United States Department of Labor
Employees' Compensation Appeals Board

C.A., Appellant	)	
and	)	**Docket No. 08-1886**
	)	**Issued: February 18, 2009**
U.S. POSTAL SERVICE, POST OFFICE, Lutz, FL, Employer	)	

Appearances:
Edward L. Daniel, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 25, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decisions dated October 25, 2007 and June 9, 2008 denying her claim for wage-loss compensation and authorization for surgery. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUES

The issues are: (1) whether appellant met her burden of proof to establish that she sustained a recurrence of disability on September 7, 2007 causally related to her accepted condition; and (2) whether the Office abused its discretion in refusing to authorize appellant's request for left knee arthroscopic surgery.

FACTUAL HISTORY

On August 16, 2004 appellant, then a 32-year-old rural carrier, sustained injuries to her left shoulder when she was hit by a door. The Office accepted her claim for left shoulder contusion.

The record contains an October 6, 2004 report of a magnetic resonance imaging (MRI) scan of the left shoulder, which revealed no evidence of a supraspinatus (rotator cuff) tear; a small contusion of the humeral head; and a questionable partial tear near the origin of the longhead of the biceps. A report of an October 6, 2004 left shoulder arthrogram reflected "no evidence of [a] rotator cuff tear."

Appellant requested authorization for anesthesia for surgery and nerve block injection of the left shoulder. On August 29, 2006 the Office informed appellant that the requested treatment did not appear to be medically related to her accepted left shoulder contusion. It advised her to submit additional medical evidence to support such a relationship.

In a March 7, 2007 report, Dr. Mark Frankle, a Board-certified orthopedic surgeon, stated that appellant had undergone right shoulder surgery nine months prior (July 27, 2006) pursuant to an October 28, 2003 traumatic injury claim (No. xxxxxx364). Appellant was released to full duty with no restrictions. Dr. Frankle noted that appellant was also experiencing pain in the periscapular region of her left shoulder.

On September 11, 2007 appellant submitted a claim for compensation for the period September 7 to October 7, 2007. In a September 7, 2007 duty status report, Dr. Alan J. Iezzi, a treating physician, stated that appellant was unable to work. He diagnosed a rotator cuff tear, indicating that the condition was due to an August 16, 2004 injury.

In a letter dated September 11, 2007, the employing establishment stated that appellant had been removed for unsatisfactory performance on July 20, 2007. On September 18, 2007 it controverted appellant's claim on the grounds that she had not established that her left shoulder condition was causally related to the accepted injury.

On September 24, 2007 the Office informed appellant that the information submitted was insufficient to establish that her recurrence was related to the original work injury. It advised her to provide medical evidence establishing disability for work during the period claimed and that the disability was due to the accepted injury.

The record contains an August 31, 2007 report of an MRI scan of the left shoulder. Findings included mild degenerative arthritis of the acromioclavicular (AC) joint; partial tendon thickness tear of the distal supraspinatus tendon; and small joint effusion.

Appellant submitted an attending physician's report dated October 1, 2007 from Dr. Iezzi, which provided a history of injury reflecting that appellant's left shoulder was hit by a door on August 16, 2004. He diagnosed "left shoulder injury and tendon tear," and stated that appellant had been disabled since September 7, 2007. Dr. Iezzi indicated, by placing a checkmark in the "yes" box, his belief that appellant's condition was caused or aggravated by an employment activity.

On October 2, 2007 Dr. Frankle stated that appellant had been complaining of left shoulder discomfort for several years and that the pain was affecting her quality of life. He noted that a recent MRI scan showed degenerative arthritis at the AC tendon, as well as joint effusion.

Examination of the left shoulder revealed active bilateral elevation to 175 degrees; abduction to approximately 110 degrees and internal rotation to L1. Appellant exhibited provocative impingement signs and symptomology, and had point tenderness over the AC joint. Dr. Frankle diagnosed left shoulder AC joint arthritis.

On October 16, 2007 Dr. Frankle indicated that appellant's July 2006 right shoulder surgery was performed initially because she was experiencing more pain in the right shoulder than in her left at that time. He stated, "Hopefully, this would explain why she had [her] right shoulder done first and now she is having her left shoulder done even though perhaps this was injured before, but it was not acute and severe otherwise."

