

intermittent time from work and wage-loss compensation benefits were paid. She returned to work with restrictions on October 12, 2005.¹

A September 28, 2005 emergency room report from Dr. Jerry L. Fenwick, Board-certified in emergency medicine, noted the motor vehicle accident and listed primary diagnoses of painful lower leg and left calf swelling. Other diagnoses were cervical degenerative joint disease, swelling and tenderness of the posterior scalp, neck pain and cervical strain. Cervical spine x-rays showed degenerative joint disease but was negative for fracture or displacement.

A March 14, 2007 electromyography (EMG) scan read by Dr. David W. Spight, a Board-certified physiatrist and osteopath, revealed a normal right upper extremity electrodiagnostic study. Dr. Spight advised that there was no electrodiagnostic evidence of a right cervical radiculopathy, upper extremity entrapment neuropathy or peripheral neuropathy. A March 22, 2007 right shoulder magnetic resonance imaging (MRI) scan read by Dr. Spight revealed a cystic lesion along the anterior margin of the subscapularis muscle, possibly a ganglion and probably a partial tear of the infraspinatus muscle, removed from the rotator cuff, near the glenoid. An August 16, 2007 x-ray of the right shoulder read by Dr. Mark DeLano, a Board-certified diagnostic radiologist, was normal.

In a report dated September 13, 2007, Dr. Julie A. Dodds, a Board-certified orthopedic surgeon, noted appellant's history of injury and treatment. She examined appellant and found tenderness over the anterior right shoulder, especially in the subscapularis region and pain with subscapularis resistance. Dr. Dodds advised that appellant had "[r]ight shoulder cyst probably secondary to injury. I think she may have subluxed or had some episode at the time of her motor vehicle accident which caused excessive swelling and possible stripping of some of her anterior capsule. This then led to the cyst which is an extension of the glenohumeral joint." On October 12, 2007 Dr. Dodds requested that the Office authorize a right shoulder arthroscopy with debridement of a bursa cyst and decompression.²

By letters dated October 29 and December 3, 2007, appellant's representative requested that the Office accept that she sustained a right shoulder condition. In a November 15, 2007 report, Dr. Dodds opined that "the accident was the direct and proximate cause of the above patient's right shoulder cyst."

On January 15, 2008 the Office informed appellant's representative that authorization for surgery was not granted and that it would schedule a second opinion examination. In a January 28, 2008 letter, it referred appellant, together with a statement of accepted facts, a set of questions and the medical record, to Dr. Bruce D. Abrams, a Board-certified orthopedic surgeon.

¹ On November 9, 2005 appellant had a recurrence of back complaints and sought treatment from her physician. She returned to light duty on November 16, 2005. On September 26, 2006 appellant relocated to Blanchard, Michigan, and changed positions to a part-time flexible clerk. She has preexisting conditions of congenital S1 transition type segment, degenerative lumbar disease, partial hysterectomy, bone spurs of the right shoulder with surgery and tonsillectomy.

² On October 22, 2007 the Office received a request from Dr. Dodds for authorization for right shoulder arthroscopy with debridement of a bursa cyst.

In a February 15, 2008 report, Dr. Abrams reviewed appellant's history of injury and medical treatment. He noted the request for surgery to the right shoulder for a cyst and advised that he did not believe that the condition was related to her cervical spine or lumbar spine or part of the accepted injury of September 28, 2005. Dr. Abrams stated that examination of the cervical spine was entirely within normal limits and appellant was neurologically intact. He noted that the 2007 EMG of the right upper extremity was normal. Dr. Abrams also advised that the lumbar and thoracic spine examinations were normal. He opined that appellant sustained a musculoskeletal sprain associated with the motor vehicle accident of September 2005 and that both the cervical and lumbar injuries had resolved. While appellant had some subjective complaints, her examination was normal. Regarding the right shoulder, he stated: "I do not feel it is in any way related to a flexion-extension injury to the cervical region, contusion or sprain of the thoracic, or a sprain or contusion to the lumbar region." Dr. Abrams noted that appellant did not have any complaints until two years after the September 2005 injury and he could not "relate a cyst in her shoulder as being caused by the event of being rear-ended. Nor did she have any shoulder complaints following the accident."

