

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

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CARMEN MacPHERSON, Appellant )

and )

U.S. POSTAL SERVICE, POST OFFICE, )  
Glendale, AZ Employer )

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**Docket No. 05-375  
Issued: May 20, 2005**

*Appearances:*  
Carmen MacPherson, *pro se*  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Alternate Member  
MICHAEL E. GROOM, Alternate Member  
A. PETER KANJORSKI, Alternate Member

**JURISDICTION**

On December 1, 2004 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs' dated December 1, 2003, which denied his request for authorization of left shoulder arthroscopic 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 properly denied authorization for medical treatment for left shoulder arthroscopic surgery.

**FACTUAL HISTORY**

On September 10, 2002 appellant, then a 52-year-old clerk, was injured when she fell down a stairway. She reported hitting her head, face, neck, upper and lower back, groin, right ankle, right knee, left knee, right hip, right arm and left arm.<sup>1</sup> Appellant also alleged that she had

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<sup>1</sup> The record reflects that appellant had a prior accepted claim for an injury to the left knee. No. 13-1189766.

bruises on her right leg, her back, arms and the right side of her body, which occurred in the performance of duty. Appellant stopped work on September 10, 2002.

In a September 12, 2002 report, Dr. Richard L. Engle, a Board-certified family practitioner, diagnosed multiple bruises and contusions, whiplash injury with cervical radiculopathy, atherosclerotic cardiovascular disease, cholelithiasis, intermittent cholecystitis, elevated alkaline phosphatase/bone fraction of uncertain etiology, estrogen replacement therapy for uncertain indications, irritable bowel syndrome, lactose intolerance, panic disorder and anxiety, chronic vertigo.

In a September 20, 2002 report, Dr. Susan McMullen a Board-certified family practitioner, advised that a magnetic resonance image (MRI) scan of the cervical spine revealed no evidence of serious injury from the fall and noted that the spinal cord and vertebrae were normal.

On October 9, 2002 the Office accepted that appellant sustained an employment-related cervical strain, right shoulder contusion, right arm contusion and right ankle contusion.

In an October 11, 2002 report, Dr. McMullen advised that appellant was seen for various complaints of pain and diagnosed cervical, thoracic and lumbar strain, right ankle sprain, acute to chronic left knee pain, left arm pain, paresthesias of all extremities, elevated blood pressure and liver, hyperlipidemia and advised health care maintenance. She recommended physical therapy and referral to a pain clinic. Regarding appellant's left shoulder, Dr. McMullen related that the films were normal and revealed only mild arthritic changes and no significant disc space disease. She continued to submit periodic reports.

On November 7, 2002 appellant filed a (Form CA-7) claim for leave without pay from October 28 to November 8, 2002.

In a November 11, 2002 report, Dr. Estelle R. Farrell, an osteopath Board-certified in pain management and rehabilitation, noted appellant's history of injury and treatment and diagnosed a fall with multiple injuries including; right ankle sprain, cervical through lumbar spine strain/sprain, sacroiliac (SI) joint dysfunction and pain behaviors.

On November 20, 2002 the Office advised appellant that she had received continuation of pay from September 13 to October 27, 2002 and that compensation would be paid from October 28 to November 22, 2002. The Office explained that to claim additional compensation after November 23, 2002, she would need to file a CA-7 form and provide documentation from her physician supporting any claimed period of disability.

By letter dated November 27, 2002, the Office referred appellant for a second opinion examination with Dr. Borislav Stojic, a Board-certified orthopedic surgeon.

In a December 19, 2002 attending physician's form report, Dr. Farrell indicated that appellant's condition was caused or aggravated by the employment activity by placing a checkmark in a box marked "yes." She advised "see notes" in response to history, findings,

diagnosis and treatment and contended that appellant was currently totally disabled. In the accompanying report dated December 19, 2002, Dr. Farrell diagnosed right ankle sprain, cervical through lumbar spine strain/sprain, rule out hip abnormality, SI joint dysfunction and pain behaviors. She also advised continued physical therapy.

