

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

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E.L., Appellant )

and )

U.S. POSTAL SERVICE, SAN FRANCISCO )  
NETWORK DISTRIBUTION CENTER, )  
Richmond, CA, Employer )  
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**Docket No. 24-0898**  
**Issued: November 8, 2024**

*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  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On September 6, 2024 appellant filed a timely appeal from a May 23, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUE**

The issue is whether OWCP abused its discretion by denying appellant's request for authorization of right shoulder arthroscopic surgical procedures.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that following the May 23, 2024 decision, OWCP received additional evidence. 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 29, 2021 appellant, then a 57-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on September 28, 2021 she sprained her right shoulder when she overreached attempting to get sacks to fall from an over-the-road container while in the performance of duty. She was held off work as of September 29, 2021, and released to return to modified duty on September 30, 2021. OWCP accepted the claim for right shoulder joint sprain.

In state workers' compensation forms and progress notes dated February 10, March 23, May 5, June 9, July 6, and October 25, 2023, and February 1, 2024, Dr. Pushpa Krishnasami, a Board-certified family medicine physician, provided appellant's physical examination findings and diagnosed right rotator cuff syndrome. In her February 10, March 23, October 25, 2023 and February 1, 2024 reports, she also noted a diagnosis of right acromioclavicular joint osteoarthritis. Dr. Krishnasami advised that appellant had permanent work restrictions and had reached maximum medical improvement as of February 24, 2022.

In an April 11, 2024 consultation evaluation report, Dr. Bradford Burr Kraetzer, an orthopedic surgeon, noted appellant's medical history. He reported her physical examination findings of tenderness over right shoulder trapezial muscles and over lower cervical spine, negative right shoulder crank, O'Brien's, Jobe's and apprehension tests, and positive right shoulder Neer and Hawkins tests. Dr. Kraetzer diagnosed right shoulder impingement syndrome, and related that he had discussed further treatment options with appellant because her condition had not improved, and, as a result, the next step would be surgery.

In a state workers' compensation form dated April 15, 2024, Dr. Krishnasami diagnosed right rotator cuff syndrome and right acromioclavicular joint osteoarthritis. She requested authorization for right shoulder subacromial decompression and distal clavicle resection. Dr. Krishnasami explained that surgery was recommended because conservative treatment had been unsuccessful.

In a letter addressed to The Permanente Medical Group dated April 18, 2024, OWCP advised that the evidence of record was insufficient to authorize the proposed right shoulder surgery as it did not appear to be medically necessary for and/or causally related to the accepted right shoulder sprain. In a notice to appellant, it requested that she provide a detailed narrative report from her physician explaining how the requested surgery was medically necessary for her accepted employment injury. OWCP afforded appellant 30 days to submit the necessary evidence.

Dr. Krishnasami, in state workers' compensation form reports dated April 10, 16 and May 16, 2024, noted that appellant had worsening pain in the right shoulder, especially with overhead activities. She noted that appellant had failed to improve with conservative care including physical therapy, acupuncture, modified restrictions, and injections. Dr. Krishnasami provided appellant's physical examination findings and diagnosed right rotator cuff syndrome and right acromioclavicular joint osteoarthritis. In the May 16, 2024 report, she indicated that right shoulder arthroscopy with decompression surgery was tentatively scheduled as appellant failed to improve with conservative care.

By decision dated May 23, 2024, OWCP denied authorization for appellant's right shoulder arthroscopic surgery distal clavicle and decompression. It found that the evidence of

record was insufficient to establish that the surgical procedure was medically necessary to treat her accepted employment injury.

### **LEGAL PRECEDENT**

Section 8103(a) of FECA<sup>3</sup> 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.<sup>4</sup> In interpreting this section of FECA, the Board has recognized that OWCP has broad discretion in determining whether a particular type of treatment is likely to cure or give relief.<sup>5</sup> The only limitation on OWCP's authority is that of reasonableness.<sup>6</sup>

While OWCP is obligated to pay for treatment of employment-related conditions, appellant has the burden of proof to establish that the expenditures were incurred for treatment of the effects of an employment-related injury or condition.<sup>7</sup> Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.<sup>8</sup> In order for a surgical procedure to be authorized, appellant must establish that the procedure was for a condition causally related to the employment injury and that the procedure was medically warranted.<sup>9</sup> Both of these criteria must be met in order for OWCP to authorize payment.<sup>10</sup>

Abuse of discretion is 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.<sup>11</sup>

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<sup>3</sup> 5 U.S.C. § 8103(a).

