United States Department of Labor
Employees' Compensation Appeals Board

BARBARA F. POSTON, Appellant	)	
and	)	**Docket No. 04-2108**
	)	**Issued: February 8, 2005**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Fayetteville, AR, Employer	)	

Appearances:
Barbara F. Poston, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On August 26, 2004 appellant filed a timely appeal from the August 3, 2004 merit decision of the Office of Workers' Compensation Programs, which denied authorization for surgery. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review this denial.

ISSUE

The issue is whether the Office properly denied authorization for a micro-anterior cervical discectomy and fusion at C3-4 and for a bilateral reduction mammoplasty.

FACTUAL HISTORY

On June 13, 2001 appellant, then a 48-year-old licensed practical nurse, sustained an injury in the performance of duty when a patient slipped and she grabbed him to keep him from falling. The Office accepted her claim for cervical and right shoulder strain and paid

compensation. The Office later accepted an aggravation of cervicalgia and an aggravation of a degenerative cervical disc.[1]

On August 13, 2003 Dr. Martin Greenberg, appellant's neurosurgeon, reported that he would proceed with a two-level micro-anterior cervical discectomy and fusion at C5-6 and C6-7 with instrumentation. He noted that appellant also had a right C3-4 disc bulge with foraminal stenosis and a central C4-5 disc bulge with foraminal narrowing. He stated: "In the future, the patient may also require further surgery, *i.e.*, micro-ACDF at the C3-4 and C4-5 levels. However, today, clearly the right C6-7 disc and also the right C5-6 and stenosis are the pain generators." The Office authorized an anterior decompression and fusion at C5-6 and C6-7, which was performed on November 11, 2002. Appellant received compensation for temporary total disability on the periodic rolls.

A conflict arose between Dr. Greenberg and Dr. Ted Honghiran, a Board-certified orthopedic surgeon and Office second opinion physician, on whether appellant remained totally disabled for work. To resolve this conflict, the Office referred appellant, together with the medical record and a statement of accepted facts, to Dr. Alice M. Martinson, a Board-certified orthopedic surgeon.

On June 23, 2004 Dr. Greenberg reported that appellant was a candidate for and would benefit from a bilateral breast reduction or decompression for thoracic outlet syndrome, bilateral brachial plexopathy. He stated that he would refer her to plastic surgery for the bilateral mammoplasty. He also reported that he would consider a micro-anterior cervical discectomy and fusion at C3-4 as well as a bilateral carpal tunnel release. The Office asked Dr. Martinson whether the diagnosed conditions warranted any further surgical intervention.

On July 21, 2004 Dr. Martinson found that appellant was totally disabled for work. She then addressed appellant's diagnosed conditions and need for surgery:

> "I concur with Dr. Greenberg that she appears to have bilateral carpal tunnel syndromes -- worse on the right than on the left. Her hand symptoms developed prior to her cervical fusion while she was still working in a clerical capacity. They have not been improved by her neck surgery and I would recommend that her carpal tunnel diagnosis be accepted as work related.
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> "In addition, Dr. Greenberg has provided her with a diagnosis of brachial plexus traction and bilateral breast pain. I find no evidence that she has any type of brachial plexus pathology. She does, however, have extremely pendulous breasts and the constant dragging weight is undoubtedly responsible for some chronic strain symptoms in her shoulder girdles now that her cervical spine posture has become fixed. These complaints are postural in nature and only indirectly related to the work-related injury of her cervical spine.

[1] The record indicates that appellant sustained a second injury on January 7, 2002 (OWCP File No. 162030919) when a patient grabbed her name tag and shoved it into her throat.

"Her right carpal tunnel syndrome appears to be sufficiently advanced so that carpal tunnel release would be an appropriate undertaking. Upon successful recovery from surgery on her right hand, surgery on her left hand can be considered depending upon her level of symptoms and finding at that time as well as the degree of electrical abnormality confirmed by diagnostic studies.

"While she has disc pathology at C3-4, this level does not appear to be producing any radicular symptoms, nor does she have any significant canal stenosis at that level at this time. I would, therefore, recommend that surgical intervention at C3-4 not be undertaken at this time. I would certainly not consider it until she had recovered from any planned hand surgery.