By decision dated October 25, 2007, the Office denied appellant's claim for compensation on the grounds that the evidence submitted was insufficient to establish that her disability was causally related to the accepted employment injury, or that the need for surgery resulted from the accepted injury. It noted that Dr. Frankle had not explained how the condition of AC joint arthritis, which was not an accepted condition, was related to the August 16, 2004 injury, nor had he explained how the appearance of a "tear" could be due to the traumatic injury rather than to an intervening factor.

On May 14, 2008 appellant, through her representative, requested reconsideration.[1]

Appellant submitted numerous reports from Dr. Frankle, including largely illegible notes for the period August 17, 2004 to September 2, 2007. On December 1, 2006 Dr. Frankle diagnosed left shoulder impingement due to a workers' compensation injury in 2001 or 2002. A March 7, 2007 report reflected appellant's complaint of pain in the periscapular region of the left shoulder. Notes dated October 30, 2007 reflected a diagnosis of left shoulder joint arthritis.

The record contains a November 2, 2007 operative report of a left shoulder procedure, which was performed on November 1, 2007 with a preoperative diagnosis of left shoulder impingement. Procedures performed included arthroscopic subacromial decompression; arthroscopic distal clavical resection; and arthroscopic debridement of both the glenohumeral and subacromial space for synovitis bursectomy. The report noted findings of moderate glenohumeral synovitis and subacromial bursitis with impingement AC arthritis.

In a report dated March 19, 2008, Dr. Frankle opined that appellant's November 1, 2007 left shoulder surgery was causally related to the accepted August 16, 2004 injury. He stated that the need for surgical intervention was based, not only on MRI scan reports, but also on a myriad of problems, including appellant's complaints of pain to the particular AC joint, the recalcitrant nature of nonoperative treatment, and the condition's inability to improve with treatment.

Dr. Frankle addressed the difference between the original October 6, 2004 MRI scan report, which reflected a finding of "no tear," and the 2007 MRI scan, which found a rotator cuff tear. He stated that the November 1, 2007 images did not "really" show evidence of a partial

[1] The record reflects that appellant originally requested an oral hearing on October 30, 2007. Contemporaneously with the filing of the request for reconsideration, appellant's representative withdrew the hearing request.

thickness rotator cuff tear. Rather, Dr. Frankle found evidence of mild glenohumeral synovitis and some impingement to subacromial space, as well as AC arthritis. He opined that the perceived changes reflected variation in interpretation, as opposed to obvious changes.

The Office forwarded the medical file to the district medical adviser for an opinion as to whether the left shoulder condition and surgery were causally related to the accepted August 16, 2004 injury. In a June 3, 2008 report, the medical adviser opined that the left shoulder impingement and other changes were due to years of change in the morphology of the shoulder and were not consistent with, or correlate with, a left shoulder contusion. He further stated that the condition for which surgery was performed was not related to the accepted left shoulder contusion.

By decision dated June 9, 2008, the Office denied modification of the October 27, 2007 decision, finding that the evidence failed to support that appellant was disabled from work during the alleged period due to the accepted 2004 injury, or that the November 1, 2007 surgery was causally related to the accepted left shoulder contusion.

LEGAL PRECEDENT -- ISSUE 1

Section 10.5(x) of the Office's regulations provides that a recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness, without an intervening injury or new exposure to the work environment that caused the illness.[2]

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury, and who supports that conclusion with sound medical reasoning.[3]

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that a claimant's claimed condition became apparent during a period of employment, nor his or her belief that the condition was aggravated by employment, is sufficient to establish causal relationship.[4]

The Board will not require the Office to pay compensation in the absence of medical evidence directly addressing the particular period of disability for which compensation is sought. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.[5]

[2] 20 C.F.R. § 10.5(x); *see Theresa L. Andrews*, 55 ECAB 719 (2004).

[3] *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.104.

[4] *Walter D. Morehead*, 31 ECAB 188 (1986).

[5] *Fereidoon Kharabi*, 52 ECAB 291 (2001).

