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<b>S.H., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 09-897</b>
	)	<b>Issued: November 3, 2009</b>
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>Kansas City, MO, Employer</b>	)	
	)	

### Case Submitted on the Record

Before:  
DAVID S. GERSON, Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

On February 18, 2009 appellant filed a timely appeal from the Office of Workers' Compensation Programs' May 30 and December 23, 2008 merit decisions, denying her request for authorization of physical therapy.<sup>1</sup> Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

The issue is whether the Office abused its discretion when refusing to authorize appellant's request for physical therapy for her neck and parascapula.

<sup>1</sup> The Board notes that the Office granted appellant a schedule award for a six percent impairment of her right upper extremity in a decision dated January 20, 2009. As appellant did not appeal the January 20, 2009 decision, the Board will not address the schedule award issue.

## **FACTUAL HISTORY**

On August 14, 2007 appellant, a 31-year-old mail handler, sustained injuries to her right shoulder while reaching for and lifting a tray. Her claim was accepted for right rotator cuff syndrome and allied disorders and sprains of the upper arm and shoulder (supraspinatus). Appellant worked light duty until December 10, 2007, when she was terminated by the employing establishment.

Appellant was treated by Dr. Alexandra J. Strong, a Board-certified orthopedic surgeon. On October 23, 2007 Dr. Strong provided a history of injury and examination findings. She noted tender muscles bilaterally in the paracervical, parascapular and trapezius areas, as well as at both acromioclavicular joints and around the acromion. Dr. Strong found good range of motion (ROM) in both shoulders with pain and good external rotation strength. Review of a magnetic resonance imaging scan of the left shoulder revealed a reticular-sided partial thickness tear. She diagnosed bilateral rotator cuff syndrome and muscle spasm. Dr. Strong recommended light duty, which restricted appellant from reaching above the shoulder and physical therapy. On December 4, 2007 she noted continued shoulder pain, mostly in the trapezius area and the base of appellant's neck.

The record reflects that the Office approved requests for physical therapy related to appellant's accepted shoulder condition from September 27 through October 27, 2007.

On February 26, 2008 Dr. Strong found tenderness in appellant's neck, paracervical area, trapezius and supraspinatus muscle belly areas. She recommended continuing appellant's work restrictions and stated, "I do not think I have a whole lot to offer her." Dr. Strong prescribed four weeks of physical therapy for the neck and parascapular region.

In a letter dated March 10, 2008, the Office informed appellant that the evidence was insufficient to establish that the requested physical therapy for the neck and parascapula was necessary and causally related to her accepted shoulder condition. It advised her to submit additional medical evidence within 30 days.

The record contains a February 28, 2008 physical therapy evaluation by Lori Evans, a physical therapist, who stated that appellant had limited right shoulder ROM and dizziness with head motion. Ms. Evans noted that appellant was unable to drive because she could not turn her head to look over her shoulder. Her stated goals were to increase cervical rotation, right shoulder elevation and cervical and upper extremity stability. Ms. Evans requested approval for physical therapy for the neck and bilateral parascapula for the period March 1 through May 15, 2008.

In a May 20, 2008 report, Dr. Ann Lee, a Board-certified physiatrist, stated that appellant related that she had experienced shoulder and neck pain since she sustained a work-related injury in August 2007. Examination of the right shoulder revealed full range of motion in all planes, with no end pain noted. Palpation revealed no significant tenderness of the subacromial space or anterior shoulder girdle musculature. There was mild tenderness on palpation of the posterior shoulder girdle musculature, as well as over the right trapezius muscle. Mild spasms were also noted in these areas. Motor strength was 5/5 and there was no significant instability noted. Dr. Lee diagnosed right shoulder pain, likely myofascial, with no neurological deficit or findings

of impingement, likely due to right trapezial myositis. She released appellant to full duty and recommended physical therapy for the right shoulder and right trapezius two to three times per week for four to six weeks.

By decision dated May 30, 2008, the Office denied authorization for the requested neck and parascapula physical therapy on the grounds that the medical evidence did not establish that the treatment was medically necessary or that it was causally related to her accepted August 13, 2007 work injury.

The record reflects that the Office approved requests for physical therapy for appellant's right shoulder for the period May 22 through July 17, 2008.

On June 5, 2008 appellant requested a telephonic hearing. She submitted a July 17, 2008 report from Dr. Lee, who stated that appellant had completed physical therapy. Dr. Lee opined that appellant's right shoulder myofascial pain had essentially resolved and that she was at maximum medical improvement. She indicated that "there was some question of decreased mobility of her thoracic spine per PT note, for which she did not receive approval for treatment." Appellant was released to full duty with no restrictions.

At the October 14, 2008 telephonic hearing, appellant's representative argued that appellant's shoulder injury justified treatment to the neck. Appellant testified that she experienced headaches and sometimes blacked out when she turned a certain way. She stated that both her physician and her physical therapist told her that her neck and disc problems were due to the accepted August 2007 injury.

By decision dated December 23, 2008, the Office affirmed its May 30, 2008 decision, finding that there was no medical evidence to support appellant's claim that physical therapy of the neck was necessary to treat the effects of her accepted work injury.<sup>2</sup>

### **LEGAL PRECEDENT**

Section 8103(a) of the Federal Employees' Compensation Act provides for the furnishing of "services, appliances and supplies prescribed or recommended by a qualified physician" which the Office, under authority delegated by the Secretary, "considers likely to cure, give relief, reduce the degree or the period of disability or aid in lessening the amount of monthly compensation."<sup>3</sup> In interpreting section 8103(a), the Board has recognized that the Office has broad discretion in approving services provided under the Act to ensure that an employee recovers from his or her injury to the fullest extent possible in the shortest amount of time.<sup>4</sup> The

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<sup>2</sup> The record contains a statement of accepted facts indicating that appellant filed two previous traumatic injury claims, which the Office did not accept. File No. xxxxxx738 was filed on April 22, 2005 for a lumbar strain. File No. xxxxxx900 was filed on February 5, 2007 for left shoulder sprain.

