United States Department of Labor
Employees' Compensation Appeals Board

C.H., Appellant	)	
and	)	**Docket No. 08-353**
	)	**Issued: May 22, 2008**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS MEDICAL CENTER, Bay Pines, FL, 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
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 14, 2007 appellant filed a timely appeal of an October 16, 2007 merit decision of the Office of Workers' Compensation Programs denying authorization for surgery. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d) (2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether the Office properly denied authorization for left knee arthroplasty.

FACTUAL HISTORY

The Office accepted that appellant, then a 47-year-old practical nurse, sustained several conditions as a result of a fall at work on April 15, 2004, including contusion of the left elbow and knee and tear of the medial and lateral cartilage of the left knee. She did not stop work.[1]

[1] The record reflects that appellant had preexisting bilateral osteoarthritis of the knee.

An April 15, 2004 x-ray of the left knee read by Dr. Anthony P. Garritano, a Board-certified diagnostic radiologist, revealed no evidence of fracture with moderately severe degenerative disease and hypertrophic changes of the joint margins and of the medial tibial spine and patella.

In an April 29, 2004 report, Dr. Joseph Sena, a Board-certified orthopedic surgeon, noted that appellant was seen for a slip and fall which occurred at work. He also noted that she was seen by an orthopedic surgeon "in January of this year and that he advised her that she would need a knee replacement." A June 2, 2004 magnetic resonance imaging (MRI) scan read by Dr. Abner M. Landry, a Board-certified diagnostic radiologist, revealed moderate joint effusion with complex tears of the medial and lateral menisci (worse in the medial meniscus) with kissing bone bruises of the medial femoral condyle and medial tibial plateau, with osteoarthritic changes. In a June 11, 2004 report, Dr. Sena opined that appellant needed arthroscopic surgery of the left knee. He stated that the April 15, 2004 x-rays revealed findings "indicative of degenerative joint disease of the knee with spurring of the superior and inferior patella and spurring on the femoral side of the patellofemoral joint and medial joint space narrowing." Dr. Sena noted that appellant "would like to hold off on knee replacement but knee replacement in this individual is inevitable."

Appellant underwent an authorized left knee arthroscopy on August 6, 2004 and received appropriate compensation benefits.[2]

Appellant continued being treated for left knee arthritis and pain. In a February 8, 2007 report, Dr. William Lowry, a Board-certified orthopedic surgeon who took over appellant's treatment after Dr. Sena's office closed, noted that appellant had ongoing pain in her left knee since April 2004. He noted appellant's August 2004 surgery, examination findings and stated that knee x-rays showed severe osteoarthritis with complete obliteration of the medial joint space in both knees. There was more varus deformity in the left knee. Dr. Lowry listed an impression of bone on bone osteoarthritis with varus deformity. He advised that appellant requested to be considered for a total knee arthroplasty. In a March 1, 2007 report, Dr. Lowry noted appellant's continuing complaints and diagnosed bilateral knee arthritis, more severe on the left, "secondary to previous injuries." He noted that appellant would undergo a lubricating injection to the left knee but opined that she would likely need a total knee arthroplasty. In a May 3, 2007 report, Dr. Lowry requested authorization for a total knee arthroplasty of the left knee. On May 23, 2007 Dr. Lowry repeated his request for authorization.

In a May 29, 2007 report, an Office medical adviser recommended against authorizing left knee surgery. He noted that appellant's claim was only accepted for contusion to the left knee with a tear of the medial and lateral meniscus. The Office medical adviser indicated that the degenerative arthritis of her left knee was a preexisting condition and not work related. He further noted that initial x-rays of the left knee on the date of the injury revealed severe degenerative disease of the left knee.

On September 17, 2007 the Office referred appellant for a second opinion to Dr. Jeffrey M. Oettinger, a Board-certified orthopedic surgeon.

[2] Appellant returned to work full time, in a modified-duty capacity.