In a May 29, 2008 report, Dr. Dodds repeated her request for authorization of right shoulder surgery. She stated that a September 29, 2005 medical intake pain diagram indicated that appellant complained of right shoulder pain.³

The Office found a conflict in medical opinion between Dr. Dodds and Dr. Abrams regarding whether appellant sustained a right shoulder injury as a result of her September 28, 2005 employment injury and whether she continued to have residuals of the accepted work injury. On July 1, 2008 it referred her together with a statement of accepted facts and the medical record, to Dr. Emmanuel Obianwu, a Board-certified orthopedic surgeon, for an impartial medical evaluation.

In a September 8, 2008 report, Dr. Obianwu reviewed the history of injury and treatment. On examination, appellant had a normal right shoulder, a resolved soft tissue injury of the cervical spine and was status post arthrodesis at L5-S1 on July 8, 2008. Dr. Obianwu explained that he had reviewed the history of injury and there did not appear to be any complaints of right shoulder pain for some time following the accident. The examination findings of the right shoulder and neck revealed some restriction on range of motion but there was no "overt evidence of impingement or capsulitis in the right shoulder." Dr. Obianwu noted that a March 2007 MRI scan did not identify any significant cyst or pathology in her right shoulder. He found that appellant was capable of performing her regular duties as a letter carrier. Dr. Obianwu advised that appellant's right shoulder complaints were not related to the accepted automobile accident and that she did not require any surgical procedures to her right shoulder. He explained that the shoulder condition for which appellant was requesting treatment would have been a significant complaint if based on a sudden anterior subluxation of the right shoulder, associated with considerable discomfort in the shoulder. It was unlikely that appellant sustained any problems at the time of the accident to her right shoulder. Dr. Obianwu noted that cysts generally formed in the right shoulder as a result of degenerative changes. He opined that "[t]his woman's right

³ The diagram in question appears to contain a marking on the left shoulder, not the right shoulder.

shoulder complaints are not related to the automobile accident. Based on my clinical examination today, she does not require any surgical procedures on her right shoulder.”⁴

By decision dated February 4, 2009, the Office determined that appellant did not sustain a right shoulder condition as a result of the September 28, 2005 injury and denied authorization for right shoulder surgery.

On February 6, 2009 appellant requested a telephonic hearing, which was held on May 28, 2009. On April 14, 2009 she alleged that she stated from day one that she had problems with her shoulder. On May 13, 2009 the Office received a copy of Dr. Dodds’ November 15, 2007 report. On June 17, 2009 appellant filed a Form CA-7 and reiterated her request.

By decision dated July 23, 2009, the Office hearing representative affirmed the February 4, 2009 decision. He found that the medical evidence was insufficient to establish that the requested shoulder surgery was to treat the effects of the September 28, 2005 injury.

LEGAL PRECEDENT

Section 8103 of the Federal Employees’ Compensation Act⁵ 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.⁶ While the Office is obligated to pay for treatment of employment-related conditions, the employee has the burden of establishing that the expenditure is incurred for treatment of the effects of an employment-related injury or condition.⁷

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.⁸ 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.⁹ To be entitled to reimbursement of medical expenses, a claimant has the burden of establishing that the expenditures were incurred for treatment of the effects of an employment-related injury or condition. Proof of causal relationship in a case such as this must include supporting rationalized

⁴ The record indicates that the Office subsequently sought supplemental reports from Dr. Obianwu regarding appellant’s low back condition. This was developed separately by the Office.

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *Id.* at § 8103; *see L.D.*, 59 ECAB ____ (Docket No. 08-966, issued July 17, 2008).

⁷ *Kennett O. Collins, Jr.*, 55 ECAB 648 (2004).

⁸ *See D.K.*, 59 ECAB ____ (Docket No. 07-1441, issued October 22, 2007).

