United States Department of Labor
Employees' Compensation Appeals Board

S.N., Appellant	)	
and	)	**Docket No. 10-2179**
	)	**Issued: July 12, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Appleton, WI, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 24, 2010 appellant, through his representative, filed a timely appeal from a July 8, 2010 merit decision of the Office of Workers' Compensation Programs. Pursuant to the Federal Employees' Compensation Act[1] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether the Office properly denied authorization for appellant's bilateral knee arthroplasties.

FACTUAL HISTORY

On August 4, 2006 appellant, then a 56-year-old maintenance mechanic, filed an occupational disease claim regarding a bilateral knee condition caused by frequent standing and climbing in and out of vehicles with elevated steps and seating. He stated that both of his knees

[1] 5 U.S.C. § 8101 *et seq.*

needed to be replaced. Appellant did not stop work.[2] He was aware of his condition since January 1, 2000.

X-ray reports dated July 2002 from Drs. Thang Ngo and Robert Scott, Board-certified diagnostic radiologists, assessed advanced bilateral knee osteoarthritis involving the medial compartments with varus deformities. Appellant underwent a total left knee arthroplasty on May 6, 2005 performed by Dr. Daniel A. Ladwig, a Board-certified orthopedic surgeon. Based on a June 2, 2006 x-ray report, Dr. Ladwig recommended a total right knee arthroplasty, he performed on August 25, 2006. A September 7, 2006 x-ray report from him showed "good position and alignment of [appellant]'s implants."

In a September 21, 2006 report, Dr. Ladwig diagnosed degenerative joint disease of both knees and explained that appellant elected to undergo knee replacement surgeries due to persistent arthritic pain and failed conservative treatment. He opined that it "[c]ertainly seems consistent that [appellant]'s significant workplace exposure has at least contributed to his present condition and necessary treatment including knee replacement surgery." Dr. Ladwig reiterated that appellant's workplace exposure "contributed to his condition." He added in a December 18, 2006 follow-up report that appellant did not recall any specific injury or trauma, but part of his routine work activities involved constant and repetitive stair climbing, heavy lifting, squatting and bending. Dr. Ladwig stated that "certainly it is well known that longstanding repetitive work exposure injury as has been involved with [his] type of work activities are contributory factors to developing arthritic knees."

On April 18, 2007 the Office accepted appellant's claim for temporary aggravation of degenerative joint disease of the knees. It found the medical evidence insufficient to establish a permanent aggravation of the condition and denied authorization of his bilateral knee arthroplasties. On the same date, the Office requested a supplementary report from Dr. Ladwig to determine the nature and extent of appellant's accepted condition. Dr. Ladwig replied in a July 27, 2007 letter, "It is my feeling that [appellant]'s workplace exposure did in fact, beyond a temporary aggravation lead to an acceleration of a natural history of degenerative joint disease process."

In a February 25, 2008 report, an Office medical adviser noted appellant's history of nontraumatic, bilateral knee pain prior to his May 6, 2005 and August 25, 2006 operations. He pointed out that appellant was moderately overweight. After reviewing the medical records, the Office medical adviser diagnosed end-stage osteoarthritis and determined that the knee replacements were surgically indicated. However, he opposed authorization of the procedures, noting that, "in the absence of a workplace injury, there is no compelling argument that the degenerative joint disease is related at all to [appellant]'s workplace experience." The Office medical adviser noted that there was no literature supporting that workers who spend excessive time walking or on their feet are at increased risk of lower extremity degenerative joint disease when compared to the general public. He opined that it was likely that genetic factors and appellant's weight were more a factor than his job. The Office medical adviser stated that,

[2] Appellant retired effective February 28, 2009.

"while the surgery was indicated, there is no evidence that the degenerative arthritis was permanently aggravated by his job...."

On July 3, 2009 appellant's attorney inquired about the status of appellant's request for authorization of his knee replacement surgeries.

