United States Department of Labor
Employees' Compensation Appeals Board

J.B., Appellant	)	
and	)	**Docket No. 10-1073**
	)	**Issued: February 24, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Carterville, MO, 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 March 10, 2010 appellant filed a timely appeal of the February 3, 2010 merit decision of the Office of Workers' Compensation Programs which affirmed the July 27, 2009 decision denying her claim for the surgery on February 13, 2006 and resulting period of disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether the Office properly found that appellant's left knee surgery of February 13, 2006 and resulting disability were not causally related to her accepted work-related injury.

FACTUAL HISTORY

On August 29, 2005 appellant, then a 42-year-old city mail carrier, filed an occupational disease claim alleging that osteochondritis dissecans in her left knee with insertion of Herbert screws, bilateral knee pain, traumatic arthritis and reflex sympathetic dystrophy (RSD) in her left

limb, tarsal tunnel and degenerative changes in the L5-S1 disc with bulging. She noted that change in her gait caused lower back pain. Appellant contended that the bending, climbing stairs, carrying a heavy mailbag, stooping and extended periods of standing necessitated by her federal employment have all contributed to the deterioration of her knees, ankles and back.

Appellant had preexisting conditions in her left knee that she sustained in the United States Air Force. She was discharged from the Air Force in 1993 with a 30 percent service-connected disability of the left knee, based on osteochondritis dissecans. In July 1991, appellant had left knee surgery with pinning of the osteochondritis dissecans fragment. Postoperatively, she developed arthrofibrosis and underwent debridement of the left knee in September 1991. Appellant was also diagnosed with continuing arthrofibrosis and RSD.

By decision dated November 28, 2005, the Office denied appellant's claim as the medical evidence did not establish that her left knee or back conditions were related to the accepted job activities.

On December 18, 2005 appellant filed a request for an oral hearing.

On February 13, 2006 Dr. David Sward, a Board-certified orthopedic surgeon, performed a hardware removal and lateral release on appellant's left knee.

In a June 2, 2006 report, Dr. Ernest Emmerton, an osteopath, advised that he was appellant's primary care physician, who reviewed her medical and work history and noted a prior history of chronic knee problems and surgery for osteochondritis dissecans. Appellant was also diagnosed with RSD of the lower extremity, arthrofibrosis and chondromalacia of the medial femoral condyle secondary to the osteochondritis dissecans. Dr. Emmerton opined that her medical condition was aggravated by her letter carrier duties. Appellant's medical condition caused her to have a disturbance in her gait and to limp, which increased the tenderness over her medial femoral condyle with the knee in flexion. Her medial joint line was also tender. Dr. Emmerton opined that appellant's multiple problems, combined with the protrusion of one of her orthopedic screws past the bony surface, led to the recent surgical intervention. He noted that she had not shown substantial improvement following surgery.

At the hearing held on June 5, 2006, appellant contended that she was filing a claim for the left knee replacement surgery and complications from surgery. She noted that she had returned to work but not at full capacity.

In a June 12, 2006 report, Dr. Brian K. Ellefsen, an osteopath, discussed the problems that occurred with the insertion of the screw in appellant's knee. He stated that, within a reasonable degree of medical certainty, her activities at the employing establishment, which included prolonged standing, walking, bending, stooping and twisting, caused her Herbert's screw to become prominent due to the loss of fibrocartilage. In turn the screws' counterclockwise rotation caused the screw to interact with the articular cartilage of the tibia causing pain that required it to be removed. Dr. Ellefsen noted that the left knee was not improving following surgery. Given the degenerative changes that were present at the time of the surgery, appellant's options were limited and a knee replacement was the preferred treatment.

In a decision dated August 31, 2006, an Office hearing representative vacated the November 28, 2005 decision and remanded the case for further development of the medical evidence.

By letter dated October 6, 2006, the Office referred appellant to Dr. Michael Clarke, a Board-certified orthopedic surgeon, for a second opinion. In an October 31, 2006 report, Dr. Clarke noted that x-rays taken on that date showed degenerative arthritis bilaterally but only minimal on the right side. He noted fairly extensive degenerative arthritis in the medial compartment on the left side with joint line thinning. Dr. Clarke opined that appellant's job at the employing establishment may have aggravated her arthritic condition to some extent, which was secondary to osteochondritis dissecans, but that most of appellant's problems with her knees preexisted her federal employment. In a December 1, 2006 supplemental report, he noted that she had preexisting bilateral knee condition of advanced osteochondritis dissecans with degenerative changes with internal fixation in place in both knees. Dr. Clarke opined that appellant's job at the employing establishment aggravated her preexisting degenerative arthritis to some extent. He stated that the surgery of February 13, 2006 was primarily for debridgement of her knees and removal of internal fixation and that this would not be employment related but due to her preexisting osteochonditis dissecans and prior internal fixation. In a January 18, 2007 report, Dr. Clarke opined that appellant would have developed degenerative changes in her knee no matter what occupation she undertook even with just the activities of daily living. There was a component of appellant's need for work restrictions that was due to exacerbation by her work, but the majority of her knee condition was secondary to the fact that she had osteochondritis dissecans for many years, preexisting her work. Dr. Clarke noted that the knee condition would not have resolved if she had not had the exacerbation from the work with the employing establishment.

