

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

ALVIN C. MANN, Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,
Milwaukee, WI, Employer

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**Docket No. 05-2000
Issued: May 18, 2006**

Appearances:
Alvin C. Mann, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On September 28, 2005 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated January 24, 2005 denying his request for surgery. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the authorization of surgery decision.

ISSUE

The issue is whether the Office properly denied surgical authorization for a left distal clavicle resection.

FACTUAL HISTORY

On December 3, 1999 appellant, then a 46-year-old automation clerk, filed an occupational disease claim alleging that he sustained shoulder, hand and arm pain due to factors of his federal employment. The Office accepted his claim for bilateral wrist and shoulder strain, bilateral wrist and shoulder tendinitis and a small rotator cuff tear of the right shoulder. The Office authorized a right rotator cuff repair on June 19, 2000.

By decision dated October 10, 2001, the Office granted appellant a schedule award for 14 percent permanent impairment of both the right and left upper extremities. In another decision of the same date, the Office found that appellant's actual earnings as a modified distribution clerk effective July 14, 2001 fairly and reasonably represented his wage-earning capacity.¹

On May 8, 2002 Dr. Alfredo Sardinias, a Board-certified orthopedic surgeon, performed an arthroscopy with a partial synovectomy, rotator cuff debridement and a subacromial space decompression on appellant's left shoulder. He performed the same surgery on appellant's right shoulder on August 16, 2002.

In a decision dated July 1, 2004, the Office granted appellant a schedule award for an additional nine percent impairment of the left upper extremity and an additional eight percent impairment of the right upper extremity.

In an office visit note dated September 27, 2004, Dr. Sardinias related:

“[Appellant] is also tender in the left AC [acromioclavicular] joint. We wanted to do a distal clavectomy before. He has osteoarthritic changes in the joint and it was never approved. I feel that [he] needs this done and that the symptoms in his upper extremity areas are related to that.”

He requested authorization from the Office to perform a left distal clavectomy.

An Office medical adviser reviewed the request for surgical approval on October 18, 2004 and recommended obtaining a second opinion examination.

By letter dated November 17, 2004, the Office referred appellant to Dr. Bernard Z. Albina, a Board-certified orthopedic surgeon, for a second opinion examination. In a report dated December 14, 2004, Dr. Albina discussed the history of injury and listed findings on examination of minimal tenderness of the left shoulder in the subdeltoid area. He noted that appellant reported “less discomfort in the left shoulder [than] he does on the right and more movement in the left shoulder as on the right....” Dr. Albina diagnosed a left shoulder sprain, mild osteoarthritis of the AC joint of the left shoulder consistent with age and a rotator cuff tear of the right shoulder tendon. He concluded that the proposed surgery was unnecessary to treat the accepted employment injury. Dr. Albina noted that appellant related that his symptoms were not severe and controlled with nonprescription medication. He stated, “[Appellant] also indicated to me that he was relieved that he does not need surgery because he does not really feel the necessity for it either since he is not hurting that much in the left shoulder.” Dr. Albina opined that it was accepted medical practice to perform the requested surgery only with severe symptoms of AC joint degeneration.

By decision dated January 24, 2005, the Office denied authorization for a left distal clavicle resection on the grounds that the treatment was not medically necessary for appellant's employment injury.

¹ Appellant retired on disability in August 2001.

LEGAL PRECEDENT

Section 8103 of the Federal Employees' Compensation Act² 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 of the period of disability or aid in lessening the amount of monthly compensation.³ 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.⁴ 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.⁵ 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.⁶

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 and that it is medically warranted. Both of these criteria must be met in order for the Office to authorize payment.⁷

ANALYSIS

The Office accepted that appellant sustained an employment-related bilateral wrist and shoulder strain, bilateral wrist and shoulder tendinitis and a small tear of the right rotator cuff. The Office authorized a right rotator cuff repair on June 19, 2000 and an arthroscopy with a partial synovectomy, rotator cuff debridement and a subacromial space decompression of the left shoulder on May 8, 2002 and of the right shoulder on August 16, 2002.

In an office visit note dated September 27, 2004, Dr. Sardinas noted findings of tenderness in the AC joint and diagnosed osteoarthritis. He requested authorization to perform a left clavectomy. Dr. Sardinas, however, did not provide any medical reasoning supporting his conclusion that such surgery was necessary or discuss the relationship of the requested surgery to appellant's accepted employment injury of a left shoulder strain and tendinitis. His opinion,

² 5 U.S.C. §§ 8101-8193.

³ 5 U.S.C. § 8103; *see Thomas W. Stevens*, 50 ECAB 288 (1999).

⁴ *Joseph P. Hofmann*, 57 ECAB ____ (Docket No. 05-1772, issued March 9, 2006); *James R. Bell*, 52 ECAB 414 (2001).

⁵ *Claudia L. Yantis*, 48 ECAB 495 (1997).

⁶ *Cathy B. Mullin*, 51 ECAB 331 (2000).

⁷ *Id.*

consequently, is insufficient to establish that the need for surgery is treatment reasonably related for residuals of the accepted condition.⁸

Based on the recommendation of the Office medical adviser, the Office referred appellant to Dr. Albina for a second opinion examination. In a report dated December 14, 2004, the physician discussed the history of appellant's accepted employment injury, listed findings on physical examination and reviewed diagnostic studies. He diagnosed a left shoulder sprain and mild osteoarthritis of the AC joint of the left shoulder consistent with age. Dr. Albina noted that appellant related that his left shoulder bothered him less than his right shoulder and that he needed only nonprescription medicine for his shoulder discomfort. He found that appellant did not require surgery as he lacked symptoms of severe degeneration of the AC joint.

The Board finds that Dr. Albina's opinion, which is based on a complete and accurate factual background and supported by rationale, represents the weight of the medical evidence and establishes that the surgical procedure is not medically necessary treatment for the accepted employment injury. The Office, consequently, did not abuse its discretion under 5 U.S.C. § 8103 in denying approval for the surgical authorization.

On appeal, appellant argues that he is entitled to a greater schedule award. The Office issued a decision granting him an increased schedule award on July 1, 2004. As this decision was made more than one year prior to the date appellant filed his appeal with the Board on September 28, 2005, it is not within the Board's jurisdiction.⁹

CONCLUSION

The Board finds that the Office properly denied appellant's request for authorization for a left distal clavicle resection.

⁸ *Jimmie H. Duckett*, 52 ECAB 332 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

⁹ See 20 C.F.R. §§ 501.2(c); 501.3.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 24, 2005 is affirmed.

Issued: May 18, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board