In a September 24, 2009 report, Dr. Ladwig noted that appellant occasionally experienced bilateral knee aches when lifting in excess of his work restrictions. On physical examination, he observed no major irregularities. Dr. Ladwig opined that appellant "reached a full healing plateau as a result of his right and left total knee replacement surgeries with a preoperative diagnosis of degenerative arthritis based upon prolonged workplace exposure." He also provided an impairment rating.

The Office determined that a conflict in the medical evidence arose between Dr. Ludwig, for appellant, and the Office medical adviser regarding whether appellant's surgery should be approved. An October 19, 2009 statement of accepted facts reflected that appellant sustained a temporary aggravation of bilateral, degenerative knee joint disease due to "frequent standing and climbing in and out of trucks with large steps" on the job. It also mentioned that he availed himself of medication, cortisone injections, physical therapy and modified duties before resorting to his knee arthroplasties on May 6, 2005 and August 25, 2006.

On December 11, 2009 the Office referred appellant for a referee examination to Dr. Kenneth H. Yuska, a Board-certified orthopedic surgeon, to resolve the conflict in medical evidence. In a February 2, 2010 report, Dr. Yuska reviewed appellant's work history and advised that appellant presented with bilateral knee osteoarthritis and total knee replacements that were performing satisfactorily. He attributed appellant's condition to performing various work tasks over a period of time such as building maintenance, mailbox repair, plumbing, carpentry and material transport, all of which entailed heavy lifting, kneeling and climbing. Dr. Yuska examined appellant and observed slight residual flexion deformities of both knees and a slight residual laxity of the right knee. He reviewed the statement of accepted facts and part of the medical record, remarking that a compact disc containing orthopedic films from 2006 and 2007 "did not open on my computer." Dr. Yuska concluded that appellant's employment activities temporarily aggravated his underlying degenerative joint disease, but did not permanently aggravate the condition. He also stated that there was no evidence that normal walking and other activities were sufficient to cause degenerative joint disease and that there was no evidence in the records provided to show that appellant's bilateral arthritic knee condition was causally related to work. Dr. Yuska noted that appellant "did not sustain an injury beyond a temporary aggravation of his [preexisting] degenerative joint condition of his knees. He may have experienced increased symptoms on occasion while working … the work activities were not sufficient to aggravate his condition beyond normal and there does not appear to have been any residual alteration in his bilateral knee degenerative joint disease." He opined that appellant's work-related aggravation would have ended within three months after the onset of symptoms. Dr. Yuska cited medical literature and studies asserting that frequent movements

such as walking, carrying, bending and squatting were actually protective for osteoarthritis as motion was good for joint lubrication and nutrition. Regarding appellant's surgeries, he stated:

> "In my opinion, the total knee replacement surgeries should not be authorized at the expense of [the Office]. The need for the total knee surgeries is the usual clinical presentation of osteoarthritis that gradually has progressed over many years. In my opinion, this is normal osteoarthritis that occurred with normal progression. While the surgeries were reasonable for his medical condition, they were not necessitated by his work-related activities."

By decision dated March 18, 2010, the Office denied authorization of appellant's bilateral knee arthroplasties, finding that the weight of the medical evidence did not establish that such treatment was medically necessary for the accepted condition.

Appellant requested a telephonic hearing, which was scheduled for June 1, 2010. At the hearing, he testified that he worked for the employing establishment for approximately 30 years and frequently engaged in physically-taxing assignments, including lifting and moving mailboxes and furniture, using a jackhammer, shoveling snow, digging out lodged vehicles and landscaping work. Appellant recalled that Dr. Yuska requested and received medical records from Dr. Ludwig, "but he said he didn't go over it or something. He didn't have time or it didn't work on his computer or something. He had some reason where he couldn't review it adequately."

On July 8, 2010 an Office hearing representative affirmed the March 18, 2010 decision.

LEGAL PRECEDENT

Section 8103 of the Act 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 Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of monthly compensation."[3] The Office has the general objective of ensuring that an employee recovers from his or her injury to the fullest extent possible in the shortest amount of time. It therefore has broad administrative discretion in choosing the means to achieve this goal. The only limitation on the Office's authority is that of reasonableness.[4] 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.[5]

While the Office is obligated to pay for treatment of an employment-related injury, the employee has the burden of establishing that the expenditure is incurred for treatment of the

[3] 5 U.S.C. § 8103(a).

