

when she was helping a patient from his bed when he began to fall, causing her to lean into him with her left shoulder to prevent the fall. She stopped work the next day on March 23, 2016. Appellant did not return to work as the employing establishment could not accommodate her physician's work restrictions. By decision dated April 3, 2016, OWCP accepted the claim for inferior subluxation of the left shoulder humerus.² It paid appellant wage-loss compensation and medical benefits on the supplemental rolls as of May 7, 2016.

Appellant sought treatment with Dr. Evan Lederman, a Board-certified orthopedic surgeon. In a July 11, 2016 medical report, Dr. Lederman reported that a magnetic resonance imaging (MRI) scan of appellant's left shoulder revealed advanced glenohumeral joint degenerative arthritis, large humeral osteophyte, degenerative circumferential labral pathology consistent with degenerative arthritis, a fairly large posterosuperior paralabral cyst, and tendinosis of the rotator cuff. He diagnosed left shoulder strain during the course of employment, underlying advanced glenohumeral joint degenerative arthritis, degenerative labrum, and nonacute paralabral cyst. Dr. Lederman reported that appellant had not improved despite treatment and was experiencing worsening mechanical pain which would suggest some damage as a result of her injury, despite her underlying degenerative arthritis. He suspected that most of her pain was related to the labral pathology and large paralabral cyst. Dr. Lederman further speculated that she either worsened her articular cartilage damage or worsened her labral tear as a result of her injury, which fit the mechanism of injury.

In an August 29, 2016 report, Dr. Lederman diagnosed left shoulder advanced glenohumeral arthritis and labral tear. He noted that appellant was not a candidate for arthroscopic surgery due to the severe degenerative arthritis. However, if surgery became necessary, appellant would require a shoulder replacement. Dr. Lederman noted that the consideration was whether the shoulder replacement was the responsibility of the industrial carrier or a preexisting condition. He reported that appellant appeared to have aggravated a preexisting condition that was unresponsive to conservative care and therefore, would qualify as a permanent aggravation. Dr. Lederman recommended that appellant be referred for another medical evaluation to determine causation and whether further total shoulder arthroplasty due to severe degenerative arthritis should be performed.

On September 15, 2016 OWCP received a request for authorization of left shoulder replacement surgery.

On January 18, 2017 OWCP referred appellant, the case file, a statement of accepted facts (SOAF), and a series of questions to Dr. Michael A. Steingart, a Board-certified orthopedic surgeon, for a second opinion examination as to the status of appellant's employment-related injury and need for the requested surgery. The accompanying SOAF noted the accepted condition of inferior subluxation of the left humerus as causally related to the March 22, 2016 work injury. It further noted that the preexisting or concurrent medical conditions of advanced left shoulder glenohumeral osteoarthritis and labral tear. OWCP requested that Dr. Steingart determine all diagnoses related to the March 22, 2016 employment injury, whether the recommended left total

² A March 28, 2016 x-ray of the left shoulder revealed inferior subluxation of the left humeral head with underlying degenerative joint disease.

shoulder replacement surgery was medically necessary and related to the accepted injury, and the nature and extent of all residuals from the employment injury.

In a February 10, 2017 medical report, Dr. Steingart provided findings based upon appellant's physical examination. He discussed her medical history and past diagnostic reports. With respect to her diagnosis, Dr. Steingart reported that appellant did not sustain a work-related injury on March 22, 2016 when protecting a patient from falling by leaning into the patient, because this would not have caused dislocation or subluxation of the left shoulder. He reported that appellant's chronic degenerative change of the left shoulder was ongoing and she had issues prior to the work-related injury. Dr. Steingart further reported that the record supported that she was able to carry fish with her left hand singly, which was something she said she would not be able to do because of her chronic left shoulder pain. He opined that appellant did not injure herself when trying to prevent a patient from falling³ and her diagnosis was not related to her work injury. Dr. Steingart reported that appellant's conditions were preexisting which were aggravated by her fishing trip, reiterating that she never sustained a traumatic injury on March 22, 2016. He concluded that she was a candidate for a left total shoulder replacement, but that it was unrelated to any work injury.

