certified physician for an impartial medical examination and a report as to whether additional surgery is appropriate in the present case. After such further development as the Office deems necessary, the Office should issue an appropriate decision.

The December 30, 2002 decision of the Office of Workers’ Compensation Programs is hereby set aside and remanded for further development consistent with this decision of the Board.

Dated, Washington, DC  
July 1, 2003

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

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<sup>5</sup> 5 U.S.C. §§ 8101-8193, 8123(a).