

FACTUAL HISTORY

On July 6, 2022 appellant, then a 42-year-old city delivery specialist, filed a traumatic injury claim (Form CA-1) alleging that on June 24, 2022 she sustained injuries to her neck, back, and left shoulder, when delivering a package while in the performance of duty. She stopped work on June 25, 2022. OWCP accepted the claim for strain of muscle, fascia, and tendon at the cervical level.

In a report dated October 11, 2022, Dr. Saurabh Singhal, who specializes in neurology, related that appellant had a recent history of falls. He diagnosed lumbar radiculopathy, bilateral leg weakness, bilateral carpal tunnel syndrome, cervical radiculopathy, and ulnar neuropathy of the left upper extremity.

On November 7, 2022 OWCP referred appellant for a second opinion examination with Dr. Gordon Gregory Gidman, a Board-certified orthopedic surgeon, to determine the nature of appellant's employment-related condition, the extent of disability, and appropriate treatment.

In a November 22, 2022 report, Dr. Patrick A. Juneau, a Board-certified neurosurgeon and a treating physician, related that it was his impression that appellant had been having neck and left arm pain, with numbness since her employment injury on June 24, 2022. He recommended that appellant undergo diagnostic testing to include a cervical magnetic resonance imaging (MRI) scan.

A December 28, 2022 MRI scan interpreted by Dr. James Godchaux, Jr., a Board-certified diagnostic radiologist, revealed straightening of the normal cervical lordosis, generalized bulging with most of the cervical spine with tiny annular tears at C3-4 and C6-7, and no disc herniation or significant canal/foraminal stenosis.

X-ray films dated December 28, 2022 of the cervical spine, read by Dr. Godchaux revealed straightening of normal cervical lordosis and slight retrolisthesis of C2 on C3 as well as C3 and C4 on C4, only seen with extension at each of these levels.

On January 5, 2023 Dr. Juneau related his review of appellant's MRI scan and indicated that appellant had a left cervical myelopathy. He requested authorization for an ACDF procedure at C5-6.

In a letter dated January 6, 2023, OWCP advised Dr. Juneau that it had received his request for cervical surgery; however, appellant's claim was accepted for neck strain. The surgery request was not currently authorized as a second opinion examination was warranted.

In a January 24, 2023 report, Dr. Gidman, the second opinion physician, noted appellant's history of injury and medical course. He related that she currently complained of neck ache and that her head felt too heavy for her neck. Appellant had no radicular symptoms to the upper extremities. Dr. Girdman opined that she sustained a cervical and left trapezius strain. He noted that appellant had subjective complaints of pain in the musculature to the left side of her neck and left trapezius muscle, but her workup was negative concerning any cervical or brachial plexus injury. Dr. Gidman further opined that she most probably had reached maximum medical improvement (MMI) of the June 24, 2022 work injury to her neck and left trapezius area.

On January 31, 2023 OWCP expanded the acceptance of the claim to include strain of other muscles, fascia, and tendons at the left trapezius.

In a separate letter also dated January 31, 2023, OWCP provided Dr. Juneau with a copy of Dr. Gidman's January 24, 2023 report and requested his response.

In a February 16, 2023 note, Dr. Juneau responded that appellant continued to have neck and left arm pain, with numbness. He concluded that for the reasons stated in his previous report, he did "not agree with Dr. Gidman, I have recommended surgery at the C5-6 level."

On March 9, 2023 OWCP referred the case record and a statement of accepted facts (SOAF) to Dr. Kenechukwu Ugokwe, Board-certified in emergency medicine and serving as the OWCP district medical adviser (DMA), for review and an opinion of whether the procedures proposed by Dr. Juneau were medically warranted and causally related to the accepted, work-related medical conditions.

In a March 29, 2023 report, the DMA, Dr. Ugokwe, opined that the requested ACDF surgery proposed at the C5-6 level was causally related to the accepted medical condition because appellant did not have neck pain prior to her employment injury. However, the procedure was not medically necessary because there was no evidence of instability or stenosis at C5-6.

