

**United States Department of Labor
Employees' Compensation Appeals Board**

A.A., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
REGIONAL OFFICE, Baltimore, MD, Employer**

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**Docket No. 07-1452
Issued: October 19, 2007**

Appearances:

Phillip R. Kete, Esq., for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

DAVID S. GERSON, Judge

MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On May 7, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' April 3, 2007 merit decision denying her request for authorization of right shoulder surgery. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether the Office abused its discretion in denying appellant's request for authorization of right shoulder surgery.

FACTUAL HISTORY

On January 4, 2006 appellant, then a 44-year-old claims examiner, filed traumatic injury claim alleging that she sustained a right shoulder injury on December 19, 2005 when she tried to hold a bathroom door open while maneuvering her wheelchair over a hump on the floor when exiting a bathroom at work. The Office accepted that appellant sustained a sprain/strain of her right rotator cuff and paid compensation for periods of disability.

The findings of the May 6, 2006 magnetic resonance imaging (MRI) scan testing of appellant's right shoulder showed avascular necrosis involving a large portion of the humeral head, extensive bone marrow edema proximal metadiaphysis, rotator cuff tendinitis, anterior labral tear, partial biceps tendon tear, glenohumeral joint effusion and axillary lymphadenopathy.

On July 18, 2006 Dr. Bruce S. Wolock, an attending Board-certified orthopedic surgeon, performed a surgical subacromial decompression of the right humeral head with synovectomy. The procedure was authorized by the Office. Dr. Wolock provided a preoperative diagnosis of right shoulder impingement syndrome and avascular necrosis of the humeral head and a postoperative diagnosis of right shoulder impingement syndrome, avascular necrosis of the humeral head and synovitis.

On September 17, 2006 Dr. Wolock indicated that appellant reported that she was doing well with her therapy and noted that her surgical wounds were well healed. Appellant had some right shoulder pain and limitation of motion. On October 16, 2006 she returned to limited-duty work at the employing establishment on a full-time basis. Appellant had a 20-pound lifting restriction. On January 8, 2007 Dr. Wolock indicated that recent MRI scan testing showed increased fracture and articular incongruity of her right humeral head and diagnosed probable progression of avascular necrosis of her right humeral head.¹ He advised appellant that she most likely would require a hemiarthroplasty at some point.

On March 7, 2007 Dr. Wolock indicated that x-rays he obtained on that date showed a progressing collapse in appellant's right humeral head. He stated, "At this point, I would recommend right shoulder hemiarthroplasty. I have told her this most likely will be a resurfacing type of arthroplasty." The record contains a surgery authorization form in which Dr. Wolock requested authorization from the Office for surgical reconstruction of the right shoulder joint, repair of the right rotator cuff, removal of the right shoulder joint lining and exploratory treatment of the right shoulder. The document indicated that one of appellant's diagnoses was primary localized osteoarthritis of the right shoulder region.

In an April 3, 2007 decision, the Office denied appellant's request for authorization for right shoulder surgery. The Office reviewed the procedures proposed by Dr. Wolock and stated:

"However, he has not provided any rationale as to the need for the additional surgery. Additionally in the surgery he stated ... primary localized osteoarthritis, shoulder region which is not accepted condition to this claim. Please have your attending physician address this new condition and how it relates to the accepted condition and provide his comments."

LEGAL PRECEDENT

Section 8103(a) of the Federal Employees' Compensation Act states in pertinent part: "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, which

¹ The record contains December 23, 2006 MRI scan findings which show an increase in fracture and articular incongruity of the right humeral head since May 2006.

the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation.”² The Board has found that the Office has great discretion in determining whether a particular type of treatment is likely to cure or give relief.³ The only limitation on the Office’s authority is that of reasonableness.⁴ In order to be entitled to reimbursement of medical expenses, it must be shown that the expenditures were incurred for treatment of the effects of an employment-related injury or condition.⁵ Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.⁶

ANALYSIS

The Office accepted that appellant sustained a sprain/strain of her right rotator cuff on December 19, 2005. On July 18, 2006 Dr. Wolock, an attending Board-certified orthopedic surgeon, performed a surgical subacromial decompression of the right humeral head with synovectomy which was authorized by the Office. In March 2007 appellant requested authorization from the Office for surgical reconstruction of the right shoulder joint, repair of the right rotator cuff, removal of the right shoulder joint lining and exploratory treatment of the right shoulder based on the recommendation of Dr. Wolock. The Board finds that the Office did not abuse its discretion in denying authorization for this surgery.

In its April 3, 2007 decision denying appellant’s request for authorization for right shoulder surgery, the Office noted that Dr. Wolock had not provided any rationale as to the need for the additional surgery. The Board notes that the record does not contain any notable explanation of the need for the surgery.⁷ The Office further noted that Dr. Wolock’s diagnosis of primary localized osteoarthritis of the right shoulder region, contained on his surgery authorization request form, is not an accepted employment condition. The Office indicated that the record did not contain an opinion relating this condition to appellant’s employment. The Board finds that Dr. Wolock did not explain how appellant had employment-related osteoarthritis of the right shoulder region such that the requested surgery would be related to the accepted employment-related condition.⁸ Given these circumstances, the Board finds that the Office provided a reasonable explanation for its refusal to authorize appellant’s March 2007

² 5 U.S.C. § 8103.

³ *Vicky C. Randall*, 51 ECAB 357 (2000).

⁴ *Lecil E. Stevens*, 49 ECAB 673, 675 (1998)

⁵ *Bertha L. Arnold*, 38 ECAB 282, 284 (1986).

⁶ *Zane H. Cassell*, 32 ECAB 1537, 1540-41 (1981); *John E. Benton*, 15 ECAB 48, 49 (1963).

⁷ On March 7, 2007 Dr. Wolock indicated that x-rays he obtained on that date appear to show a progressing collapse in appellant’s right humeral head and stated that he would recommend right shoulder hemiarthroplasty. He did not provide any explanation of why the surgery would be required for an accepted right shoulder condition.

⁸ See *supra* notes 5 and 6 and accompanying text.

request for right shoulder surgery.⁹ The Office has great discretion in determining whether a particular type of treatment is likely to cure or give relief. It did not abuse its discretion in this case in denying appellant's surgery request.¹⁰

CONCLUSION

The Board finds that the Office did not abuse its discretion in denying appellant's request for authorization of right shoulder surgery.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' April 3, 2007 decision is affirmed.

Issued: October 19, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

⁹ The Board notes that the mere fact that the Office approved the July 18, 2006 right shoulder surgery would not in itself constitute authorization for the surgery requested in March 2007.

¹⁰ See *supra* notes 3 and 4 and accompanying text.