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

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| **WILLIAM J. KRONMAIER, Appellant** | ) | |
| **and** | ) | **Docket No. 04-1400** |
| | ) | **Issued: March 1, 2005** |
| **U.S. POSTAL SERVICE, POST OFFICE, Portland, ME, Employer** | ) | |

*Appearances:*
*William J. Kronmaier, pro se*
*Office of the Solicitor, for the Director*

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

### ***JURISDICTION***

On May 3, 2004 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated April 21, 2004. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

### ***ISSUE***

The issue is whether the Office abused its discretion by denying appellant authorization for right shoulder surgery.

### ***FACTUAL HISTORY***

On June 11, 2004 appellant, a 43-year-old mail handler, filed a Form CA-2 claim for benefits, alleging that he developed a right shoulder condition as a result of repetitive lifting, and that he first became aware that this condition was related to his employment in March 2003. The Office accepted his claim for right shoulder bursitis.

In a report dated July 16, 2003, Dr. David N. Markellos, a Board-certified orthopedic surgeon and appellant's treating physician, stated:

> "I saw [appellant] initially on April 29, 2003, with a history of onset of right, dominant shoulder pain during his employment as a postal service mail handler. His findings were consistent with tendobursitis. X[-]rays were normal without significant osteoarthritis or other periarticular abnormalities. He was treated with nonsteroidals, activity limitation and self[-]directed therapy as symptoms resolved. Last assessment [occurred] on June 3, 2003, when he was released to return to full, unrestricted activities.
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> "I believe his activity as a postal worker significantly contribute[d] to the development of a subacromial bursitis as there is no evidence of any other activity or injury to explain his condition…."

On December 8, 2003 appellant filed a claim for recurrence of his work-related shoulder condition, which the Office accepted on March 15, 2004.

In a report dated December 29, 2003, Dr. Eric D. Hoffman, a Board-certified orthopedic surgeon, related appellant's complaints of continued pain in the right shoulder and difficulties with overhead reaching activities. He diagnosed right shoulder impingement syndrome and rotator cuff tendinitis. Dr. Hoffman gave appellant a subacromial corticosteroid injection and recommended a course of physical therapy.

In a report dated March 16, 2004, Dr. Hoffman stated that appellant noticed no significant changes in the right shoulder following therapy and was unsure whether the cortisone injection helped him at all. In light of appellant's slow progress, Dr. Hoffman recommended that appellant undergo a magnetic resonance imaging (MRI) scan to rule out a rotator cuff tear. In a March 30, 2004 report, Dr. Hoffman stated that review of the MRI scan showed findings consistent with a partial-thickness undersurface rotator cuff tear. He advised that appellant had a very tight subacromial space, a hook on his acromion, and some irregularity to the superior labrum consistent with a possible tear. Dr. Hoffman stated:

> "I had a lengthy discussion with him and it has been over a year since treating his right shoulder. He has considered treatment and I have offered surgery. This would consist of a diagnostic arthroscopy with debridement of a partial-thickness rotator cuff tear versus arthroscopic repair, if it is greater than 50 percent thickness. I have discussed and recommended acromioplasty given his chronic impingement symptoms as well as careful assessment of the labrum. He may have a labral tear amenable to a repair."

Dr. Hoffman's office subsequently requested authorization from the Office for right shoulder surgery.

In a report dated April 20, 2004, Dr. David I. Krohn, an Office medical consultant and a Board-certified orthopedic surgeon, reviewed the medical record and stated:

> "In my considered opinion there are a number or reasons not to approve such a procedure at this time. First, there is no well[-]reasoned recommendation from either of [appellant's] treating orthopedists recommending such a procedure. Second, there is no indication that [appellant] was referred for additional conservative measures by way of treatment subsequent to injection into the subacromial bursa. Third, from the date of the evaluation of [appellant] by Dr. Hoffman (December 29, 2003 -- fully three and a half months to the date of this report) there has been no subsequent description of [appellant's] current symptoms or detailed physical examination of his right shoulder. Fourth, a reasonable medical observer might well raise doubt that the cause of [appellant's] right shoulder pain might as easily if not more likely have been the result of his extra-curricular (outside of work) weight lifting up to 200 pounds repetitively, as [opposed] to the lifting of up to 30 pounds repetitively at work. In my considered medical opinion, it is more likely than not, that repetitively bench pressing weights nearly seven times heavier than the maximum lifted at work was the cause of [appellant's] mild degenerative disease of the right shoulder.
>
> "Given the above, I do not believe that the proposed right shoulder arthroscopy is warranted and necessitated as a result of the accepted work injury."