On April 14, 2023 OWCP determined that a conflict of medical opinion evidence existed between Dr. Gidman, the second opinion physician, and Dr. Juneau, appellant's treating physician, with regard to whether the ACDF surgery at the C5-6 level was medically necessary.

On October 5, 2023 OWCP referred appellant for an impartial medical evaluation with Dr. Elisabeth Post, a Board-certified neurosurgeon, to resolve the conflict of medical opinion. It provided Dr. Post with a SOAF, the medical record, and a series of questions.

In a report dated November 30, 2023, Dr. Post, the impartial medical examiner (IME), reviewed appellant's history of injury, medical treatment, and the SOAF. She examined appellant and provided detailed physical examination findings. Dr. Post noted that palpation of the cervical spine revealed no point tenderness and appellant had full range of motion (ROM) of both the neck and arms, her muscle strength testing was 5/5 in the deltoids, biceps, triceps, wrist extensors, wrist flexors, and intrinsics, and her deep tendon reflexes were present everywhere. She noted that she reviewed the diagnostic studies including the December 28, 2022 MRI scan and x-rays and opined that appellant had suffered a cervical sprain as a result of her June 24, 2022 employment injury. Dr. Post explained that appellant's MRI scans did not reveal any traumatic injury and her symptoms remained solely subjective without any objective neurological findings on physical examination. She advised that cervical sprains were soft tissue injuries that generally resolved within three to six months with conservative measures. Dr. Post noted that appellant had passed this timeframe and should be considered at MMI for her cervical sprain. The IME further opined that given the lack of focal neurological findings, appellant was able to return to her preaccident job without restrictions.

By decision dated December 21, 2023, OWCP denied authorization for ACDF surgery at the C5-6 level. It explained that the evidence did not support that the requested surgery was medically necessary to address the effects of her work-related conditions under FECA.

LEGAL PRECEDENT

Section 8103(a) of FECA³ 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 by 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 the monthly compensation.⁴ In interpreting this section of FECA, the Board has recognized that OWCP has broad discretion in determining whether a particular type of treatment is likely to cure or give relief.⁵ The only limitation on OWCP's authority is that of reasonableness.⁶

While OWCP is obligated to pay for treatment of employment-related conditions, appellant has the burden of proof to establish that the expenditures were incurred for treatment of the effects of an employment-related injury or condition.⁷ Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.⁸ In order for a surgical procedure to be authorized, appellant must establish that the procedure was for a condition causally related to the employment injury and that the procedure was medically warranted.⁹ Both of these criteria must be met in order for OWCP to authorize payment.¹⁰

Abuse of discretion is 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.¹¹

Section 8123(a) of FECA provides that if there is a disagreement between the physician making the examination for the United States and the physician of an employee, the Secretary shall appoint a third physician (known as a referee physician or impartial medical examiner) who shall make an examination.¹² This is called an impartial medical examination and OWCP will select a

³ 5 U.S.C. § 8103(a).

⁴ *Id.*; see *J.K.*, Docket No. 20-1313 (issued May 17, 2021); *Thomas W. Stevens*, 50 ECAB 288 (1999).

⁵ *R.C.*, Docket No. 18-0612 (issued October 19, 2018); *W.T.*, Docket No. 08-812 (issued April 3, 2009).

⁶ *D.C.*, Docket No. 18-0080 (issued May 22, 2018); *Mira R. Adams*, 48 ECAB 504 (1997).

⁷ *R.M.*, Docket No. 19-1319 (issued December 10, 2019); *J.T.*, Docket No. 18-0503 (issued October 16, 2018); *Debra S. King*, 44 ECAB 203, 209 (1992).

⁸ *K.W.*, Docket No. 18-1523 (issued May 22, 2019); *C.L.*, Docket No. 17-0230 (issued April 24, 2018); *M.B.*, 58 ECAB 588 (2007); *Bertha L. Arnold*, 38 ECAB 282 (1986).

⁹ *T.A.*, Docket No 19-1030 (issued November 22, 2019); *Zane H. Cassell*, 32 ECAB 1537, 1540-41 (1981); *John E. Benton*, 15 ECAB 48, 49 (1963).

