

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

M.C., Appellant

and

**DEPARTMENT OF HOMELAND SECURITY,
IMMIGRATION & NATURALIZATION
SERVICE, Phoenix, AZ, Employer**

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**Docket No. 10-814
Issued: October 25, 2010**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 1, 2001 appellant filed a timely appeal from the August 10, 2009 merit decision of the Office of Workers' Compensation Programs, which denied authorization for right shoulder surgery. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case.

ISSUE

The issue is whether the Office properly denied authorization for right shoulder surgery.

FACTUAL HISTORY

On September 25, 1996 appellant, then a 43-year-old assistant district director, sustained an injury in the performance of duty when her wheelchair flipped over backwards and she tried to stop the fall by extending both arms. The Office accepted her claim for right shoulder strain, right shoulder tear, right anterior rotator cuff repair, aggravation of Polio syndrome and

consequential left shoulder strain. Appellant received schedule awards for a 65 percent impairment of her right upper extremity and a 45 percent impairment of her left.

The medical evidence indicated that appellant reinjured her right shoulder on March 13, 2009: “She reached up from her wheelchair to grab some cat litter at the store and [it] yanked the arm down. She had pain and jolt in the right shoulder.” Diagnostic testing revealed a massive tear from what appeared to be previously repaired supraspinatus and infraspinatus tendons. Both were torn and retracted medially. There was also marked tendinopathy of the subscapularis tendon with probable tearing of the articular surface.

The Office received a call from appellant stating, “[S]he sustained another injury to her shoulder. She stated she was shopping for grocery when she went to reached for an item, she tore her shoulder again and requires another surgery.”

On June 10, 2009 Dr. Richard K. Peairs, appellant’s Board-certified orthopedic surgeon, related the recent history of injury. He reported that “[appellant] injured the right shoulder while shopping on March 13, 2009 when a bag of cat litter weight 16 pounds she was trying to get off a high shelf fell and caused her right arm to be jerked downward.... She experienced immediate pain in the right shoulder.” Dr. Peairs diagnosed right rotator cuff tear and found that appellant would benefit from an arthroscopy of the right shoulder with repair of the rotator cuff.

On June 17, 2009 Dr. Kathy A. Finch, appellant’s primary care physician, reported that appellant acutely tore her right rotator cuff on March 13, 2009 pulling a grocery item from the shelf and it dropped abruptly causing instant pain and inability to raise her arm.

On August 10, 2009 the Office denied authorization for right shoulder surgery. It found that the need for surgery was the result of an incident at the grocery store on March 13, 2009, not the result of a work-related incident.

LEGAL PRECEDENT

Section 8103(a) of the Federal Employees’ Compensation Act 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 that the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of any disability or aid in lessening the amount of any monthly compensation.¹ These services include surgery and hospitalization.² The Office must therefore exercise discretion in determining whether the particular service, appliance or supply is likely to affect the purposes specified in the Act.³ The only limitation on the Office’s authority is that of reasonableness.⁴

¹ 5 U.S.C. § 8103(a).

² Federal (FECA) Procedure Manual, Part 3 -- Medical, *Overview*, Chapter 3.0100.2.a (October 1990).

³ See *Marjorie S. Geer*, 39 ECAB 1099 (1988) (the Office has broad discretionary authority in the administration of the Act and must exercise that discretion to achieve the objectives of section 8103).

⁴ *Daniel J. Perea*, 42 ECAB 214 (1990).

The Office's obligation to pay for medical treatment under section 8103 of the Act extends only to treatment of employment-related conditions, and appellant has the burden of establishing that the requested treatment is for the effects of an employment-related condition. Proof of causal relation must include rationalized medical evidence.⁵

It is an accepted principle of workers' compensation law that when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent, intervening cause attributable to the employee's own intentional conduct.⁶

ANALYSIS

Appellant acutely tore her right rotator cuff on March 13, 2009 when, at a grocery store, she reached up to pull a bag of cat litter weighing 16 pounds from a high shelf. The bag dropped abruptly and jerked her right arm downward, causing instant pain and an inability to raise her arm. The injury was not the natural progression of her September 25, 1996 employment injury. What triggered the injury was an independent, intervening cause attributable to appellant's own intentional conduct.⁷

Because the March 13, 2009 injury did not arise in the course of appellant's federal employment and because the resulting need for surgery was not for the natural progression of her 1996 employment injury, the Board finds that the Office acted reasonably in denying authorization for the surgery. As the Office properly exercised its discretion in the matter, the Board will affirm the Office's August 10, 2009 decision.

CONCLUSION

The Board finds that the Office properly denied authorization for right shoulder surgery. The record establishes that the requested surgery was for the effects of a nonwork-related injury.

⁵ *Debra S. King*, 44 ECAB 203 (1992).

⁶ *John R. Knox*, 42 ECAB 193 (1990); *Lee A. Holle*, 7 ECAB 448 (1955).

⁷ *See Clement Jay After Buffalo*, 45 ECAB 707 (1994) (holding that while the claimant's employment-related knee injury contributed to a later basketball injury as a medical matter, the legal chain of causation was broken by an independent, intervening cause, namely, playing basketball only 24 hours after receiving medical advice not to do so).

ORDER

IT IS HEREBY ORDERED THAT the August 10, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 25, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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