

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

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**SANDRA L. GRUDZEN, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Lutz, FL, Employer**

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**Docket No. 05-190  
Issued: June 1, 2005**

*Appearances:*  
*Sandra L. Grudzen, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Member  
DAVID S. GERSON, Alternate Member  
MICHAEL E. GROOM, Alternate Member

**JURISDICTION**

On October 21, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated August 31, 2004 which denied her request to change treating physicians. Since she filed her application for review within a year of the Office decision, the Board has jurisdiction to review this issue pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

**ISSUE**

The issue is whether the Office properly denied appellant's request to change her treating physician.

**FACTUAL HISTORY**

On May 28, 1996 appellant, then a 49-year-old distribution clerk, filed a traumatic injury claim alleging that on May 26, 1996 she injured both shoulders when pulling a mail hamper. On October 10, 1996 appellant's claim was accepted for bilateral shoulder strain.

Appellant was treated by Dr. Joan Watkins, an osteopath, who instructed her to take ibuprofen and placed her on work restrictions. Appellant commenced treatment with Dr. Stephen J. Raterman, a Board-certified orthopedic surgeon, on July 23, 1996. On October 31, 2001 Dr. Raterman performed a right arthroscopic rotator cuff repair. In a medical report dated February 14, 2002, Dr. Raterman indicated that appellant had a small partial thickness rotator cuff tear to the left which did not require surgical intervention but could use strengthening and therapy. He recommended physical therapy for both shoulders. In an April 11, 2002 report, Dr. Raterman opined that appellant was at maximum medical improvement. On July 8, 2003 he noted left rotator cuff tear and rotator cuff repair, right, with mild pain. He suggested that appellant have another magnetic resonance imaging (MRI) scan on her left side. In answer to questions from the employing establishment, Dr. Raterman indicated on October 28, 2003 that appellant's residuals in her right shoulder had resolved but that she was limited to 30 pounds lifting from her waist and 1 to 2 pounds lifting overhead. He noted that appellant was still being treated for a left shoulder injury of the same date.

By letter dated July 15, 2003, appellant requested a change of treating physicians from Dr. Raterman to Dr. McClimans, an osteopath. Appellant contended that she had pain in both shoulders for seven years and was not satisfied with her treatment by Dr. Raterman, noting that she still had problems with her right shoulder following surgery and that she might require surgery on her left shoulder.

By letter dated September 8, 2003, the Office did not authorize a change in physicians, but did authorize a one-time examination with Dr. Frederick J. McClimans, an orthopedic osteopath.

In a medical report dated November 13, 2003, Dr. McClimans listed his impressions as impingement, left shoulder and rotator cuff tear, left shoulder. He indicated that he would schedule appellant for an outpatient acromioplasty of the left shoulder with rotator cuff tear.

An MRI scan of appellant's right shoulder on November 17, 2003 was interpreted by Dr. H. Douglas Nanni, a Board-certified radiologist, as evidencing a full thickness tear of the supraspinatus tendon anterior distal insertion with small amount of fluid in the subacromial bursa and degenerative disease at the acromioclavicular joint with small downward projecting osteophytes.

By decision dated August 31, 2004, the Office denied appellant's request to transfer her medical supervision as it found that the treatment she was receiving was "proper and adequate." The Office noted that appellant's attending physician was authorized to refer her to another appropriate specialist for an evaluation.

### **LEGAL PRECEDENT**

Under section 8103(a) of the Federal Employees' Compensation Act,<sup>1</sup> an employee is permitted the initial selection of a physician. However, Congress did not restrict the Office's power to approve medical care after the initial choice of a physician. The Office has the general

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<sup>1</sup> 5 U.S.C. § 8103(a).

objective of ensuring that an employee recovers from his injury to the fullest extent possible in the shortest amount of time. The Office, therefore, has broad administrative discretion in choosing the means to achieve this goal within the limitation of allowing an employee the initial choice of a doctor. An employee who wishes to change physicians must submit a written request to the Office fully explaining the reasons for the request. The Office may approve the request in its discretion if sufficient justification is shown.<sup>2</sup> The only limitation on the Office's authority is that of reasonableness.<sup>3</sup> 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 not be construed so as to produce a contrary factual conclusion.<sup>4</sup>

### **ANALYSIS**

The Board finds that the Office properly refused to authorize a change of physicians. No medical evidence has been submitted to establish that Dr. Raterman provided inappropriate or inadequate care. In a report dated October 24, 2003, Dr. Raterman indicated that appellant was still having left shoulder pain and that she should have a repeat MRI scan of the left shoulder. On October 28, 2003 Dr. Raterman indicated that appellant was still receiving treatment for her left shoulder. He found the residuals from the injury resolved with regard to the right shoulder, although he indicated that appellant still had lifting restrictions. Although Dr. McClimans recommended surgery on appellant's left shoulder, a conclusion that Dr. Raterman had not reached as of his October 28, 2003 notation. Nevertheless, the fact that Dr. Raterman had not yet concluded that appellant needed surgery on her left shoulder is not evidence of inadequate care. Nor is the fact that an MRI scan of November 17, 2003 showed a full thickness tear of the supraspinatus tendon anterior distal insertion sufficient to show that Dr. Raterman's treatment was inadequate.<sup>5</sup> Based on the evidence in the record, the Office acted reasonably in determining that a change of physicians was not necessary to treat appellant's accepted condition.

### **CONCLUSION**

Appellant's statement that she is unsatisfied with her treatment by Dr. Raterman is not sufficient reason to find that the Office abused its discretion in denying appellant's request for change of physician. Accordingly, the Office properly denied appellant's request to change physicians.

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<sup>2</sup> See *Elizabeth Stanislav*, 49 ECAB 540 (1998); 20 C.F.R. § 501.2(c); *Felix Flecha*, 52 ECAB 268 (2001).

<sup>3</sup> *Daniel J. Perez*, 42 ECAB 214 (1990); *Pearlie M. Brow*, 40 ECAB 1090 (1989).

<sup>4</sup> *Rosa Lee Jones*, 36 ECAB 679 (1985).

<sup>5</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 31, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 1, 2005  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member