In a report dated December 30, 2002, Dr. Stojic noted appellant's history of injury and treatment, including that she was not compliant with her physical therapy. He advised that she was attending physiotherapy and strength training two to three times a week and was also on a pain management program.<sup>2</sup> Dr. Stojic noted that left shoulder x-rays were negative. He advised that appellant complained of pain in the neck, thoracic and lumbar spine, pain in the left and the right shoulder, left and right arm, right ankle and of headaches. Dr. Stojic noted upper extremity ranges of motion, advising that appellant had difficulties reaching to the occiput with the left and the right hand and that she had slightly limited internal rotation. He noted that appellant complained of pain in the right and left shoulder throughout the examination and that she had tenderness over the anterior-posterior shoulder girdle area and on palpation of the left and the right arm, forearm, wrists and the fingers. Dr. Stojic diagnosed myofascial pain neck, thoracic and lumbosacral spine without objective evidence of radiculitis and/or radiculopathy involving the upper and the lower extremities; patellar tendinitis of the left; chronic pain syndrome; pain right groin; plantar fasciitis right; and headache. He noted that appellant presented with multiple musculoskeletal complaints reflecting chronic pain syndrome and advised that the cervical strain, right shoulder contusion, right arm contusion and right ankle contusion were causally related to the employment injury of September 10, 2002. Dr. Stojic opined that "it is difficult to rationalize the multiple complaints presented by the patient as being causally related to the injury in question." Furthermore, the physician opined that the injury related factors of disability reflected chronic pain syndrome. Dr. Stojic opined that appellant could return to her position with restrictions of light sedentary work with no physical exertion.

On January 8, 2003 the Office requested that the employing establishment provide appellant with a position complying with Dr. Stojic's work restrictions. Appellant was offered a limited-duty assignment on January 21, 2003 which she accepted.

In a January 16, 2003 report, Dr. McMullen advised that on physical examination, appellant walked with antalgia and used a cane. She advised that appellant had forward rounded posture from the upper extremities and shoulders and guarded her left upper extremity range of motion. She noted that appellant moved quite well with distraction. Dr. McMullen related that the right lumbosacral spine was tender and opined that it was possible that appellant's complaints on the right side were spine related as it appeared that she had a disc protrusion on the right. Dr. McMullen placed appellant on limited duty for four hours a day, three days a week, with work hardening in therapy. She continued to submit periodic reports.

In an April 18, 2003 decision, the Office terminated entitlement to monetary compensation on the grounds that appellant had refused suitable work.<sup>3</sup>

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<sup>2</sup> Dr. Stojic also advised that he had evaluated appellant for her prior left knee claim.

<sup>3</sup> The Office found that appellant refused to return to a suitable full-time modified position. The claim remained open for medical treatment. The suitable work termination is not before the Board on appeal.

In a May 12, 2003 report, Dr. Farrell advised that nerve conduction and electromyography (EMG) results were normal. He indicated that there was no evidence of nerve injury, peripheral neuropathy or radiculopathy at most and there might be a component of left rotator cuff problems or adhesive capsulitis. He advised pain management and counseling as well as a second opinion.

By letter dated May 13, 2003, the Office contacted Dr. Farrell and requested that she provide a comprehensive report regarding the recommendation for pain management and counseling.

In a report dated May 19, 2003, Dr. Victor H. Salazar-Calderon, a Board-certified neurologist, noted appellant's history of injury and treatment. He stated that on September 10, 2002 appellant sustained a cervical, thoracic and lumbar sprain/strain and closed head injury without loss of consciousness resulting in a concussion and post-traumatic vascular type headaches. In addition he advised that she sustained multiple body injuries which involved both knees and the right ankle which she twisted and both shoulders. He indicated that appellant had markedly decreased range of motion in the left shoulder. Dr. Salazar-Calderon recommended a cervical spine and left shoulder MRI scan and physical therapy as well as medication. Dr. Salazar-Calderon advised that appellant could work in her modified position full time. In a separate report dated May 19, 2003, Dr. Salazar-Calderon advised that appellant could return to work "immediately" pursuant to the modified job-duty description.

By letter dated June 4, 2003, the Office advised appellant's physician, Dr. McMullen, that in order to authorize additional therapy, additional information was needed. Dr. McMullen responded that she had not seen appellant since January 24, 2003 and advised that Dr. Farrell was managing appellant's therapy.

In a June 16, 2003 report, Dr. Farrell indicated that appellant was able to return to full duty and explained that because of a "language disparity," Dr. Salazar-Calderon had taken over appellant's care.

In a July 22, 2003 follow-up report, Dr. Salazar-Calderon contended that appellant's neurological condition had not improved since her initial evaluation and that she was seeing a pain counselor. In an August 25, 2003 report, Dr. Salazar-Calderon indicated that appellant's cervical MRI scan was normal and that the shoulder MRI scan, which was conducted by Dr. Richard S. Sherry, a Board-certified diagnostic radiologist, revealed a partial tear of the left supraspinatus tendon and some evidence of bursitis. He noted that appellant was being referred to an orthopedic surgeon because of her left shoulder findings and discharged her from his care.

In a report dated October 28, 2003, Dr. Gustavo J. Armendariz, a Board-certified orthopedic surgeon, noted appellant's history of injury and advised that he was primarily concerned with examining the left shoulder. He contended that a physical examination revealed positive impingement and positive reverse impingement of the left shoulder. He advised that appellant was unable to reach behind her back with her left arm and advised that appellant otherwise appeared to have normal sensation, no muscle atrophy or weakness into either extremity and normal coordinated motions of the upper and lower extremities. Dr. Armendariz

diagnosed a rotator cuff tear of the left shoulder and advised that appellant had no other history of serious injury to the left shoulder with the exception of the work industry. He recommended arthroscopic subacromial decompression and a mini open rotator cuff repair on the left and indicated that he would schedule her for surgery.