By decision dated February 6, 2007, the Office accepted appellant's claim for bilateral exacerbation of degenerative arthritis of the knees. In a separate decision that day, it denied authorization of the February 13, 2006 surgery for internal fixation and associated total disability. The Office further denied appellant's claim for preexisting osteochondritis dissecans.

On March 5, 2007 appellant requested an oral hearing that was held on March 17, 2008. She noted that she worked at the employing establishment for approximately 13 years as a city mail carrier and described her duties. Appellant alleged that walking involved in her federal employment caused one of the screws to rotate out resulting in cartilage damage. She also alleged that her employment aggravated her underlying arthritis.

In a March 27, 2008 report, Dr. Ellefsen noted that appellant's surgical procedure of February 13, 2006 was performed to relieve the patella femoral joint arthrosis and decompress the patellofemoral joint to allow more central tracking of the patella to alleviate her patellofemoral syndrome. He advised that her left knee condition had been aggravated by her job as a city carrier and the responsibilities and duties of that job.

By memorandum dated June 24, 2008, the Office asked the Office medical adviser if the surgery performed on February 13, 2006 and resultant disability was due to the accepted February 15, 2005 work injury. On June 28, 2008 the Office medical adviser noted that the surgical report noted that the procedure was performed to manage a patellofemoral syndrome,

not for the management of degenerative arthritis of the left knee joint. He recommended that the Office not accept the opinion of Dr. Ellefsen that the February 13, 2006 operation was performed for the management of a condition affecting the left knee that had been accepted by the Office.

By decision dated August 8, 2008, the Office found that the left knee surgery performed on February 13, 2006 and resultant disability were not causally related to the February 15, 2005 work injury.

On August 26, 2008 appellant requested an oral hearing.

By decision dated March 19, 2009, an Office hearing representative set aside the August 8, 2008 Office decision and remanded the case for an impartial medical examination. The Office hearing representative found a conflict in medical opinion between the Office medical adviser and Dr. Ellefsen.

By letter dated April 21, 2009, the Office referred appellant to Dr. Terry Sites, a Board-certified orthopedic surgeon, for an impartial medical examination. In a report dated April 9, 2009, Dr. Sites stated that there was no objective medical evidence to support that appellant's underlying degenerative arthritis of her left knee was aggravated by her exposure to factors of her federal employment. There was no surgical evidence that appellant's work activity had caused a significant material worsening of the left knee beyond what could be expected from activities of daily living or other activity. Dr. Sites opined that it was more-likely-than-not that the patellofemoral changes were a result of years of using a knee which did not fully extend, thus increasing the patellofemoral stresses. It was less-likely-than-not that appellant's exposure to the factors of federal employment caused material worsening of her left knee. The large majority of her symptoms were a result of having an open osteochondral surgery in 1991 followed by arthrofibrosis and RSD, with permanent loss of motion resulting in abnormal gait and abnormal joint reactive forces, resulting in post-traumatic arthritis and a chronic knee condition which was a 30 percent service-connected disability. The need for surgical intervention on February 13, 2006 was warranted, given ongoing pain in appellant's knee along with concern of a prominent screw, but there was no objective medical evidence from the findings at surgery to support a material worsening of her underlying condition as a result of her federal work exposure. Dr. Sites advised that no further treatment to either knee was indicated as a result of appellant's work activity.

By decision dated July 27, 2009, the Office denied compensation for the February 13, 2006 surgery and resulting disability. It found that the weight of the medical evidence rested with Dr. Sites and established that the February 13, 2006 left knee surgery and disability were not employment related.

On August 17, 2009 appellant requested an oral hearing.

In an August 24, 2009 report, Dr. Sites clarified his opinion. He noted that there was no objective medical evidence to support that appellant's underlying degenerative arthritis of the left knee was aggravated by her federal employment. Dr. Sites noted that there was no surgical evidence that her work activity caused a material worsening of her left knee arthritis beyond what could be expected from activities of daily living or any other work activity. He noted that

the lateral tibial compartment showed no significant degenerative change and the patellofemoral compartment showed Grade II-III changes. Dr. Sites opined that it was more-likely-than-not that the patellofemoral changes were the result of years of using a cane which did not fully extend, thus increasing the patellofemoral stresses.

At the hearing held on December 10, 2009, appellant noted that she was currently working with accommodations.

By decision dated February 3, 2010, an Office hearing representative affirmed the July 27, 2009 decision.