By decision dated April 5, 2017, OWCP denied appellant's request for authorization of left shoulder surgery finding that the evidence of record did not establish that it was medically necessary to address the effects of her work-related injury.

On May 1, 2017 appellant requested an oral hearing before an OWCP hearing representative. In a May 3, 2017 statement, she described the March 22, 2016 incident when she prevented a 200-pound patient from falling. Appellant provided a history of her medical treatment and reported that she held fish during a trip to Alaska just long enough to have her photograph taken, and was in severe pain while doing so.

In an April 3, 2017 medical report, Dr. Lederman noted review of Dr. Steingart's second opinion report which was provided to him by appellant.⁴ He related that he disagreed with most of Dr. Steingart's conclusions, although he agreed with his opinion that appellant had degenerative arthritis of the left shoulder prior to her injury. Dr. Lederman also agreed that she sustained an injury with a significant increase in pain of her left shoulder, which would be expected to be a temporary aggravation. However, as one year had passed, he reported that her injury would now qualify as a permanent aggravation of her underlying degenerative arthritis. Dr. Lederman opined that appellant was a candidate for left total shoulder arthroplasty which was related to her work injury with an unfortunate permanent aggravation of her underlying preexisting condition.

In a May 4, 2017 report, Dr. Susan Del Sordi-Staats, an osteopathic physician, reported that she had been appellant's primary care physician for over 10 years. She noted that, despite

³ Dr. Steingart was provided a questionnaire which noted that appellant had taken a vacation to Alaska and posted pictures of herself fishing on July 16, 2016, holding up two fish with one in each arm, one weighing 20 pounds and one weighing 30 pounds, which exceeded her lifting restrictions. OWCP reported that this was based on a statement provided by the employing establishment.

⁴ Dr. Lederman noted that, on March 24, 2017, OWCP requested he comment and review on Dr. Steingart's report, but failed to provide him with the second opinion.

chronic shoulder changes seen on a left shoulder MRI scan in 2005, appellant was not treated for any shoulder complaints as it was not an active issue for her until March 23, 2016, when she presented to her office and an x-ray of her left shoulder revealed dislocation. Appellant was referred to an orthopedist and an updated MRI scan of the left shoulder revealed underlying severe degenerative changes, a ganglion cyst, and labral/rotator cuff injury. Dr. Sordi-Staats opined that the March 22, 2016 incident clearly triggered appellant's situation requiring surgery. She noted that the fact that appellant had underlying chronic degenerative shoulder issues did not change the fact that her work activity induced an injury to that shoulder. Dr. Sordi-Staats explained that the mechanism by which she helped her patient from falling would explain a dislocation, and the complaint of pain and limitation in movement that followed the incident were not present in that shoulder prior to the work injury. She reported that any activity, such as lifting a fish on a vacation, were activities that she had performed in the past and did not change the mechanism of injury at work that directly led to her need for a shoulder replacement surgery. Dr. Sordi-Staats requested appellant's surgery be approved by OWCP.

By decision dated September 27, 2017, an OWCP hearing representative affirmed the April 5, 2017 decision denying appellant's request for authorization of left shoulder surgery. It noted that the weight of the medical evidence rested with Dr. Steingart's opinion that appellant's left shoulder condition was preexisting.

LEGAL PRECEDENT

Section 8103(a) of FECA provides for the furnishing of services, appliances, and supplies prescribed or recommended by a qualified physician who OWCP, 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.⁵ In interpreting section 8103(a), the Board has recognized that OWCP has broad discretion in approving services provided under FECA to ensure that an employee recovers from his or her injury to the fullest extent possible in the shortest amount of time.⁶ The Board therefore has broad administrative discretion in choosing means to achieve this goal. The only limitation on OWCP's authority is that of reasonableness.⁷

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 by submitting rationalized medical evidence that supports such a connection and demonstrates that the treatment is necessary and reasonable.⁸ While OWCP is obligated to pay for treatment of employment-related conditions, the employee has the burden of proof to establish that the expenditure is incurred for treatment of the effects of an employment-related injury or condition.⁹ Proof of causal relationship in a case such as this must include supporting rationalized medical

⁵ 5 U.S.C. § 8103(a).

