

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATRICIA ANN MORETTI and U.S. POSTAL SERVICE,
POST OFFICE, Pittsfield, MA

*Docket No. 03-1868; Submitted on the Record;
Issued December 1, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

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

On December 16, 1995 appellant, then a 25-year-old transitional clerk, filed an occupational disease claim alleging that on October 27, 1995 she first realized that her right hand tendinitis was employment related. The employing establishment terminated her employment effective May 13, 1996. The Office accepted the claim for right wrist tendinitis and appellant was placed on the periodic rolls for temporary total disability effective April 27, 1997. Subsequently, the Office authorized right wrist arthroscopy, right ulnar nerve decompression, anterior submuscular transposition and surgical repair of trilaminar fiber cartilage tear.

In an October 29, 1999 report, Dr. Gabriella Kovi noted appellant's initial April 7, 1995 employment injury concerned her right wrist. Dr. Kovi noted that appellant currently reported pain through her arm to her shoulder. In subsequent reports dated June 22 through October 13, 2000, Dr. Kovi diagnosed right shoulder pain. In subsequent treatment reports, she diagnosed a right rotator cuff tear and cyst and right shoulder pain.

In a June 18, 2001 report, Dr. Richard L. Uhl, an attending physician, concluded that appellant's shoulder problems necessitated a right shoulder arthroscopy and capsular shrinkage and were related to her employment injury. He stated that he had been treating appellant for right upper extremity injuries due to her employment injury. Dr. Uhl noted that appellant's employment duties included grabbing with her hand and reaching overhead which caused a number of problems including wrist and elbow problems. With regards to her shoulder condition, Dr. Uhl opined that her employment activities were "the producing cause of her shoulder problems in addition to the elbow and wrist problems." The physician sought authorization for the surgical procedure.

On August 31, 2001 the Office referred appellant to Dr. Kuhrt Wieneke, Jr., a Board-certified orthopedic surgeon, for a second opinion as to whether the requested shoulder surgery was related to her accepted employment injury.

In a report dated September 18, 2001, Dr. Wieneke opined that he could not “make any diagnosis regarding her right shoulder, other than a profound pain syndrome on her part.” He noted that the record contained no history of a right shoulder injury in 1995 and that medical treatment had focused on her right wrist injury. He concluded that he would “not recommend surgery on her right shoulder at this time, given her total unwillingness to have her right shoulder examined.” Dr. Wieneke opined that he did not believe appellant injured her shoulder in 1995 and noted that appellant had not worked in 5½ years and first reported her shoulder pain to Dr. Kovi in 2000, who noted an onset date of 1999.

By decision dated February 5, 2002, the Office denied appellant’s request for authorization of shoulder surgery.

Appellant requested an oral hearing in a letter dated February 21, 2002. A hearing was held on November 19, 2002 at which appellant was represented by counsel and allowed to submit evidence and testify.

In a decision dated February 13, 2003, the hearing representative affirmed the denial of appellant’s request for authorization of her shoulder surgery.

The Board finds that the Office properly denied appellant’s request for authorization for right shoulder surgery.

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 the Secretary of Labor considers likely to cure, give relief, reduce the degree of the period of disability or aid in lessening the amount of the monthly compensation.”¹ In order to obtain authorization for surgery, appellant must establish that the surgery is necessary for treatment of the effects of the employment-related injury.² Proof of causal relation must include supporting rationalized medical evidence.

Proof of causal relationship, in a case such as this, must include supporting rationalized medical evidence.³ Thus, in order for surgery to be authorized, appellant must submit evidence to show that such surgery is 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.

¹ 5 U.S.C. § 8103; *See Robert S. Winchester*, 53 ECAB ____ (Docket No. 00-800, issued November 8, 2002).

² *See Cathy B. Millin*, 51 ECAB 331, 333 (2000); *Francis H. Smith*, 46 ECAB 392, 394 (1995).

³ *See Debra S. King*, 44 ECAB 203 (1992); *Bertha L. Arnold*, 38 ECAB 282 (1986).

Dr. Wieneke, a Board-certified orthopedic surgeon, provided a second opinion evaluation for the Office and advised that the requested right shoulder surgery was not warranted. In his September 18, 2001 report, Dr. Wieneke reviewed the history of appellant's accepted employment injury, his findings on physical examination and a review of appellant's medical records and diagnostic tests. He opined that he could not make a right shoulder diagnosis other than a profound pain syndrome. Dr. Wieneke concluded that appellant did not require any further medical treatment for her accepted right wrist and right ulnar neuropathy conditions. Regarding the requested right shoulder surgery, he indicated that he would not recommend surgery based upon appellant's unwillingness to have her right shoulder examined. Dr. Wieneke opined that there was no connection between appellant's right shoulder condition and her accepted 1995 employment injury as she did not report any shoulder pain until 2000 to Dr. Kovi and had not worked at the employing establishment in 5½ years. Dr. Wieneke provided a rationalized medical opinion that the proposed right shoulder surgery was not causally related to appellant's October 27, 1995 employment injury.

Dr. Uhl, appellant's treating physician, stated that his findings of capsular shrinkage was causally related to appellant's employment injury and recommended right shoulder arthroscopy and capsular shrinkage. However, Dr. Uhl did not provide an adequate explanation of how or why his findings and the proposed surgery were causally related to appellant's October 27, 1995 employment injury; particularly in light of the fact that the Office never accepted that appellant sustained a shoulder injury on December 16, 1995. Moreover, Dr. Uhl failed to explain how appellant's shoulder condition was employment related in view of the fact that appellant has not worked at the employing establishment since May 13, 1996 and she did not report a shoulder problem until it was noted by Dr. Kovi in a 2000 medical report. The medical evidence supporting surgery is not well rationalized and of diminished probative value. Therefore, the Office did not abuse its discretion in denying surgery in this case.

The decision of the Office of Workers' Compensation Programs dated February 13, 2003 is hereby affirmed.

Dated, Washington, DC
December 1, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member