Section 10.5(x) of the Office's regulations defines "recurrence of disability" as an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness, without an intervening injury or new exposure to the work environment that caused the illness.[6] Therefore, the Board has held that, in order to establish a claim for a recurrence of disability, appellant must establish that she suffered a spontaneous material change in the employment-related condition without an intervening injury.[7]

ANALYSIS -- ISSUE 1

The Office accepted appellant's August 16, 2004 claim for left shoulder contusion. Having returned to full duty following a right shoulder surgery for an injury under a separate claim in July 2007, appellant filed a claim for compensation for lost wages for the period September 7 to October 7, 2007. The Board finds that appellant has not met her burden of proof in establishing that she sustained a recurrence of disability in the performance of duty on September 7, 2007. There is no medical evidence of record that contains a well-rationalized opinion establishing that she became totally disabled during this period due to the accepted injury.

On September 7, 2007 Dr. Iezzi stated that appellant was unable to work. He diagnosed a rotator cuff tear due to the August 16, 2004 injury. However, Dr. Iezzi did not explain how appellant's tendon tear was causally related to the August 16, 2004 injury, which was accepted for left shoulder contusion. As it is unsupported by rationale, his opinion is of diminished probative value.[8] Additionally, Dr. Iezzi did not provide findings on examination, or indicate that his opinion was based on a review of a complete factual and medical background of the claimant.

On October 1, 2007 Dr. Iezzi provided a history of injury reflecting that appellant's left shoulder was hit by a door on August 16, 2004. He diagnosed "left shoulder injury and tendon tear," and stated that appellant had been disabled since September 7, 2007. Dr. Iezzi indicated, by placing a checkmark in the "yes" box, his belief that appellant's condition was caused or aggravated by an employment activity. The Board has found that a report that addresses causal relationship with a checkmark, without a medical rationale explaining how the work event caused the alleged injury, is of diminished probative value and is insufficient to establish causal relationship.[9]

Reports from Dr. Frankle are also insufficient to establish appellant's recurrence claim. Dr. Frankle did not address whether appellant was disabled during the period claimed. The Board will not require the Office to pay compensation in the absence of medical evidence

[6] 20 C.F.R. § 10.5(x) (2002). *See Carlos A. Marrero*, 50 ECAB 117 (1998).

[7] *Carlos A. Marrero, supra* note 6.

[8] *Willa M. Frazier*, 55 ECAB 379 (2004).

[9] *See Calvin E. King, Jr*., 51 ECAB 394 (2000); *see also Frederick E. Howard, Jr*., 41 ECAB 843 (1990).

directly addressing the particular period of disability for which compensation is sought. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.[10] Additionally, none of his numerous reports contains a definitive opinion that appellant's left shoulder joint arthritis was caused by or related to, her accepted injury. The Board has long held that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value.[11] Similarly, MRI scan reports and operative reports, which do not contain an opinion on causal relationship, are of diminished probative value.

Appellant had the burden of providing rationalized medical evidence establishing that her alleged disability was causally related to her accepted injury.[12] The medical evidence of record does not contain a rationalized opinion explaining how her current condition was causally related to the accepted left shoulder contusion. Moreover, there is no medical evidence of record which establishes that appellant was disabled during the period in question. Accordingly, the Board finds that the Office properly denied her claim.

LEGAL PRECEDENT -- ISSUE 2

Section 8103(a) of the Federal Employees' Compensation Act provides for the furnishing of "services, appliances and supplies prescribed or recommended by a qualified physician" which the Office, under authority delegated by the Secretary, "considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of monthly compensation."[13] In interpreting section 8103(a), the Board has recognized that the Office has broad discretion in approving services provided under the Act to ensure that an employee recovers from his or her injury to the fullest extent possible in the shortest amount of time.[14] The Office has administrative discretion in choosing the means to achieve this goal, and the only limitation on the Office's authority is that of reasonableness.[15]

While the Office is obligated to pay for treatment of employment-related conditions, appellant has the burden of establishing that the expenditure is incurred for treatment of the effects of an employment-related injury or condition.[16] Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.[17] Therefore, in order to

[10] *Fereidoon Kharabi*, 52 ECAB 291 (2001).