⁶ See *Dale E. Jones*, 48 ECAB 648, 649 (1997).

⁷ *Dr. Mira R. Adams*, 48 ECAB 504 (1997).

⁸ See *Debra S. King*, 44 ECAB 203 (1992).

⁹ *Kennett O. Collins, Jr.*, 55 ECAB 648, 654 (2004).

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 OWCP to authorize payment.¹¹

ANALYSIS

The Board finds that this case is not in posture for decision.¹²

The Board notes that OWCP accepted the condition of inferior subluxation of left humerus. On January 18, 2017 OWCP referred appellant, the case file, the SOAF, and a series of questions to Dr. Steingart, serving as a second opinion physician, for review and determination regarding appellant's diagnoses related to the accepted March 22, 2016 employment injury and the need for the requested surgery. The Board finds, however, that Dr. Steingart's opinion was not sufficiently rationalized because it was based on an inaccurate background and accordingly, failed to resolve whether appellant's requested surgery should be authorized as related to the March 22, 2016 employment injury.¹³

In his February 10, 2017 medical report, Dr. Steingart opined that the accepted condition of inferior subluxation of the left humerus was not related to the March 22, 2016 work injury, and that she sustained no injury to her left shoulder at work on that date.¹⁴ OWCP procedures indicate that, when an OWCP medical adviser, second opinion specialist, or referee physician renders a medical opinion based on a SOAF which is incomplete or inaccurate, or does not use the SOAF as the framework in forming his or her opinion, the probative value of the opinion is seriously diminished or negated altogether.¹⁵ Dr. Steinhart's opinion that the left shoulder surgery should not be authorized because appellant's inferior subluxation of the left humerus was not caused by the March 22, 2016 employment injury was outside of the SOAF and was therefore based on an inaccurate factual history.¹⁶ Accordingly, the Board finds that Dr. Steingart's opinion is of limited or no probative value.

¹⁰ *M.B.*, 58 ECAB 588 (2007).

¹¹ *R.C.*, 58 ECAB 238 (2006).

¹² *T.H.*, Docket No. 17-0025 (issued July 6, 2017).

¹³ *See D.B.*, Docket No. 14-0830 (issued August 22, 2014).

¹⁴ *L.J.*, Docket No. 14-1682 (issued December 11, 2015).

¹⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Statements of Accepted Facts*, Chapter 2.809.5 (September 2009). *See also A.C.*, Docket No. 07-2423 (issued May 15, 2008). The Board held that the SOAF did not accurately reflect the conditions OWCP accepted as employment related and, therefore, the physician's report was of diminished probative value, and insufficient to resolve the conflict in medical opinion.

¹⁶ *V.A.*, Docket No. 14-722 (issued May 8, 2014). *See also* FECA Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.3 (October 1990).

OWCP shares responsibility to see that justice is done.¹⁷ Once OWCP undertakes to develop the medical evidence further, it has the responsibility to do so in a proper manner. The Board has previously explained that as OWCP undertook development of the medical evidence, but failed to obtain an opinion that rationally resolved whether appellant's requested left shoulder surgery should be authorized, OWCP has an obligation to pursue the issue further.¹⁸

OWCP shall refer appellant, together with a SOAF and her medical record, to a second opinion physician for a rationalized medical opinion as to whether appellant's left shoulder surgery should be authorized.¹⁹ After this and such further development as deemed necessary, OWCP shall issue an appropriate *de novo* decision on appellant's request for left shoulder surgery.

CONCLUSION

The Board finds that this case is not in posture for decision

¹⁷ See *E.W.*, Docket No. 17-0707 (issued September 18, 2017).

¹⁸ *Supra* note 13.

¹⁹ *R.R.*, Docket No. 15-1055 (issued December 16, 2015).

ORDER

IT IS HEREBY ORDERED THAT the September 27, 2017 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision of the Board.

Issued: November 5, 2018
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board