In a report dated October 8, 2007, Dr. Oettinger described appellant's history of injury and treatment, which included an August 6, 2004 arthroscopy with a postoperative diagnosis of degenerative joint disease in the left knee with a meniscal tear. He also reviewed an April 29, 2004 report from Dr. Sena, who noted that, earlier, her orthopedic surgeon had indicated that she would need a knee replacement. Dr. Oettinger advised that, at the time of injury, a bone scan revealed moderate severe degenerative joint disease in the left knee. He conducted a physical examination and diagnosed bilateral advanced varus tricompartmental degenerative joint disease of both knees. Dr. Oettinger opined that appellant's "injury was an aggravation of a preexisting condition. The aggravation was appropriately managed medically, injections therapeutically as well as arthroscopically. The continued symptoms are a natural progression of the preexisting condition. The need for total knee arthroplasty was present prior to injury as well as postinjury with the appropriate management intervening."

By decision dated October 16, 2007, the Office denied authorization for the proposed surgery. The Office found the weight of the medical evidence did not establish that surgery was medically necessary or related to the accepted injury.

LEGAL PRECEDENT

Section 8103(a) of the Federal Employees' Compensation 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 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.[3] 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.[4] The only limitation on the Office's authority is that of reasonableness.[5]

For a surgery to be authorized, a claimant must submit evidence to show that the requested procedure is for a condition causally related to the employment injury and that it is medically warranted. Both of these criteria must be met in order for the Office to authorize payment.[6]

ANALYSIS

Dr. Lowry, appellant's treating physician, requested authorization for arthroplasty of the left knee. However, an Office medical adviser advised against the proposed surgery, noting appellant's claim was only accepted for a contusion and tear of the medial and lateral meniscus.

[3] 5 U.S.C. § 8103(a).

[4] *Dale E. Jones*, 48 ECAB 648, 649 (1997).

[5] *Daniel J. Perea*, 42 ECAB 214 (1990) (holding that 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).

[6] *R.C.*, 58 ECAB ___ (Docket No. 06-1676, issued December 26, 2006).

He stated that appellant's degenerative arthritis preexisted the accepted injury and was not work related.[7] The Office referred appellant for a second opinion examination with Dr. Oettinger, a Board-certified orthopedic surgeon, to determine whether the surgery was warranted.

In an October 8, 2007 report, Dr. Oettinger noted appellant's history of injury and treatment. He noted appellant's history of injury and treatment, which included that on August 6, 2004 she underwent an arthroscopy which included a postoperative diagnosis of degenerative joint disease in the left knee with a meniscal tear. Dr. Oettinger also indicated that on April 29, 2004 appellant's treating physician noted that her orthopedic surgeon had previously advised her that she would need a knee replacement. He further explained that, at the time of the injury, a bone scan revealed that appellant had moderate to severe degenerative joint disease in the knee. Dr. Oettinger conducted a physical examination and diagnosed bilateral advanced varus tricompartmental degenerative joint disease of the knees. He opined that appellant's "injury was an aggravation of a preexisting condition." Dr. Oettinger also determined that the aggravation was appropriately managed with injections and arthroscopically. He indicated that appellant's continued symptoms were a natural progression of the preexisting condition. Furthermore, Dr. Oettinger advised that the need for total knee arthroplasty was present prior to injury as well as postinjury, including the appropriate intervening management.

The Board finds that the weight of the medical evidence lies with Dr. Oettinger, a Board-certified orthopedic surgeon, who examined appellant, reviewed the record and provided a reasoned medical opinion explaining why the medical authorization in question should not be given. Dr. Oettinger indicated that, while surgery would be necessary, it was not due to appellant's accepted condition but was due to the progression of appellant's preexisting degenerative joint disease. Similarly, the Office medical adviser found that the need for surgery was due to the preexisting condition and not the accepted contusion and meniscal tear. Dr. Lowry, on the other hand, did not specifically address or explain why the surgery was causally related to the employment injury. Based on the evidence of record, the Office reasonably concluded that the proposed surgery was not medically necessary for treatment of an employment-related condition. The Office did not abuse its discretion in denying authorization for arthroscopic surgery in this case.

CONCLUSION

The Board finds that the Office properly exercised its discretion pursuant to 5 U.S.C. § 8103(a) in refusing to authorize appellant's request for left knee arthroplasty surgery.

[7] The Office did not accept arthritis or any degenerative condition of the knee as being employment related. *See Jaja K. Asaramo*, 55 ECAB 200 (2004) (where an employee claims that a condition not accepted or approved by the Office was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury).

ORDER

IT IS HEREBY ORDERED THAT the October 16, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 22, 2008
Washington, DC

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

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

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