[11] *Michael E. Smith*, 50 ECAB 313 (1999).

[12] *Dennis E. Twardzik*, *supra* note 3; *Max Grossman*, *supra* note 3; 20 C.F.R. § 10.104.

[13] 5 U.S.C. § 8103(a).

[14] *Dale E. Jones*, 48 ECAB 648, 649 (1997).

[15] *Daniel J. Perea*, 42 ECAB 214, 221 (1990) (holding that abuse of discretion by the Office is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or administrative actions which are contrary to both logic and probable deductions from established facts).

[16] *See Debra S. King*, 44 ECAB 203, 209 (1992).

[17] *Id.*; *see also Bertha L. Arnold*, 38 ECAB 282 (1986).

prove that the surgical procedure is warranted, appellant must submit evidence to show that the procedure was 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.[18]

ANALYSIS -- ISSUE 2

The Board finds that the Office did not abuse its discretion when it denied appellant's request for authorization of left shoulder arthroscopic surgery. Appellant did not meet her burden of proof to establish that the procedure was required for treatment of her accepted left shoulder contusion.[19]

In order to prove that the requested surgical procedures were warranted, appellant had the burden of establishing both that the procedure was for a condition causally related to the employment injury and that the surgery was medically warranted.[20] Although Dr. Frankle opined that appellant's November 1, 2007 left shoulder surgery was necessary and that it was causally related to her accepted August 16, 2004 injury, he did not explain how her left shoulder AC arthritis could have developed as a result of the accepted contusion. He stated that the need for surgical intervention was based, not only on MRI scan reports, but also on a myriad of problems, including appellant's complaints of pain to the particular AC joint, the recalcitrant nature of nonoperative treatment, and the condition's inability to improve with treatment. Addressing the difference between the original October 6, 2004 MRI scan report, which found "no tear," and the 2007 MRI scan, which noted a torn rotator cuff, Dr. Frankle stated that the November 1, 2007 images did not "really" show evidence of a partial thickness rotator cuff tear. Rather, he found evidence of mild glenohumeral synovitis and some impingement to subacromial space, as well as AC arthritis, and opined that the perceived changes reflected variation in interpretation, as opposed to obvious changes. However, Dr. Frankle did not explain how appellant's current condition was caused by, or related to, the accepted shoulder contusion.

The November 2, 2007 operative report reflects a preoperative diagnosis of left shoulder impingement. Procedures performed included arthroscopic subacromial decompression; arthroscopic distal clavical resection; and arthroscopic debridement of both the glenohumeral and subacromial space for synovitis bursectomy. The report noted findings of moderate glenohumeral synovitis and subacromial bursitis with impingement AC arthritis. However, the report does not contain an opinion as to the cause of the preoperative diagnosis. Therefore, it is of limited probative value.

The only limitation on the Office's authority in approving, or disapproving, services under the Act is that of reasonableness.[21] In the instant case, appellant requested authorization of

[18] *See Cathy B. Millin*, 51 ECAB 331, 333 (2000).

[19] *Id.*

[20] *Cathy B. Millin, supra* note 18.

[21] *Daniel J. Perea, supra* note 15.

a left shoulder arthroscopic surgery for a left shoulder impingement and AC arthritis. In order to ascertain whether or not the proposed surgery was medically necessary, the Office consulted with its medical adviser, who opined that the impingement and other changes were due to years of change in the morphology of the left shoulder condition, and were not consistent with, and did not correlate with, a left shoulder contusion. After considering all of the medical evidence of record, the Office concluded that authorization for the requested surgery should be denied. The Board finds that the Office's refusal to authorize the left shoulder surgery was reasonable and did not constitute an abuse of discretion.

The Board finds that appellant has not met her burden of showing that the left shoulder arthroscopic surgery was for a condition causally related to the accepted employment injury.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained a recurrence of disability commencing September 7, 2007. The Board further finds that the Office did not abuse its discretion in refusing to authorize appellant's request for left shoulder arthroscopic surgery.

ORDER

IT IS HEREBY ORDERED THAT the June 9, 2008 and October 25, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 18, 2009
Washington, DC

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

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board