<sup>3</sup> 5 U.S.C. § 8103(a).

<sup>4</sup> *Dale E. Jones*, 48 ECAB 648, 649 (1997).

Office has administrative discretion in choosing the means to achieve this goal and the only limitation on the Office's authority is that of reasonableness.<sup>5</sup>

While the Office is obligated to pay for treatment of employment-related conditions, appellant has the burden of establishing that the expenditure is incurred for treatment of the effects of an employment-related injury or condition.<sup>6</sup> Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.<sup>7</sup> Therefore, in order to prove that the physical therapy is warranted, appellant must submit evidence to show that the procedure was for a condition causally related to the employment injury and that the surgery was medically warranted. Both of these criteria must be met in order for the Office to authorize payment.<sup>8</sup>

### ANALYSIS

The Board finds that the Office did not abuse its discretion in denying appellant's request for physical therapy for her neck and parascapula. Therefore, the May 30 and December 23, 2008 decisions will be affirmed.

The Office accepted right rotator cuff syndrome and allied disorders and sprains of the upper arm and shoulder (supraspinatus). It appropriately accepted appellant's repeated requests for physical therapy related to her shoulder conditions, but denied her request for therapy for an unaccepted neck condition. The medical evidence of record fails to establish that the requested physical therapy was for a condition that was causally related to the accepted employment injury.

Although Dr. Strong noted that appellant experienced tenderness in her neck area, none of her reports contains an opinion that the August 13, 2007 employment injury was the cause of her neck condition. The Board has long held that medical evidence which does not offer an opinion regarding the cause of an employee's condition is of limited probative value.<sup>9</sup> Dr. Lee noted appellant's complaints of neck pain following her August 2007 work injury and indicated that "there was some question of decreased mobility of her thoracic spine per PT note, for which she did not receive approval for treatment;" however, she did not offer a definitive diagnosis or an opinion as to the cause of appellant's neck condition. Therefore, her reports lacks probative value. The record indicates that appellant had preexisting back and left shoulder conditions. These conditions or another unrelated traumatic injury, reasonably might have caused appellant's neck pain. The Board finds that the reports from appellant's physicians to be insufficient to meet her burden of proof.

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<sup>5</sup> *Daniel J. Perea*, 42 ECAB 214, 221 (1990) (holding that abuse of discretion by the Office is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or administrative actions which are contrary to both logic and probable deductions from established facts).

<sup>6</sup> *See Dona M. Mahurin*, 54 ECAB 309 (2003); *see also Debra S. King*, 44 ECAB 203, 209 (1992).

<sup>7</sup> *See Debra S. King*, *supra* note 6; *Bertha L. Arnold*, 38 ECAB 282 (1986).

<sup>8</sup> *See Dona M. Mahurin*, *supra* note 6; *see also Cathy B. Millin*, 51 ECAB 331, 333 (2000).

<sup>9</sup> *A.D.*, 58 ECAB \_\_\_\_ (Docket No. 06-1183, issued November 14, 2006); *Michael E. Smith*, 50 ECAB 313 (1999).

Appellant's physical therapist requested approval for physical therapy for the neck and bilateral parascapula, noting that appellant had limited right shoulder ROM and dizziness with head motion and that she was unable to drive because she could not turn her head to look over her shoulder. As a physical therapist is not a physician under the Act, her report lacks probative value.<sup>10</sup> Moreover, she did not provide an opinion that appellant's neck condition was causally related to her accepted injury.

There is no evidence of record establishing that the requested physical therapy was medically warranted.<sup>11</sup> Rather, the medical evidence clearly reflects that appellant's accepted conditions resolved without the benefit of the requested physical therapy for the neck. On July 17, 2008 Dr. Lee opined that appellant's right shoulder myofascial pain had essentially resolved and released her to full duty with no restrictions. The Board notes that Dr. Lee provided no examination findings regarding appellant's neck and only briefly mentioned, without explanation, a physical therapy note which indicated that "there was some question of decreased mobility of her thoracic spine."

The only limitation on the Office's authority in approving services under the Act is that of reasonableness.<sup>12</sup> In the instant case, the Office authorized physical therapy to treat appellant's accepted shoulder conditions. After appellant requested physical therapy for neck pain, the Office advised her to submit a medical report from her physician explaining how her cervical condition was causally related to her accepted injury and why the therapy was medically warranted. She failed to submit the requested medical evidence. In keeping with its obligations under the Act, the Office continued to authorize physical therapy for the accepted shoulder conditions until appellant's physician opined that the conditions had resolved. The Board finds that the Office's refusal to authorize the physical therapy for appellant's neck and parascapula was reasonable and did not constitute an abuse of discretion.

On appeal, appellant's representative argues that the Office's December 23, 2008 decision was contrary to fact and law. For reasons stated herein, the Board finds his argument to be without merit. The Board finds that appellant has not met her burden of proof to show that the proposed physical therapy for the neck and parascapula was for a condition causally related to the employment injury or that it was medically warranted.

### **CONCLUSION**

The Board finds that the Office properly exercised its discretion in refusing to authorize appellant's request for physical therapy for the neck.

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<sup>10</sup> Physical therapists do not qualify as "physicians" under the Act. Section 8101(2) of the Act provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law."

<sup>11</sup> See *supra* note 8 and accompanying text.

<sup>12</sup> *Daniel J. Perea, supra* note 5.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 23 and May 30, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 3, 2009  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board