

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of BRAD M. COOPER and DEPARTMENT OF THE ARMY,  
TAG CO, Englewood, CO

*Docket No. 02-2274; Submitted on the Record;  
Issued April 4, 2003*

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DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for authorization for surgery.

On February 1, 1996 appellant, then a 35-year-old electronics mechanic, sustained an employment-related left shoulder injury that was accepted by the Office as left shoulder sprain and tenosynovitis. On May 6 and December 12, 1996 appellant underwent surgical procedures on his left shoulder and returned to full-time light duty on February 5, 1997 and to his regular position on June 6, 1997. On August 7, 1997 he filed an occupational disease claim for a right shoulder injury that was accepted by the Office as right shoulder impingement for which he underwent right shoulder arthroscopy and decompression.<sup>1</sup>

The Office continued to develop the claims and on August 11, 1997 appellant was granted a schedule award for a 13 percent permanent loss of use of the left upper extremity for a total of 40.56 weeks of compensation, to run from April 25, 1997 to February 2, 1998. On July 7, 1999 he was granted a schedule award for a 36 percent permanent loss of use of the right upper extremity for a total of 112.32 weeks of compensation to run from June 8, 1999 to August 2, 2001.

Appellant submitted requests for reconsideration of the August 11, 1997 award for his left upper extremity, which were denied by the Office in decisions dated May 16 and July 14, 2000, because the requests had not been submitted within one year of the previous decision.

On January 22, 2001 appellant again requested reconsideration and submitted medical evidence. An Office medical adviser reviewed the evidence submitted and advised that appellant was entitled to an additional eight percent impairment for loss of use of the left arm. By decision dated May 18, 2001, the Office granted modification of the August 11, 1997 decision to reflect

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<sup>1</sup> The Office adjudicated the left shoulder claim under file number A12-0159761 and the right shoulder claim under A12-0170586. The claims were doubled on October 16, 2000 with the master number being A12-0159761.

that appellant was entitled to an additional schedule award for his left arm. On May 23, 2001 he was granted a schedule award for an additional eight percent permanent loss of use of the left upper extremity for a total of 24.96 weeks of compensation, to run from March 14 to September 4, 2000.

By letter dated June 4, 2001, appellant again requested reconsideration regarding his left arm. On July 31, 2001 the Office referred appellant, along with the medical record, a set of questions and a statement of accepted facts, to Dr. Gareth E. Shemesh, who is Board-certified in internal and physical medicine. Based on a report by him dated August 16, 2001 and that of an Office medical adviser dated August 26, 2001, by decision dated August 30, 2001, the Office denied modification of the prior decision.

On November 15, 2001 appellant's treating Board-certified orthopedic surgeon, Dr. Wiley J. Jinkins, requested authorization for surgery for a left lateral epicondyle release and submitted a treatment note dated November 13, 2001. In a decision dated December 11, 2001, the Office denied authorization for the surgical procedure, noting that bilateral elbow complaints and the need for left elbow surgery could not be considered under claim number A12-0159761.<sup>2</sup> The Office further noted that the first mention of elbow complaints was during physical therapy in February 2001 and no medical evidence had been provided explaining how his bilateral elbow complaints were related to his shoulder injuries. The Office advised appellant that he would need to either provide a comprehensive medical report explaining how his bilateral elbow condition was related to his bilateral shoulder condition or submit an occupational disease claim regarding his bilateral elbow condition. The instant appeal follows.

The Board notes that it only has jurisdiction over final decisions of the Office that is issued within one year of the filing of the instant appeal.<sup>3</sup> The record in this case indicates that the most recent schedule award decision was issued on August 30, 2001 and appellant's appeal to the Board was postmarked September 4, 2002. The Board, therefore, does not have jurisdiction to review the August 30, 2001 Office decision denying modification of appellant's schedule awards for his left upper extremity.<sup>4</sup>

The Board further finds that the Office properly denied appellant's request for authorization for surgery.

In this case, the Office has accepted appellant's claims for bilateral shoulder conditions. It has not, however, accepted that he sustained an employment-related elbow condition, for which he sought authorization for surgery.

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<sup>2</sup> *Id.*

<sup>3</sup> The Board only has jurisdiction over final decisions of the Office. 20 C.F.R. § 501.2(c). Any appeal of an Office decision must be filed within one year of the issuance of such decision. 20 C.F.R. § 501.3(d)(2).

<sup>4</sup> The Board notes that a claimant may seek an increased schedule award if the evidence establishes that progression of an employment-related condition, without new exposure to employment factors has resulted in a greater permanent impairment than previously calculated. *Linda T. Brown*, 51 ECAB 115 (1999).

Section 8103 of the Federal Employees' Compensation Act<sup>5</sup> 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, which the Office considers likely to cure, give relief, reduce the degree or the period of disability or aid in lessening the amount of the monthly compensation.<sup>6</sup> In interpreting this section of the Act, the Board has recognized that the Office has broad discretion in approving services provided under the Act. The only limitation on the Office's authority is that of reasonableness. 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.<sup>7</sup> In order to be entitled to reimbursement for medical expenses, a claimant must establish that the expenditures were incurred for treatment of the effects of an employment-related injury.

The request for surgery in the instant case was not for an employment-related injury. Furthermore, in a report dated November 13, 2001 and the request for authorization dated November 15, 2001, Dr. Jenkins merely diagnosed persistent lateral epicondylitis and advised that appellant would need surgery. The Office, therefore, properly denied the request for surgical authorization.<sup>8</sup>

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<sup>5</sup> 5 U.S.C. §§ 8101-8193.

<sup>6</sup> 5 U.S.C. § 8103.

<sup>7</sup> *Daniel J. Perea*, 42 ECAB 214 (1990).

<sup>8</sup> As noted by the Office, in its December 11, 2001 Office decision, appellant may submit medical evidence advising that his elbow conditions are related to his accepted shoulder conditions or file a Form CA-2, occupational disease claim, for his elbow conditions.

The decision of the Office of Workers' Compensation Programs dated December 11, 2001 is hereby affirmed.

Dated, Washington, DC  
April 4, 2003

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member