By decision dated April 21, 2004, the Office denied authorization for right shoulder arthroscopic surgery.

## ***LEGAL PRECEDENT***

Section 8103 of the Federal Employees' Compensation Act[1] 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.[2] In interpreting this section of the Act, the Board has recognized that the Office has broad discretion in approving services provided under the Act. The Office has the general objective of ensuring that an employee recovers from his injury to the fullest extent possible in the shortest amount of time. The Office therefore has broad administrative discretion in choosing means to achieve this goal. The only limitation on the Office's authority is that of reasonableness. 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.[3]

[1] 5 U.S.C. § 8101 *et seq.*

[2] 5 U.S.C. § 8103.

[3] *Daniel J. Perea*, 42 ECAB 214 (1990).

## ***ANALYSIS***

The Office accepted that appellant sustained the condition of right shoulder bursitis. In his March 30, 2004 report, Dr. Hoffman opined that the results of an MRI scan showed findings of a right rotator cuff tear. He stated that he had spoken with appellant and offered to perform a diagnostic arthroscopy on his right shoulder, with debridement of a partial-thickness rotator cuff tear versus arthroscopic repair if it was greater than a 50 percent thickness. Dr. Hoffman also recommended that appellant undergo an acromioplasty procedure given his chronic impingement symptoms. Finally, he recommended an assessment of appellant's labrum and advised that appellant might also have a labral tear amenable to a repair.

Appellant's authorization request was reviewed by Dr. Krohn, an Office orthopedic consultant, who recommended that the Office deny the request because: (a) there was no well reasoned opinion from either of appellant's treating orthopedists recommending such a procedure; (b) there was no indication that appellant had been referred for additional conservative measures by way of treatment subsequent to injection into the subacromial bursa; (c) three and a half months had passed between Dr. Hoffman's December 29, 2003 and March 16, 2004 evaluations without any subsequent description of appellant's current symptoms or a detailed physical examination of his right shoulder; and (d) he concluded that appellant's right shoulder pain was caused by his extracurricular heavy weight lifting of up to 200 pounds, rather than his work-related repetitive lifting of approximately 30 pounds. Based on this review of the medical evidence, which indicated that any tear of appellant's right shoulder was not related to his accepted right shoulder condition, Dr. Krohn concluded that the proposed right shoulder arthroscopy was neither warranted nor necessitated as a result of the accepted work injury.

As noted above, the only restriction on the Office's authority to authorize medical treatment is one of reasonableness. Dr. Krohn, the Office medical adviser, properly found that the medical evidence was not sufficient to establish a causal relationship between appellant's right rotator cuff condition and factors of his employment. The only condition accepted by the Office as employment related was right shoulder bursitis. The proposed surgery was not for this condition, but was for a presumed torn right rotator cuff. As pointed out by the Office medical adviser, there was no rationalized medical opinion that the accepted condition of bursitis caused the torn rotator cuff tear. Rather the evidence of record suggested that appellant's activities outside the federal workplace, which required that he lift up to 200 pounds, could have caused the tear. Therefore, given the fact that the medical evidence of record does not establish that appellant's torn right rotator cuff condition was work related, the Office did not unreasonably deny appellant's request for surgery to ameliorate this condition. The Office did not abuse its discretion to deny appellant authorization for right shoulder surgery.

## ***CONCLUSION***

The Board finds that the Office did not abuse its discretion by denying appellant's request for authorization for cervical surgery.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the April 21, 2004 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: March 1, 2005
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member