

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ROY ROSADO and DEPARTMENT OF JUSTICE,  
FEDERAL PRISON SYSTEMS, FEDERAL DETENTION  
CENTER, Miami, FL

*Docket No. 01-807; Submitted on the Record;  
Issued November 1, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for authorization for surgery.

On May 6, 1999 appellant, then a 37-year-old corrections counselor, sustained an employment-related right knee contusion when he slipped and fell at work. He was initially treated on May 9, 1999 at the Cedars Care Center and continued to be treated there until June 7, 1999.<sup>1</sup> A diagnosis of contusion of the right knee was made. A May 9, 1999 x-ray of the right knee revealed no fracture, dislocation or joint effusion. Dr. Hugh S. Unger, a Board-certified orthopedic surgeon, submitted a report dated July 1, 1999 in which he diagnosed chondromalacia of the right patella. He continued to submit reports and advised on August 30, 1999 that appellant's clinical examination was normal. In a September 28, 1999 report, he advised that there was no evidence of physical impairment.

Dr. Scott A. Stegbauer, a Board-certified orthopedic surgeon, provided a treatment note dated February 7, 2000 in which he noted the history of injury. Examination of the right knee revealed tenderness at the joint line and was consistent with a torn lateral meniscus. McMurray's test was positive and arthroscopic surgery was recommended. An Office telephone memorandum dated February 9, 2000 indicates that Dr. Stegbauer's office called requesting authorization for surgery. By letter dated February 28, 2000, the Office requested that Dr. Stegbauer provide a detailed medical report with supportive evidence linking appellant's current knee condition with the May 6, 1999 contusion. He submitted nothing further. In a report dated March 9, 2000, an Office medical adviser advised that, as per Dr. Unger's opinion, appellant had recovered from the employment injury.

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<sup>1</sup> The doctors' signatures on these reports are illegible.

The Office continued to develop the claim and referred appellant, along with a statement of accepted facts, a set of questions and the medical record, to Dr. Gerald Schuster, a Board-certified orthopedic surgeon. In a report dated June 15, 2000, Dr. Schuster noted the history of injury on May 6, 1999 and appellant's complaints of pain and stiffness. He stated:

“[Appellant’s] current examination shows no significant bony or soft tissue abnormality. He does have minimal pain on pressure posterolaterally at the knee joint level, but there is absolutely no instability of the medial or lateral collateral ligaments or the cruc[iates] and he has no evidence of chondromalacia changes on the under surface of the patella as there is no crepitation noted on extending or flexing or moving the patella across the femoral articulating surface.”

His impression was residual pain of the right knee post injury. In a report dated June 22, 2000, Dr. Schuster noted x-ray findings of some lateral tilt of the patella. He found nothing abnormal, which would warrant arthroscopy.

By decision dated August 17, 2000, the Office denied appellant's request for surgery. The Office credited the opinions of Dr. Unger, who found that appellant's examination was normal on August 30 and September 28, 1999 and that of Dr. Schuster, who advised that appellant had nothing abnormal that would warrant the need for arthroscopy. The Office further noted that Dr. Stegbauer did not provide the requested information.

The Board finds that the Office properly denied appellant's request for authorization for surgery.

In this case, it is undisputed that appellant sustained an injury while in the performance of his federal duties on May 6, 1999. The Office accepted his claim for the condition of right knee contusion. Appellant then sought authorization for surgery.

Section 8103 of the Federal Employees' Compensation Act<sup>2</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 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.<sup>3</sup> 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 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.<sup>4</sup> 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.

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> 5 U.S.C. § 8103.

<sup>4</sup> *Daniel J. Perea*, 42 ECAB 214 (1990).

Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.<sup>5</sup> Thus, in this case, in order for surgery to be authorized, appellant must submit evidence to show that such surgery is for a condition causally related to the employment injury and that the surgery was medically warranted. Both of these criterias must be met for the Office to authorize payment. The record in this case contains no such evidence.

In reports dated August 30 and September 28, 1999, Dr. Unger found that appellant's examination was normal. Dr. Schuster, who performed a second-opinion evaluation for the Office, advised that appellant had nothing abnormal that would warrant the need for arthroscopy. While Dr. Stegbauer advised that appellant's examination was consistent with a torn lateral meniscus and recommended arthroscopic surgery, he did not provide a rationalized medical opinion regarding the cause of this condition.<sup>6</sup> Furthermore, he did not respond to the Office request for further information regarding appellant's knee condition and the need for surgery. Appellant, therefore, failed to establish either that arthroscopic surgery on his right knee was medically warranted or that it was related to his federal employment.<sup>7</sup>

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<sup>5</sup> See *Debra S. King*, 44 ECAB 203 (1992); *Bertha L. Arnold*, 38 ECAB 282 (1986).

<sup>6</sup> The medical evidence required to establish a causal relationship, generally, is rationalized medical evidence. Rationalized medical evidence is medical evidence that includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. *Charles E. Burke*, 47 ECAB 185 (1995).

<sup>7</sup> The Board notes that subsequent to his appeal to the Board, appellant requested reconsideration with the Office and submitted additional evidence. The Board and the Office may not have concurrent jurisdiction over a case; see *Clifford F. Russell*, 37 ECAB 567 (1986). Furthermore, the Board cannot consider evidence submitted subsequent to the August 17, 2000 decision of the Office as its review of the case is limited to the evidence of record, which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).

The decision of the Office of Workers' Compensation Programs dated August 17, 2000 is hereby affirmed.

Dated, Washington, DC  
November 1, 2001

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member