In a memorandum of telephone call, the Office advised that appellant's left shoulder surgery was not authorized as it was not for treatment of an accepted condition.<sup>4</sup>

By decision dated December 1, 2003, the Office denied authorization for left shoulder arthroscopic surgery on the grounds a left shoulder injury was not an accepted condition and that the medical evidence did not establish that such treatment was medically necessary for the accepted work injury.

### **LEGAL PRECEDENT**

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 section 8103, with the only limitation on the Office's authority being that of reasonableness.<sup>7</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 be construed so as to produce a contrary factual conclusion.<sup>8</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.<sup>9</sup>

Proof of causal relationship in a case such as this must include supporting rationalized medical evidence. Thus, in order for a surgery to be authorized, appellant must submit evidence to show that the requested procedure is for a condition causally related to the employment injury

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<sup>4</sup> The record reflects that the Office continued medical development of appellant's work-related condition by referring her for a second opinion examination in a letter dated September 15, 2003. The report of the second opinion physician, Dr. Joseph Gimbel, a Board-certified orthopedic surgeon, was received after appellant filed her appeal with the Board. As this report has not been reviewed by the Office in reaching a final decision, the Board may not review it for the first time on appeal. *See* 20 C.F.R. § 501.2(c).

<sup>5</sup> 5 U.S.C. §§ 8101-8193.

<sup>6</sup> 5 U.S.C. § 8103; *see Thomas W. Stevens*, 50 ECAB 288 (1999).

<sup>7</sup> *James R. Bell*, 52 ECAB 414 (2001).

<sup>8</sup> *Claudia L. Yantis*, 48 ECAB 495 (1997).

<sup>9</sup> *Cathy B. Mullin*, 51 ECAB 331 (2000).

and that it is medically warranted. Both of these criteria must be met in order for the Office to authorize payment.<sup>10</sup>

Where an employee claims that a condition not accepted or approved by the Office was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.<sup>11</sup>

### ANALYSIS

The Office accepted that appellant sustained an employment-related cervical strain, right shoulder contusion, right arm contusion and right ankle contusion. While Dr. Armendariz requested authorization for arthroscopic subacromial decompression and a mini open rotator cuff repair on the left, a left shoulder condition has not been accepted by the Office as related to the September 10, 2002 injury. He supported causal relationship by noting that appellant had no other injury to the area except for the work injury. As noted, no left shoulder condition was accepted and the physician did not provide sufficient medical rationale to explain how appellant's left shoulder condition was caused or contributed to by the accepted injury. The medical reports contemporaneous with the September 10, 2002 injury did not mention treatment of any left shoulder condition. The Board has held that medical reports not containing rationale on causal relation are of diminished probative value and are insufficient to meet an employee's burden of proof.<sup>12</sup>

In a May 12, 2003 report, Dr. Farrell, another treating physician, noted that nerve conduction and EMG results were normal and at most, there might be a component of left rotator cuff problems or adhesive capsulitis. However, this report does not address the accepted work injury or the issue of causal relationship. In an August 25, 2003 report, Dr. Salazar-Calderon, noted that the findings of a partial tear of the supraspinatus tendon and some evidence of bursitis; however, he offered no explanation as to causal relationship. He did not address how the tear appeared, subsequent to appellant's injuries, when prior reports from appellant's other physicians showed no tear. Reports from Dr. McMullen issued shortly after the employment injury noted no evidence of serious injury from the fall and also indicated that x-rays of appellant's left shoulder were normal, with only mild arthritic changes.

Dr. Stojic provided a second opinion examination for the Office and, in a December 30, 2002 report, reviewed appellant's history and conducted a thorough examination. However, in his assessment, Dr. Stojic reported no basis on which a left shoulder condition could be attributed to the accepted injury.

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<sup>10</sup> *Id.*

<sup>11</sup> *Jaja K. Asaramo*, 55 ECAB \_\_\_\_ (Docket No. 03-1327, issued January 5, 2004).

<sup>12</sup> *See Lois E. Culver (Clair L. Culver)*, 53 ECAB 412 (2002).

The Board finds that appellant has not established through rationalized medical evidence that the September 10, 2002 employment injury caused or contributed to any left shoulder condition. As such, the Office properly denied authorization for the left shoulder surgery.

**CONCLUSION**

The Board finds that the Office properly denied authorization for left shoulder arthroscopic surgery.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated December 1, 2003 is affirmed.

Issued: May 20, 2005  
Washington, DC

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member