United States Department of Labor
Employees' Compensation Appeals Board

H.E., Appellant	)	
and	)	**Docket No. 23-0629**
	)	**Issued: April 5, 2024**
U.S. POSTAL SERVICE, ROME POST OFFICE, Rome, GA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On March 20, 2023 appellant filed a timely appeal from a February 23, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

ISSUE

The issue is whether OWCP abused its discretion by denying appellant's request for authorization for left shoulder arthroplasty surgery.

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that following the February 23, 2023 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id*.

FACTUAL HISTORY

On September 18, 2014 appellant, then a 50-year-old city mail carrier, filed an occupational disease claim (Form CA-2) alleging that his rotator cuff partial thickness tear was due to factors of his federal employment, including repetitive casing and delivering mail.[3] He noted that he first became aware of his condition on March 27, 2014 and first realized its relationship to his federal employment on April 21, 2014. Appellant stopped work on September 11, 2014. OWCP accepted his claim for aggravation of left shoulder/arm supraspinatus strain and left shoulder ankylosis. It paid appellant wage-loss compensation.

Appellant underwent OWCP-approved left shoulder arthroscopic rotator cuff repair and acromioplasty surgery on January 7, 2015 and OWCP-approved left shoulder arthroscopic subacromial decompression and capsular release surgery on February 27, 2017.

Appellant continued to receive medical treatment. In a progress note dated June 7, 2022, Dr. Keith A. Lamberson, a Board-certified orthopedic surgeon, recounted appellant's complaints of severe pain and weakness in the left shoulder. On physical examination of the left shoulder, he observed moderate tenderness to palpation of the anterior shoulder and abnormal range of motion. Neer's, Hawkins, and supraspinatus tests were positive on the left. Dr. Lamberson diagnosed left shoulder chondromalacia and complete tear of the left rotator cuff. He recommended a left reverse total shoulder arthroplasty.

On July 22, 2022 Dr. Michael M. Katz, a Board-certified orthopedic surgeon serving as the OWCP district medical adviser (DMA), reviewed the statement of accepted facts (SOAF) and the medical evidence of record. He indicated that he was unable to locate diagnostic studies of the left shoulder that would support the performance of total shoulder arthroplasty and requested additional information from Dr. Lamberson.

In a letter dated August 19, 2022, OWCP requested that Dr. Lamberson review the July 22, 2022 report of Dr. Katz and respond to the questions raised by him regarding appellant's request for left shoulder arthroplasty surgery.

In a progress note and work status form dated September 1, 2022, Dr. Lamberson recounted appellant's complaints of worsening pain and weakness in the left shoulder, localized to the superior and anterior shoulder. He noted that appellant reported no improvement with rest, ice, and home exercise program. Dr. Lamberson provided examination findings and indicated that a left shoulder x-ray scan revealed evidence of previous subacromial decompression, cortical irregularity at the greater tuberosity and superior aspect of the humeral head, and irregularity along the inferior glenoid consistent with degenerative changes. Dr. Lamberson diagnosed left rotator cuff tear arthropathy. He reiterated his opinion that appellant should proceed with left reverse total

[3] OWCP assigned the present claim OWCP File No. xxxxxx779. Appellant subsequently filed a traumatic injury claim (Form CA-1) alleging that on November 14, 2020 he felt pain in his left shoulder to left forearm when he lifted a 48-pound package while in the performance of duty. OWCP assigned this claim OWCP File No. xxxxxx161 and accepted it for strain of muscle(s) and tendon(s) of the rotator cuff of the left shoulder and aggravation of impingement syndrome of the left shoulder. OWCP has administratively combined OWCP File Nos. xxxxxx779 and xxxxxx161, with the current claim as the master file.

shoulder arthroplasty surgery. Dr. Lamberson reported that appellant had failed all surgical and nonsurgical attempts for improving left shoulder symptoms. He also noted that appellant had symptoms consistent with rotator cuff syndrome and degenerative changes by radiographs.

