United States Department of Labor
Employees' Compensation Appeals Board

D.L., Appellant	)	
and	)	**Docket No. 10-1153**
	)	**Issued: February 2, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Tampa, FL, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 15, 2010 appellant filed a timely appeal from a February 18, 2010 merit decision of the Office of Workers' Compensation Programs denying her request for surgery. Pursuant to 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 right knee arthroscopic surgery.

FACTUAL HISTORY

On April 14, 1999 appellant, then a 44-year-old letter carrier, sustained a right knee injury while walking up an incline to make a delivery. The Office accepted her claim for right knee sprain. Appellant did not stop work.[1]

Appellant was treated by Dr. Keith J. Simon, a Board-certified orthopedic surgeon, for right knee pain from the work injury. Dr. Simon noted that x-rays revealed arthritic changes, a meniscal tear and a medial collateral ligament sprain. He diagnosed patellofemoral pain syndrome and recommended anti-inflammatories, physical therapy and a knee sleeve. A June 2, 1999 magnetic resonance imaging (MRI) scan of the right knee revealed no abnormality of the patella or patellar cartilage, the lateral meniscus appeared unremarkable, normal anterior and posterior cruciate ligament and no evidence of internal derangement. A July 7, 2000 electromyogram (EMG) revealed evidence of loss of neurogenic power in the right vastus lateralis without denervation. In an April 10, 2007 duty status report, Dr. Simon released appellant to work with permanent restrictions.

On August 28, 2008 appellant requested permission to change physicians to Dr. Anthony Infante, an osteopath. She contended that she sustained a separate injury to her left knee and underwent surgery on March 10, 2008. Appellant maintained that her right knee injury of April 14, 1999 was aggravated by her left knee injury due to increased stress and use.[2] She submitted a September 3, 2008 report from Dr. Infante who reviewed a history of injury and listed persistent right knee pain. Dr. Infante advised that a September 5, 2008 MRI scan of the right knee revealed a tear of the medial meniscus, strain in the medial and fibular collateral ligaments, osteoarthritis and joint effusion. In a September 22, 2008 form, Dr. Infante requested authorization to perform right knee arthroscopy.

In a letter dated September 24, 2008, the Office advised that authorization for surgery could not be approved and that further development was required.

In a September 30, 2008 report, an Office medical adviser found that the proposed right knee surgery was not needed for treatment of the 1999 right knee sprain. The medical adviser noted that appellant had a left knee arthroscopy on March 10, 2008 with good results and that the clinical evidence did not support a consequential injury or worsening of the right knee due to increased use or stress from the left knee.

In a September 17, 2008 report, Dr. Infante noted findings upon examination of tenderness to palpation of medial joint line space, mild pain over the patellar with no swelling or edema. An MRI scan of the right knee revealed medial meniscus tear with collateral sprains

[1] Appellant requested a schedule award but the Office denied the request on February 25, 2002 and in subsequent decisions.

[2] On February 18, 2008 appellant filed a traumatic injury claim for a left knee injury sustained while retrieving parcels. This was accepted for tear of the medial meniscus and sprain of the knee medial collateral ligament, claim number xxxxxx449. This claim is not before the Board on the present appeal.

with mild arthritis and an x-ray of the right knee noted a meniscus tear. Dr. Infante again recommended arthroscopic surgery of the right knee.

In an October 7, 2008 letter, the Office granted appellant's request to change physician's to Dr. Infante. It advised her that the evidence was insufficient to authorize right knee arthroscopic surgery because the requested treatment was not medically necessary or related to the accepted injury. The Office requested that appellant provide additional information to establish that her current right knee condition was related to the work injury or employment factors. It provided her with the September 30, 2008 report of the medical adviser and requested a narrative opinion from her physician addressing how her condition was causally related to the accepted work injury and whether she had residuals.

In an October 16, 2008 report, Dr. Infante noted reviewing a 1999 right knee MRI scan which did not reveal any tears of the meniscus but noted that there were a significant number of MRI scans that were incorrectly read by radiologists as normal when they were positive for meniscus tears. He advised that, if appellant did not have the meniscus tear removed and the knee cleaned out, she would continue to experience pain. Dr. Infante diagnosed torn medial meniscus and recommended diagnostic surgical arthroscopy of the right knee.