[4] *Daniel J. Perea*, 42 ECAB 214, 221 (1990); *R.L.*, Docket No. 08-855 (issued October 6, 2008).

[5] *R.C.*, 58 ECAB 238, 241 (2006); *Perea*, *supra* note 4.

effects of such injury. In order for a surgical procedure to be authorized, he or she must submit evidence to show that the procedure is for an employment-related condition and that the surgery is medically warranted. Both of these criteria must be met in order for the Office to authorize payment.[6]

If there is a conflict in medical opinion between the employee's physician and the physician making the examination for the United States, the Office shall appoint a third physician, known as a referee physician or impartial medical specialist, to make what is called a referee examination.[7] Where it has referred appellant to a referee physician to resolve a conflict, the referee's opinion, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[8]

ANALYSIS

The Office accepted appellant's claim for temporary aggravation of degenerative joint disease of the knees. Dr. Ladwig, for appellant, opined that appellant's work-related condition necessitated his bilateral knee replacement surgery. On the other hand, the Office medical adviser found that, while the surgeries were medically warranted, appellant's accepted condition did not contribute to the need for the surgeries. The Office determined that there was a conflict in medical opinion as to whether appellant's knee replacements were related to his accepted condition and properly referred him to Dr. Yuska to conduct a referee examination.

In a February 2, 2010 report, Dr. Yuska opined that while appellant sustained a temporary aggravation of his preexisting, bilateral knee osteoarthritis, the injury should have resolved three months after the onset of symptoms. He concluded that the knee arthroplasties should not be authorized because these procedures were necessitated by the characteristics of normal osteoarthritis instead of the temporary, work-related aggravation. However, it does not appear that Dr. Yuska reviewed the complete medical record as he acknowledged in his report that he was unable to review certain medical records from 2006 and 2007 due to computer problems.

The Board finds that the case is not in posture for a decision. An impartial medical specialist's opinion is not entitled to special weight if it is based upon an incomplete and inaccurate factual background.[9] In this case, Dr. Yuska did not have complete factual background as he noted that he was unable to look at certain medical records from 2006 and 2007 due to computer problems.[10] The record does not establish that he viewed these records. 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

[6] *R.L.*, *supra* note 4.

[7] *See* 5 U.S.C. § 8123(a); 20 C.F.R. § 10.321.

[8] *L.W.*, 59 ECAB 471 (2007); *James P. Roberts*, 31 ECAB 1010 (1980).

[9] *Gwendolyn Merriweather*, 50 ECAB 411 (1999); *James R. Driscoll*, 50 ECAB 146 (1998).

[10] This was corroborated by appellant's June 1, 2010 oral hearing testimony.

elaboration, it must secure a supplemental report from the specialist to correct the defect.[11] Here, it failed to request such a supplement report from Dr. Yuska before issuing its decisions. Consequently, there remains an unresolved medical conflict regarding whether the need for appellant's bilateral knee surgeries was caused or aggravated by appellant's accepted condition.

On remand, the Office shall obtain a supplemental report from Dr. Yuska that is based upon a review of the entire medical record and reflects an accurate understanding of the condition accepted by the Office. If the supplemental report is vague, speculative or lacking in rationale, or if no such report is provided, it must refer the matter to a second impartial specialist for the purpose of obtaining a proper opinion on the issue.[12] After conducting further development as it may find necessary, the Office shall render an appropriate decision.

CONCLUSION

The Board finds that the case is not in posture for decision and must be remanded for further development of the record.

[11] *L.R. (E.R.)*, 58 ECAB 369, 375 (2007).

[12] *See L.R. (E.R.), supra* note 12.

ORDER

IT IS HEREBY ORDERED THAT the July 8, 2010 decision of the Office of Workers' Compensation Programs is set aside. The case is remanded for further action consistent with this decision of the Board.

Issued: July 12, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board