A left shoulder magnetic resonance imaging (MRI) scan, obtained on September 19, 2022, indicated sequela of prior rotator cuff repair and acromioplasty, and intact rotator cuff tear with no evidence of recurrent tear.

In a progress report and work status form dated September 22, 2022, Dr. Lamberson provided examination findings and noted that a left shoulder MRI scan revealed mild-to-moderate chondral thinning, but no evidence of rotator cuff tear or full-thickness cartilage loss. He diagnosed left shoulder chondromalacia and left rotator cuff syndrome. Dr. Lamberson recommended left reverse total shoulder arthroplasty and reiterated that appellant had failed all surgical and nonsurgical attempts for improving left shoulder symptoms.

In a September 29, 2022 statement, appellant requested that OWCP approve his request for shoulder surgery.

In a progress report and work status form dated October 25, 2022, Dr. Lamberson noted that appellant was evaluated for follow up of worsening left shoulder pain and weakness. On physical examination of appellant's left shoulder, he observed tenderness to palpation and abnormal range of motion. Neurovascular examination of the left shoulder was normal. Dr. Lamberson diagnosed left shoulder chondromalacia and rotator cuff syndrome. He reported that he again recommended a left reverse total shoulder arthroplasty. Dr. Lamberson reiterated that appellant had failed all surgical and nonsurgical attempts for improving left shoulder symptoms and that the most appropriate surgical intervention was a left reverse total shoulder arthroplasty.

In a July 8, 2022 supplemental report, Dr. Katz indicated that he had reviewed the September 19, 2022 left shoulder MRI scan and Dr. Lamberson's October 25, 2022 progress report. He noted that the MRI scan showed prior rotator cuff tear with no evidence of recurrent tear and no high-grade cartilage loss in the glenohumeral joint. Dr. Katz opined that these findings did not support the performance of reverse total shoulder arthroplasty. He recommended that appellant be referred for a second surgical opinion.

In a December 13, 2022 progress report and work status note, Dr. Lamberson noted left shoulder examination findings of tenderness to palpation in the rotator cuff and sternoclavicular joint. He indicated that an electromyography (EMG) study of the left shoulder, obtained on December 28, 2022, showed no evidence of radiculopathy. Dr. Lamberson diagnosed left rotator cuff syndrome and recommended that appellant proceed with left reverse total shoulder arthroplasty.

OWCP referred appellant, the case file, a SOAF and a series of questions to Dr. Daniel Schlatterer, an osteopath Board-certified in orthopedic surgery, for a second opinion examination and opinion on appellant's employment-related disability and authorization for left shoulder surgery. In a January 18, 2023 report, Dr. Schlatterer reviewed the SOAF and noted appellant's accepted conditions of left shoulder rotator cuff strain and left shoulder ankylosis. He discussed

appellant's history of injury and recounted appellant's current complaints of left shoulder pain and discomfort, worsened by reaching overhead, lifting, and driving. Dr. Schlatterer indicated that appellant's treating physician had opined that appellant needed a reverse total shoulder replacement surgery but provided no rationale explaining how he arrived at that conclusion. On examination of appellant's left shoulder, he observed acromioclavicular (AC) joint and subacromial tenderness. Neer and Hawkins impingement tests were positive. Range of motion testing demonstrated internal and external rotation to 80 degrees and abduction to 50 degrees. In response to OWCP's questions, Dr. Schlatterer indicated that appellant's examination findings were volitional and not supported by objective data or tests performed within the last year. He reported that appellant had reached maximum medical improvement (MMI) with regard to his 2014 left shoulder injury. Dr. Schlatterer diagnosed status post arthroscopic subacromial decompression with partial rotator cuff repair and subsequent manipulation under anesthesia. He reported that there were no current clinical signs or objective tests to substantiate significant shoulder sequelae. Dr. Schlatterer opined that there were no objective signs or test data to support a total shoulder replacement. In a work capacity evaluation (Form OWCP-5c), he indicated that appellant was capable of performing his usual work without restrictions.

