United States Department of Labor
Employees' Compensation Appeals Board

WILLIAM A. HAZELTON, Appellant	)	
and	)	**Docket No. 05-349**
	)	**Issued: August 19, 2005**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTING CENTER, Bellmawr, NJ, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On November 23, 2004 appellant, through his representative, filed a timely appeal from an August 14, 2004 decision of the Office of Workers' Compensation Programs which denied his recurrence claim and authorization for surgery. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.

ISSUES

The issues are: (1) whether appellant established that he sustained a recurrence of disability on and after December 30, 1998 causally related to his February 19, 1995 employment injury; and (2) whether the Office properly denied appellant authorization for his March 5, 1999 right knee surgery.

FACTUAL HISTORY

This is appellant's second appeal before the Board. In the prior appeal, the Board remanded the case for resolution of a conflict in the medical opinion evidence between

Dr. Arnold T. Berman, a treating Board-certified orthopedic surgeon, and Dr. Gregory Maslow, a second opinion Board-certified orthopedic surgeon, regarding whether appellant's right knee meniscus tear, surgery and disability were caused or aggravated by his accepted employment injury.[1] The Board set aside the August 12, 2002 Office hearing representative's decision due to the unresolved conflict in the medical opinion evidence.[2] The facts of the case as set forth in the Board's prior decision are hereby incorporated by reference.

Upon remand of the case record, the Office referred appellant on July 9, 2003 together with a statement of accepted facts, medical records and list of questions, to Dr. Stanley R. Askin, a Board-certified orthopedic surgeon, to resolve the conflict in medical opinion. In a report dated July 25, 2003, Dr. Askin reported range of motion for the right knee was full for flexion and extension. A physical examination revealed a limp on gait, no right knee synovitis or effusion, no laxity of the cruciate or collateral ligaments and normal patellar tracks. Dr. Askin related "no noted difference between the two knees other [than] for his report that there was discrete right knee tenderness just medial and lateral to the patellar tendon." With regard to the March 5, 1999 operative report, Dr. Askin noted "[n]o meniscal tear was found" and "[t]he only finding reported was 'a stellate shaped defect' over the medial femoral condyle," which was cut out or debrided. He opined that appellant did not sustain a meniscus tear as "no medial meniscus tear was identified at the time of the surgery" and "the medical evidence of record does not support an allegation that such was causally related to the February 5, 1999 employment injury."[3] In support of this conclusion, Dr. Askin noted "posterior meniscal tears occur commonly in the general population" and no effusion was noted. With regard to whether appellant's disability was related to the February 19, 1995 employment injury, Dr. Askin stated:

> "In response, with the statement of accepted facts as my frame of reference, [appellant] was accepted as having a permanent impairment. If permanent is used as defined, such remains to be his impairment currently. I am not provided with any evidence either on clinical examination or in the medical evidence of record, that would support the concept of [appellant] being more impaired (or disabled) than was accepted in 1997 secondary to the February 19, 1995 injury."

In an attached work capacity evaluation form, Dr. Askin indicated that appellant was capable of working full duty with restrictions on repeated kneeling and squatting.

By decision dated October 16, 2003, the Office denied appellant's claim for a recurrence of disability beginning December 30, 1998 and found that the March 5, 1999 surgical procedure was not causally related to his accepted employment injury.

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[1] Appellant, a 37-year-old mail handler, filed a traumatic injury claim on February 20, 1995 alleging that he twisted his knee on February 19, 1995 while in the performance of duty. The Office accepted the claim for a knee strain. On January 23, 1997 the Office issued a schedule award for a 22 percent impairment of the right leg.

[2] Docket No. 03-406 (issued April 3, 2003).

[3] This appears to be a typographical error as Dr. Askin noted the date of injury as February 19, 1995 and refers to February 19, 1995 as the injury date both prior to and subsequent to the notation of February 5, 1999.

In a letter dated October 23, 2003, appellant's counsel requested an oral hearing. A hearing was held on May 25, 2004 at which appellant was represented by counsel and provided testimony.

By decision dated August 18, 2004, the Office hearing representative affirmed the October 16, 2003 denial of appellant's claim for a recurrence of disability beginning December 30, 1998. He credited the weight of medical opinion to Dr. Askin, who noted that the March 5, 1999 surgical procedure did not find a torn medial meniscus.

LEGAL PRECEDENT -- ISSUE 1

Section 10.5(x) of the Office's regulation provides in part,that a recurrence of disability is an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.[4]

Where appellant claims a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury.[5] This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury.[6] Moreover, the physician's conclusion must be supported by sound medical reasoning.[7]

The Federal Employees' Compensation Act at section 8123(a) provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.[8] It is well established that, when a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.[9]

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[4] 20 C.F.R. § 10.5(x).

[5] *Robert H. St. Onge*, 43 ECAB 1169 (1992).

[6] Section 10.104(a), (b) of the Code of Federal Regulations provides that, when an employee has received medical care as a result of the recurrence, he or she should arrange for the attending physician to submit a detailed medical report. The physicians report should include the physician's opinion with medical reasons regarding the causal relationship between the employee's condition and the original injury, any work limitations or restrictions and the prognosis. 20 C.F.R. § 10.104.

[7] *Robert H. St. Onge*, *supra* note 5.

[8] 5 U.S.C. § 8123(a).