<sup>4</sup> *Id.* See *S.T.*, Docket No. 24-0571 (issued June 14, 2024); *C.L.*, Docket No. 24-0249 (issued April 15, 2024); *J.K.*, Docket No. 20-1313 (issued May 17, 2021); *Thomas W. Stevens*, 50 ECAB 288 (1999).

<sup>5</sup> *S.T.*, *id.*; *C.L.*, *id.*; *R.C.*, Docket No. 18-0612 (issued October 19, 2018); *W.T.*, Docket No. 08-812 (issued April 3, 2009).

<sup>6</sup> *S.T.*, *id.*; *C.L.*, *id.*; *D.C.*, Docket No. 18-0080 (issued May 22, 2018); *Mira R. Adams*, 48 ECAB 504 (1997).

<sup>7</sup> *S.T.*, *id.*; *C.L.*, *id.*; *R.M.*, Docket No. 19-1319 (issued December 10, 2019); *J.T.*, Docket No. 18-0503 (issued October 16, 2018); *Debra S. King*, 44 ECAB 203, 209 (1992).

<sup>8</sup> *S.T.*, *id.*; *C.L.*, *id.*; *K.W.*, Docket No. 18-1523 (issued May 22, 2019); *C.L.*, Docket No. 17-0230 (issued April 24, 2018); *M.B.*, 58 ECAB 588 (2007); *Bertha L. Arnold*, 38 ECAB 282 (1986).

<sup>9</sup> *S.T.*, *id.*; *C.L.*, *id.*; *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).

<sup>10</sup> *S.T.*, *id.*; *C.L.*, *id.*; *J.L.*, Docket No. 18-0990 (issued March 5, 2019); *R.C.*, 58 ECAB 238 (2006); *Cathy B. Millin*, 51 ECAB 331, 333 (2000).

<sup>11</sup> *S.T.*; *C.L.*, *id.*; *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).

### ANALYSIS

The Board finds that OWCP did not abuse its discretion in denying appellant's request for authorization of right shoulder arthroscopic surgical procedures.

As noted, the evidence must establish that the requested surgery is both medically warranted, and causally related to the accepted employment injury. OWCP accepted the claim for right shoulder joint sprain as causally related to the accepted September 28, 2021 employment injury. Appellant has not submitted sufficient medical evidence to support that her accepted September 28, 2021 employment injury necessitated surgery on her right shoulder.

Appellant submitted reports dated April 10, 15, 16, and May 16, 2024 from Dr. Krishnasami diagnosing right rotator cuff and right acromioclavicular joint osteoarthritis. She requested authorization for right shoulder subacromial decompression and distal clavicle resection, as conservative medical treatment had failed. The record contains an April 11, 2024 report from Dr. Kraetzer in which he diagnosed right shoulder impingement syndrome and recommended surgery. Dr. Kraetzer also noted that conservative medical treatment had failed. However, neither physician explained why the recommended surgical procedures were medically necessary for the treatment of the accepted right shoulder joint sprain.<sup>12</sup> As the conditions for which surgery was requested were not employment related, the procedures were not medically warranted.<sup>13</sup> The reports from Dr. Krishnasami and Dr. Kraetzer are, therefore, insufficient to establish that the requested surgical procedures were medically necessary and causally related to the accepted employment injury.<sup>14</sup> The Board thus finds that OWCP did not abuse its discretion in denying authorization of surgery.

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.

### CONCLUSION

The Board finds that OWCP properly denied authorization of appellant's right shoulder arthroscopic surgical procedures.

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<sup>12</sup> *Supra* note 8.

<sup>13</sup> *J.B.*, Docket No. 21-0854 (issued May 18, 2023); *see D.S.*, Docket No. 19-1698 (issued June 18, 2020).

<sup>14</sup> *M.M.*, Docket No. 19-0563 (issued August 1, 2019); *N.G.*, Docket No. 18-1340 (issued March 6, 2019).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 23, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 8, 2024  
Washington, DC

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

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

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board