¹⁰ *J.L.*, Docket No. 18-0990 (issued March 5, 2019); *R.C.*, 58 ECAB 238 (2006); *Cathy B. Millin*, 51 ECAB 331, 333 (2000).

¹¹ *D.S.*, Docket No. 18-0353 (issued February 18, 2020); *E.L.*, Docket No. 17-1445 (issued December 18, 2018); *L.W.*, 59 ECAB 471 (2008); *P.P.*, 58 ECAB 673 (2007); *Daniel J. Perea*, 42 ECAB 214 (1990).

¹² 5 U.S.C. § 8123(a); see *R.S.*, Docket No. 10-1704 (issued May 13, 2011); *S.T.*, Docket No. 08-1675 (issued May 4, 2009).

physician who is qualified in the appropriate specialty and who has no prior connection with the case.¹³ When there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical examiner 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.¹⁴

ANALYSIS

The Board finds that OWCP properly denied appellant's request for authorization of ACDF surgery at the C5-6 level.

OWCP properly referred appellant, pursuant to 5 U.S.C. § 8123(a), to Dr. Post for an impartial medical examination and opinion in order to resolve the conflict in the medical opinion evidence between Dr. Juneau, appellant's treating physician, and Dr. Gidman, an OWCP second opinion examiner, with regard to whether the proposed ACDF surgery at the C5-6 level was medically necessary.

OWCP provided Dr. Post with a SOAF which noted appellant's history of injury, accepted conditions, and treatment. Dr. Post conducted an extensive physical examination and related that appellant had full ROM of both the neck and arms, her muscle strength testing was 5/5 in the deltoids, biceps, triceps, wrist extensors, wrist flexors, and intrinsic, and her deep tendon reflexes were present everywhere. She opined after reviewing appellant's diagnostic studies, including the December 28, 2022 MRI scan and x-rays, that appellant had suffered a cervical sprain as a result of her June 24, 2022 employment injury. Dr. Post explained that appellant's MRI scans did not reveal any traumatic injury and her symptoms remained solely subjective without any objective neurological findings on physical examination. She further explained that cervical sprains were soft tissue injuries that generally resolved within three to six months with conservative measures. The IME advised that, given the lack of focal neurological findings, appellant had reached MMI and was able to return to her preaccident job without restriction.

In situations where the case is referred to an IME for the purpose of resolving a medical conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.¹⁵ The Board finds that Dr. Post provided a well-rationalized opinion based on the SOAF, the medical record, and her examination findings. Thus, Dr. Post's opinion that appellant had only subjective symptoms, without objective neurologic findings and that she had reached MMI is entitled to the special weight of the evidence.¹⁶ The only limitation on OWCP's authority in approving or denying service under FECA is one of reasonableness.¹⁷ OWCP obtained an impartial medical examination by Dr. Post who opined that

¹³ 20 C.F.R. § 10.321.

¹⁴ *J.P.*, Docket No. 23-0075 (issued March 26, 2023); *Darlene R. Kennedy*, 57 ECAB 414 (2006); *Gloria J. Godfrey*, 52 ECAB 486 (2001); *James P. Roberts*, 31 ECAB 1010 (1980).

¹⁵ *See D.S.*, Docket No. 19-1698 (issued June 18, 2020); *C.W.*, Docket No. 17-0918 (issued January 5, 2018); *Patricia J. Glenn*, 53 ECAB 159 (2001); *James P. Roberts*, *id.*

¹⁶ *See D.S.*, *id.*; *P.F.*, Docket No. 16-0693 (issued October 24, 2016).

¹⁷ *See T.A.*, *supra* note 9; *Cathy B. Millin*, *supra* note 10.

appellant had only sustained a soft tissue cervical injury, without any objective neurologic findings. It, therefore, had sufficient evidence upon which to deny surgery and did not abuse its discretion.

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 properly denied appellant's request for authorization of ACDF surgery.

ORDER

IT IS HEREBY ORDERED THAT the December 21, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 15, 2024
Washington, DC

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

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

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