

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

H.C., Appellant

and

**DEFENSE AGENCIES, SOUTHERN REGION,
Fort Lee, VA, Employer**

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**Docket No. 13-1741
Issued: April 14, 2014**

Appearances:
Donald F. de Boisblanc, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 11, 2013 appellant, through his attorney, filed a timely appeal from the January 15, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether OWCP properly denied appellant's request for authorization of left shoulder surgery.

¹ 5 U.S.C. §§ 8101-8193.

² In an August 6, 2013 decision, OWCP authorized appellant's requested left shoulder surgery and such surgery was performed on September 18, 2013. The Clerk of the Board contacted counsel to ascertain whether appellant wished to proceed with the present appeal, but no written response was received within the allotted time and therefore the Board has proceeded with the appeal. Appellant filed his appeal with the Board on July 11, 2013 and under the principles discussed in *Douglas E. Billings*, 41 ECAB 880 (1990), OWCP's August 6, 2013 decision, issued while the Board had jurisdiction over the matter in dispute, is null and void. See *Linda Thompson*, 51 ECAB 694 (2000).

FACTUAL HISTORY

On July 19, 2012 appellant, then a 57-year-old meat cutter, filed a traumatic injury claim alleging that he sustained injury to his collarbone and left shoulder, arm and hand due to a fall at work. An emergency room physician treated him on the date of his accident and diagnosed sprains/strains of his left shoulder, ante-cubital fossa and proximal forearm. Appellant did not stop work but began working in a limited-duty position for the employing establishment.

The findings of August 21, 2012 magnetic resonance imaging (MRI) scan testing of appellant's left shoulder revealed, *inter alia*, a full-thickness and full-width tear of the supraspinatus tendon as well as large joint effusion and fluid distension of the subacromial bursa.

In a September 27, 2012 report, Dr. Alain F. Cracco, an attending Board-certified orthopedic surgeon, detailed appellant's July 19, 2012 work injury and reported examination findings. He diagnosed rotator cuff tear and pericapsulitis of the left shoulder and recommended a program of physical therapy to restore some range of motion. Dr. Cracco prescribed medication and stated, "Second opinion: recommend surgery if no improvement. [Appellant] will be seen for follow-up in two weeks, October 11, 2012."

On November 20, 2012 Dr. Cracco stated that appellant reported making significant progress with his left shoulder by engaging in physical therapy sessions and a home exercise program. He indicated that appellant should continue with his medication and stated, "[Appellant] is to continue physical therapy. We discussed if he is still symptomatic [to] consider a surgical reattachment and repair the rotator cuff. [Appellant] is to be reevaluated in three weeks in this office."

On December 7, 2012 OWCP accepted that appellant sustained a left shoulder sprain due to the July 19, 2012 work incident.

On January 9, 2013 appellant submitted a request for authorization of left rotator cuff repair surgery.³

In a January 15, 2013 decision, OWCP denied appellant's request for authorization of left shoulder surgery noting that he had not submitted sufficient medical evidence in support of his request.⁴

LEGAL PRECEDENT

Section 8103(a) of FECA 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 the Secretary of Labor considers

³ The request was not signed by any physician.

⁴ Prior to the issuance of OWCP's January 15, 2013 decision, OWCP did not receive any additional medical reports of Dr. Cracco or any other medical reports addressing whether appellant needed left shoulder surgery.

likely to cure, give relief, reduce the degree or the period of disability or aid in lessening the amount of the monthly compensation.”⁵

The Board has found that OWCP has great discretion in determining whether a particular type of treatment is likely to cure or give relief.⁶ The only limitation on OWCP’s authority is that of reasonableness.⁷ Abuse of discretion is generally 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.⁸

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.⁹ Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.¹⁰

ANALYSIS

OWCP accepted that appellant sustained a left shoulder sprain due to a July 19, 2012 fall at work and he submitted a request for authorization of left rotator cuff repair surgery. It denied his request noting that he did not submit sufficient medical evidence in support of his request.

The Board finds that OWCP properly denied appellant’s request for authorization of left shoulder surgery. At the time OWCP denied his request for authorization of surgery, he had not submitted sufficient medical evidence to establish that such surgery was necessitated by an accepted work-related condition.

In a September 27, 2012 report, Dr. Cracco, an attending Board-certified orthopedic surgeon, diagnosed rotator cuff tear and pericapsulitis of the left shoulder and recommended a program of physical therapy to restore some of appellant’s range of shoulder motion. He did not recommend left shoulder surgery at that time, but merely noted that, if no improvement was seen, surgery might be recommended at some point in the future. On November 20, 2012 Dr. Cracco stated that appellant reported making significant progress with his left shoulder by engaging in physical therapy sessions and a home exercise program. He recommended that appellant continue with physical therapy treatment. Dr. Cracco did not provide a current

⁵ 5 U.S.C. § 8103.

⁶ *Vicky C. Randall*, 51 ECAB 357 (2000).

⁷ *Lecil E. Stevens*, 49 ECAB 673, 675 (1998).

⁸ *Rosa Lee Jones*, 36 ECAB 679 (1985).

⁹ *Bertha L. Arnold*, 38 ECAB 282, 284 (1986).

¹⁰ *Zane H. Cassell*, 32 ECAB 1537, 1540-41 (1981); *John E. Benton*, 15 ECAB 48, 49 (1963).

recommendation for surgery, but noted that surgical reattachment and repair of the rotator cuff would be considered if appellant remained symptomatic in the future.¹¹

Appellant did not submit any additional medical reports addressing a current need for left shoulder surgery and OWCP properly denied his request for authorization of such surgery.

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 left shoulder surgery.

ORDER

IT IS HEREBY ORDERED THAT the January 15, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 14, 2014
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

¹¹ Dr. Cracco indicated that appellant would be reevaluated in three weeks. Prior to the issuance of OWCP's January 15, 2013 decision, appellant had not submitted any additional reports of Dr. Cracco.