LEGAL PRECEDENT

Section 8103 of the Federal Employees' Compensation Act[1] 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.[2] While the Office is obligated to pay for treatment of employment-related conditions, the employee has the burden of establishing that the expenditure is incurred for treatment of the effects of an employment-related injury or condition.[3]

In interpreting this section of the Act, the Board has recognized that the Office has broad discretion in approving services provided under section 8103, with the only limitation on the Office's authority being 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] To be entitled to reimbursement of medical expenses, a claimant has the burden of establishing that the expenditures were incurred for treatment of the effects of an employment-related injury or condition. Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.[6] In order for a surgical procedure to be authorized, a claimant must submit evidence to show that the surgery is for a condition causally related to an employment injury and that it is medically warranted. Both of these criteria must be met in order for the Office to authorize payment.[7]

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[1] 5 U.S.C. §§ 8101-8193.

[2] *Id.* at § 8103; *see L.D.*, 59 ECAB 648 (2008).

[3] *Kenneth O. Collins, Jr.*, 55 ECAB 648 (2004).

[4] *See D.K.*, 59 ECAB 141 (2007).

[5] *Minnie B. Lewis*, 53 ECAB 606 (2002).

[6] *M.B.*, 58 ECAB 588 (2007).

[7] *R.C.*, 58 ECAB 238 (2006).

Section 8123(a) of the Act 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] The implementing regulations state that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an Office medical adviser, the Office shall appoint a third physician to make an examination. This is called a referee examination and the Office will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.[9] When there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[10]

ANALYSIS

Prior to working at the employing establishment, appellant had a 30 percent disability in her left knee due to osteochondritis dissecans as a result of her service with the Air Force. She had multiple surgeries on her left knee and was diagnosed with continuing arthrofibrosis and RSD. On February 13, 2006 appellant underwent surgery on her left knee, specifically hardware removal and a lateral release. She claimed that her surgery and subsequent disability were the result of the walking required in her federal employment. The Office accepted appellant's claim for exacerbation of bilateral degenerative arthritis of both knees. It denied her claim for the February 13, 2006 surgery and resulting disability. The Board finds that the medical evidence fails to establish that the left knee surgery or disability related thereto were causally related to the accepted exacerbation of arthritis. The Office properly denied authorization and compensation for disability.

Appellant's treating osteopaths, Dr. Emmerton and Dr. Ellefsen, opined that her employment activities made the February 13, 2006 surgery necessary. Dr. Emmerton opined that her medical condition had been aggravated by her letter carrier duties. Dr. Ellefsen stated that appellant's activities, specifically prolonged standing, walking, bending, stooping and twisting, caused the Herbert's screw to become prominent due to the loss of fibrocartilage covering the screw as well as the screw's counterclockwise rotation. The Office referred her to Dr. Clarke for a second opinion. Dr. Clarke noted that, while her employment aggravated her arthritic condition, which was secondary to osteochondritis dissecans, the problems with both knees were preexisting. He noted that appellant would have developed degenerative changes in her knee no matter the occupation she undertook and with the activities of daily living. The Office medical adviser reviewed the medical evidence and stated that the surgical report noted that the procedure was performed to manage her patellofemoral syndrome and not for management of degenerative arthritis of the left knee.

[8] 5 U.S.C. § 8123(a); *see Y.A.*, 59 ECAB 701 (2008).

[9] *R.C., supra* note 7. The Board also notes that where a claimant claims that a condition not accepted or approved by the Office was due to an employment injury, the claimant bears the burden of proof to establish that the condition is causally related to the employment injury through the submission of rationalized medical evidence. *T.M.*, 60 ECAB ___ (Docket No. 08-975, issued February 6, 2009).

[10] *V.G.*, 59 ECAB 635 (2008).

To resolve a conflict in medical opinion as to whether appellant's surgery of February 13, 2006 was causally related to her federal employment, the Office referred appellant to Dr. Sites for an impartial medical examination. He opined that there was no surgical evidence to establish that her work activity had caused a material worsening of the left knee beyond what one could expect from activities of daily living or other work activity. Dr. Sites stated that there was no objective evidence to support that appellant's preexisting degenerative arthritis of the left knee was aggravated by factors of her federal employment. He opined that the surgical intervention of February 13, 2006 was warranted, but that there was no objective medical evidence from the operative findings to support a material worsening of appellant's underlying condition as a result of her federal work exposure that warranted the need for surgical intervention on February 13, 2006. Dr. Sites stated that it was more-likely-than not that the patellofemoral changes are the result of years of using a cane, thus increasing the patellofemoral stresses.

The Board finds that the opinion of the impartial medical examiner is supported by a review of the medical evidence and medical examination. In support of his opinion that appellant's surgery was not necessitated by his employment, Dr. Sites noted that the lateral tibial compartment showed no significant degenerative change and that the patellofemoral compartment showed Grade II-III changes. As the opinion of Dr. Sites is entitled to special weight, the Board finds that the Office properly denied her claim for surgical intervention on February 13, 2006 and compensation for the resulting disability as not causally related to the accepted employment injury.

CONCLUSION

The Board finds that the Office properly denied authorization for appellant's left knee surgery of February 13, 2006 and compensation for the resulting disability as not causally related to her accepted work-related injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 3, 2010 is affirmed.

Issued: February 24, 2011
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