By decision dated February 23, 2023, OWCP denied appellant's request for authorization for left shoulder arthroplasty surgery. It found that the medical evidence of record was insufficient to establish that the requested surgery was medically necessary to treat her accepted left shoulder conditions.

LEGAL PRECEDENT

Section 8103(a) of FECA[4] 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 by or recommended by a qualified physician, which OWCP considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation.[5] In interpreting this section of FECA, the Board has recognized that OWCP has broad discretion in approving services provided, with the only limitation on OWCP's authority being that of reasonableness.[6] 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.[7]

[4] 5 U.S.C. § 8103(a).

[5] *Id.*; *see N.G.*, Docket No. 18-1340 (issued March 6, 2019); *see also Thomas W. Stevens*, 50 ECAB 288 (1999).

[6] *D.C.*, Docket No. 20-0854 (issued July 19, 2021); *C.L.*, Docket No. 17-0230 (issued April 24, 2018); *Mira R. Adams*, 48 ECAB 504 (1997).

[7] *D.S.*, Docket No. 18-0353 (issued February 18, 2020); *E.L.*, Docket No. 17-1445 (issued December 18, 2018); *L.W.*, 59 ECAB 471 (2008); *P.P.*, 58 ECAB 673 (2007); *Daniel J. Perea*, 42 ECAB 214 (1990).

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.[8] Both of these criteria must be met in order for OWCP to authorize payment.[9]

ANALYSIS

The Board finds that OWCP did not abuse its discretion in denying appellant's request for authorization of total left shoulder replacement surgery.

In a January 18, 2023 report, Dr. Schlatter, an OWCP second opinion physician, reviewed appellant's medical records and a SOAF. He noted his examination of appellant's left shoulder, discussed appellant's history of injury, and diagnosed status post arthroscopic subacromial decompression with partial rotator cuff repair. Dr. Schlatterer opined that there were no current clinical signs or objective tests to substantiate significant shoulder sequelae and that appellant had reached MMI. He indicated that appellant's treating physician had opined that appellant needed a reverse total shoulder replacement surgery but provided no rationale explaining how he arrived at that conclusion. Dr. Schlatterer opined that there were no objective signs or test data to support a total left shoulder replacement procedure as related to the accepted employment injury.

The Board finds that Dr. Schlatterer provided a well-rationalized opinion that the requested total left shoulder replacement surgery was not medically warranted for the accepted conditions. His opinion was based on a complete factual background, SOAF, and a review of the medical record, and physical examination findings. As such, his opinion represents the weight of the evidence.

The only limitation on OWCP's authority in approving or disapproving service under FECA is one of reasonableness.[10] In the instant case, OWCP obtained a well-rationalized report from Dr. Schlatterer in which he opined that the requested surgery was not warranted for appellant's accepted employment injury. OWCP, therefore, had sufficient evidence upon which it made its decision to deny surgery and did not abuse its discretion.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

[8] *B.I.*, Docket No. 22-0090 (issued July 19, 2022); *T.A.*, Docket No 19-1030 (issued November 22, 2019); *Zane H. Cassell*, 32 ECAB 1537, 1540-41 (1981); *John E. Benton*, 15 ECAB 48, 49 (1963).

[9] *P.S.*, Docket No. 20-0075 (issued July 12, 2021); *J.L.*, Docket No. 18-0990 (issued March 5, 2019); *R.C.*, 58 ECAB 238 (2006); *Cathy B. Millin*, 51 ECAB 331, 333 (2000).

[10] *D.C.*, 58 ECAB 629 (2007); *Mira R. Adams*, 48 ECAB 504 (1997).

CONCLUSION

The Board finds that OWCP did not abuse its discretion in denying appellant's request for authorization of total left shoulder replacement surgery.

ORDER

IT IS HEREBY ORDERED THAT the February 23, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 5, 2024
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board