[9] *Gloria J. Godfrey*, 52 ECAB 486 (2001).

ANALYSIS -- ISSUE 1

The Board finds that the case is not in posture for decision as to whether appellant's recurrence of disability on an after December 30, 1998 is causally related to his accepted February 19, 1995 employment injury. On April 13 2003 the Board remanded the case to the Office to refer him to an impartial medical examiner to resolve a conflict in medical evidence. On July 9, 2003 the Office referred appellant to Dr. Askin for an impartial medical examination to determine whether the disability beginning December 30, 1998 was causally related to his accepted February 19, 1995 employment injury. He reported that appellant's range of motion for the right knee was full for flexion and extension. A physical examination revealed a limp on gait, no right knee synovitis or effusion, no laxity of the cruciate or collateral ligaments and normal patellar tracks. Dr. Askin related "no noted difference between the two knees other [than] for his report that there was discrete right knee tenderness just medial and lateral to the patellar tendon." He concluded that appellant was not "more impaired (or disabled) than was accepted in 1997, secondary to the February 19, 1995 injury." Dr. Askin's opinion regarding whether appellant sustained a recurrence of disability is vague. He has not provided a definitive opinion as to whether appellant had any recurrence of disability on or after December 30, 1998 due to the February 19, 1995 employment injury beyond stating that he was not more disabled than he was in 1997. This is not fully responsive to the issue.

When the Office obtains an opinion from an impartial medical specialist for the purpose of resolving a conflict in the medical evidence and the specialist's opinion requires clarification or elaboration, the Office must secure a supplemental report from the specialist to correct the defect in his original report.[10] Unless this procedure is carried out by the Office, the intent of section 8123(a) of the Act will be circumvented when the impartial specialist's medical report is insufficient to resolve the conflict of medical evidence.[11]

The Board finds that Dr. Askin's response regarding appellant's recurrence of disability on December 30, 1998 does not definitively provide an opinion regarding any disability for work on or after December 30, 1998. Thus his report is not sufficient to resolve the conflict in medical opinion.[12] The Board will remand the case to the Office to secure a supplemental report from Dr. Askin clarifying whether appellant's disability on or after December 30, 1998 was causally related to his accepted February 19, 1995 employment injury. After such further development as may be necessary to resolve this issue, the Office shall issue an appropriate final decision on the matter.

LEGAL PRECEDENT -- ISSUE 2

Section 8103 of the Act[13] 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

[10] *Nancy Lackner (Jack D. Lackner)*, 40 ECAB 232 (1988); *Ramon K. Ferrin, Jr.*, 39 ECAB 736 (1988).

[11] *Roger W. Griffith*, 51 ECAB 491 (2000); *Harold Travis*, 30 ECAB 1071 (1979).

[12] *See Leonard M. Burger*, 51 ECAB 369 (2000).

[13] 5 U.S.C. § 8101 *et seq*.

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.[14] 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.[15]

ANALYSIS -- ISSUE 2

As noted, the Board remanded the case on April 13 2003 to the Office to resolve a conflict in medical evidence regarding whether appellant's right knee surgery on March 5, 1999 was due to the February 19, 1995 employment injury. The Office referred appellant to Dr. Askin for an impartial medical examination to resolve the conflict in the medical opinion evidence. In a July 25, 2003 report, he concluded that the March 5, 1999 surgery was not related to the February 19, 1995 employment injury. In support of this conclusion, Dr. Askin noted the March 5, 1999 operative report specifically stated "[n]o meniscal tear was found" with "[t]he only finding reported was 'a stellate shaped defect' over the medial femoral condyle," which was cut out or debrided. Moreover, he noted "posterior meniscal tears occur commonly in the general population" and no effusion was noted. Dr. Askin opined that appellant did not sustain a meniscus tear as "no medial meniscus tear was identified at the time of the surgery." A review of the medical evidence does not support that the March 5, 1999 surgery was due to the accepted February 19, 1995 employment injury, as the claim was only accepted for a right knee strain.

As noted above, the only restriction on the Office's authority to authorized medical treatment is one of reasonableness. Dr. Askin, the impartial medical examiner, provides rationale for his opinion that the medical evidence of record did not establish a causal relationship between appellant's February 19, 1995 employment injury and the March 5, 1999 right knee surgery. As the medical evidence of record did not establish the existence of a right knee meniscal tear or that the osteochondral defect of the right medial femoral condyle was due to the February 19, 1995 employment injury, the Office properly denied appellant's request for authorization of the March 5, 1999 surgery. Thus, the Office did not abuse its discretion to deny his authorization for the right knee surgery.

CONCLUSION

The Board finds that the opinion of Dr. Askin, the impartial medical specialist, requires clarification as to whether appellant sustained a recurrence of disability beginning December 30, 1998 causally related to the accepted February 19, 1995 employment injury. Upon return of the

[14] 5 U.S.C. § 8103.

[15] *Francis H. Smith*, 46 ECAB 392 (1995); *Daniel J. Perea*, 42 ECAB 214 (1990).

case record the Office should request a supplemental medical opinion from Dr. Askin. The Board further finds that the Office properly denied appellant's request for authorization for right knee surgery.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 14, 2004 is affirmed in part, set aside in part and the case remanded for further proceedings consistent with the above opinion.

Issued: August 19, 2005
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board