"Bilateral reduction mammoplasty has also been recommended for relief of her chronic shoulder girdle strain symptoms. In actuality, this procedure has been discussed for several years. I strongly concur with the recommendation for bilateral reduction mammoplasty. This is not a cosmetic procedure. Rather, it is one that is undertaken for pain relief. Individuals with extremely large breasts frequently develop chronic shoulder girdle strain symptoms as they age. [Appellant's] symptoms are not directly related to the work injury of her cervical spine on June 13, 2001. I do not, however, believe it is the province of the workers' compensation system to fund that procedure in this case."

The Office updated appellant's claim to include the accepted condition of bilateral carpal tunnel syndrome. In a decision dated August 3, 2004, the Office denied authorization for the prescribed micro-anterior cervical discectomy and fusion at C3-4 and bilateral reduction mammoplasty based on Dr. Martinson's opinion.

LEGAL PRECEDENT

Section 8103(a) of the Federal Employees' Compensation Act 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 that the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of any disability or aid in lessening the amount of any monthly compensation.[2] The Office must therefore exercise discretion in determining whether the particular service, appliance or supply is likely to effect the purposes specified in the Act.[3] The only limitation on the Office's authority is that of reasonableness.[4]

[2] 5 U.S.C. § 8103(a).

[3] *See Marjorie S. Geer*, 39 ECAB 1099 (1988) (the Office has broad discretionary authority in the administration of the Act and must exercise that discretion to achieve the objectives of section 8103).

[4] *Daniel J. Perea*, 42 ECAB 214 (1990). *See generally* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.10 (April 1993) (obtaining second opinions for surgery).

ANALYSIS

With respect to the micro-anterior cervical discectomy and fusion at C3-4, the Board notes that appellant's neurosurgeon, Dr. Greenberg, reported that this procedure was only under consideration; he did not advise that it was currently necessary. Dr. Martinson, who served as an impartial medical specialist on the issue of disability for work but who must be considered a second-opinion physician for purposes of the issue on appeal, recommended that the procedure not be undertaken "at this time" because appellant's disc pathology at C3-4 did not appear to be producing any radicular symptoms, and appellant did not currently have any significant canal stenosis at that level. Dr. Martinson added that she would certainly not consider the procedure until appellant had recovered from any planned hand surgery.

The Board finds that the Office did not abuse its discretion in denying authorization for a micro-anterior cervical discectomy and fusion at C3-4. Dr. Martinson explained the medical reasons why such a procedure was not warranted at that time. As the Office's denial of authorization was reasonable based on the evidence, the Board will affirm the Office's August 3, 2004 decision on the issue of cervical surgery.[5]

With respect to the bilateral reduction mammoplasty, the Board finds that the case is not in posture. Dr. Martinson drew a connection between the previously authorized fusion at C5-7 and the current chronic strain symptoms in appellant's shoulder girdles: "She does, however, have extremely pendulous breasts and the constant dragging weight is undoubtedly responsible for some chronic strain symptoms in her shoulder girdles *now that her cervical spine posture has become fixed.*" (Emphasis added.) In other words, Dr. Martinson appeared to indicate that these chronic strain symptoms were a consequence of the authorized cervical fusion.

It is an accepted principle of workers' compensation law that when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent, intervening cause attributable to the employee's own intentional conduct.[6] Dr. Martinson raised a question whether chronic strain symptoms in appellant's shoulder girdles were a consequence of the authorized fusion at C5-7. Dr. Martinson reported that appellant's shoulder complaints were indirectly related to the accepted employment injury. Further development of the medical evidence is warranted.

The Board will set aside the Office's August 3, 2004 decision on the issue of bilateral reduction mammoplasty and remand the case for further development.[7] After such further development as may be necessary, the Office shall issue an appropriate final decision on whether to authorize this procedure.

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[5] This does not preclude any future request for the surgery should circumstances change and the need become medically apparent.

[6] *John R. Knox*, 42 ECAB 193 (1990).

[7] The Office must update its statement of accepted facts to include all the medical conditions accepted as employment related, not just a cervical and right shoulder strain, and to include any employment injury on January 7, 2002.

CONCLUSION

The Office did not abuse its discretion in denying authorization for a micro-anterior cervical discectomy and fusion at C3-4. The medical evidence supported that such a procedure was not warranted. Further development of the medical evidence is needed to clarify whether a mammoplasty is warranted as related to the accepted cervical and shoulder strain conditions.

ORDER

IT IS HEREBY ORDERED THAT the August 3, 2004 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part. The case is remanded for further action consistent with this opinion.

Issued: February 8, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member