⁹ *Minnie B. Lewis*, 53 ECAB 606 (2002).

medical evidence.¹⁰ In order for a surgical procedure to be authorized, a claimant must submit evidence to show that the surgery is for a condition causally related to an employment injury and that it is medically warranted. Both of these criteria must be met in order for the Office to authorize payment.¹¹

Section 8123(a) of the Act provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.¹² The implementing regulations state that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an Office medical adviser, the Office shall appoint a third physician to make an examination. This is called a referee examination and the Office will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.¹³ When there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.¹⁴

ANALYSIS

Dr. Dodds, appellant's treating physician, requested authorization for a right shoulder arthroscopy, debridement of a bursa cyst and decompression. She stated that the need for surgery was due to the September 28, 2005 work injury. The second opinion physician, Dr. Abrams, did not support the need for proposed surgery. He explained that appellant did not have any complaints related to her right shoulder until two years after the 2005 work injury. Dr. Abrams did not relate the cyst in her shoulder as being caused by the event of being rear-ended.

The Board notes that a conflict in medical opinion arose between Dr. Abrams and Dr. Dobbs. The Office properly referred appellant to Dr. Obianwu, a Board-certified orthopedic surgeon, for an impartial medical examination.

The Board finds that the weight of the medical evidence rests with the opinion of Dr. Obianwu, the impartial referee physician, who examined appellant, reviewed the medical evidence of record and found that the right shoulder surgery was not medically warranted or due to appellant's accepted work injury. For a surgical procedure to be authorized, a claimant must submit evidence to establish that the surgery is for a condition causally related to an employment injury and that it is medically warranted. Both of these criteria must be met in order for the

¹⁰ *M.B.*, 58 ECAB 588 (2007).

¹¹ *R.C.*, 58 ECAB 238 (2006).

¹² 5 U.S.C. § 8123(a); *see Y.A.*, 59 ECAB ____ (Docket No. 08-254, issued September 9, 2008).

¹³ 20 C.F.R. § 10.321.

¹⁴ *V.G.*, 59 ECAB ____ (Docket No. 07-2179, issued July 14, 2008).

Office to authorize payment.¹⁵ Dr. Obianwu provided a comprehensive report in which he reviewed the history of injury and medical treatment. He addressed the diagnostic studies in support of his opinion. Dr. Obianwu noted examination findings and determined that appellant had a normal right shoulder and did not sustain any condition due to the September 28, 2005 work injury. He found that appellant did not have any complaints involving the right shoulder for some time after the accident. Dr. Obianwu noted that the March 2007 EMG was a normal study. The type of shoulder condition for which appellant sought treatment would have been an initial complaint if due to a sudden anterior subluxation of the right shoulder at the time of the accident. Dr. Obianwu found it unlikely that appellant had any problems at the time of the accident to her right shoulder and explained that cysts generally formed in the shoulder as a result of degenerative changes. He noted that there was some range of motion restriction but there was no overt evidence of impingement or capsulitis in the right shoulder. Regarding the need for surgery, Dr. Obianwu stated that the March 2007 MRI scan identified no significant cyst or pathology of the right shoulder. He concluded that appellant's shoulder complaints were not related to the automobile accident and that she did not require any surgical procedures, as recommended by Dr. Dodds.

As noted, a reasoned opinion from a referee examiner is entitled to special weight.¹⁶ The Board finds that Dr. Obianwu provided a well-rationalized opinion based on a complete background, his review of the accepted facts and the medical record and his examination findings. The Board finds that the Office properly relied on Dr. Obianwu's opinion to determine the requested surgery was not medically warranted.

Consequently, the Office did not abuse its discretion in denying authorization of the proposed right shoulder surgery.

CONCLUSION

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

¹⁵ *R.C.*, *supra* note 11. The Board also notes that where a claimant claims that a condition not accepted or approved by the Office was due to an employment injury, the claimant bears the burden of proof to establish that the condition is causally related to the employment injury through the submission of rationalized medical evidence. *T.M.*, 60 ECAB ___ (Docket No. 08-975, issued February 6, 2009).

¹⁶ *V.G.*, *supra* note 14.

ORDER

IT IS HEREBY ORDERED THAT the July 23, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 10, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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