On October 24, 2008 the Office referred appellant to Dr. Ponnovolu D. Reddy, a Board-certified orthopedic surgeon, for a second opinion examination. In an August 5, 2009 report, Dr. Reddy reviewed the records and statement of accepted facts on examination of the right knee, there was no deformity, tenderness over the medial joint line, palpable patellofemoral crepitus, full extension and flexion with normal distal pulses. Dr. Reddy noted a September 5, 2008 MRI scan of the right knee showed a medial meniscal tear, strain of the collateral ligaments and osteoarthritis with joint effusion. Appellant reported falling again in 2008 and sustaining a right knee injury and right knee pain with giving way in the medial and anterior aspect of the right knee. Dr. Reddy opined that right knee arthroscopic surgery was not warranted in the treatment of appellant's April 14, 1999 injury as her symptoms were secondary to patellofemoral arthritis. He recommended intra-articular steroid injection or Visco supplementation and noted that arthroscopic surgery would not provide significant relief of her symptoms. Dr. Reddy noted that appellant continued to have medial joint line tenderness related to the April 14, 1999 work injury. He advised that appellant could not perform her regular letter carrier position because of the arthritic changes in the right knee and chronic pain.

In a decision dated September 4, 2009, the Office denied the requested for surgery, finding that surgery was neither warranted nor causally related to appellant's accepted right knee strain.

On September 14, 2009 appellant requested a telephonic hearing which was held on December 9, 2009. In a January 6, 2010 report, Dr. Infante reviewed a history of her bilateral knee injuries. He noted that appellant's right knee medial meniscal tear was sustained when she fell in the emergency room after being placed in a brace for her left knee injury. Dr. Infante again recommended right knee arthroscopic surgery.

In a decision dated February 18, 2010, an Office hearing representative affirmed the September 4, 2009 decision. The hearing representative denied authorization for the right knee

surgery on the grounds that there was insufficient rationalized medical evidence to establish the right knee medial meniscus tear was causally related to the April 14, 1999 injury.

LEGAL PRECEDENT

Section 8103 of the Federal Employees' Compensation Act[3] 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 monthly compensation.[4] 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.[5] 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.[6] 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.[7]

Proof of causal relationship in a case such as this must include supporting rationalized medical evidence. Thus, in order for a surgery to be authorized, appellant 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.[8]

ANALYSIS

The Office accepted that appellant sustained a right knee sprain on April 14, 1999. On September 22, 2008 Dr. Infante requested authorization to perform right knee arthroscopy. The Board finds that appellant did not submit sufficient medical evidence addressing how the need for right knee arthroscopy is related to her April 14, 1999 work injury, accepted for a right knee sprain. The Board finds that the Office did not abuse its discretion in denying the request for right knee arthroscopy.

On August 5, 2009 Dr. Reddy, a second opinion referral physician found no deformity of the right knee, some tenderness over the medial joint line, palpable patellofemoral crepitus, full

[3] 5 U.S.C. §§ 8101-8193.

[4] *Id.* at § 8103; *see Thomas W. Stevens*, 50 ECAB 288 (1999).

[5] *James R. Bell*, 52 ECAB 414 (2001).

[6] *Claudia L. Yantis*, 48 ECAB 495 (1997).

[7] *Cathy B. Mullin*, 51 ECAB 331 (2000).

[8] *Id.*

range of motion with normal distal pulses. He did not believe that right knee arthroscopic surgery was warranted for treatment of appellant's April 14, 1999 injury. Dr. Reddy advised that appellant's symptoms were secondary to patellofemoral arthritis, as noted on the September 5, 2008 MRI scan. He recommended nonsurgical treatment and noted that arthroscopic surgery would not provide significant relief of her symptoms.

On September 30, 2008 the Office medical adviser opined that the proposed right knee arthroscopy was not indicated to treat appellant's employment-related injury of April 14, 1999. He also opined that the clinical evidence was not sufficient to support a consequential injury or worsening of the right knee due to increase use and stress from the left knee surgery.

Dr. Infante recommended surgery on September 22, 2008. He noted that an MRI scan of the right knee revealed a medial meniscus tear with collateral sprains and mild arthritis. The Board notes that appellant's claim was not accepted for medial meniscus tear, collateral sprains or arthritis. Dr. Infante did not adequately explain the causal relationship between these conditions and the right knee sprain of April 14, 1999.[9] On October 16, 2008 he reviewed the 1999 MRI scan of the right knee which did not reveal any tears of the meniscus. Dr. Infante advised only that there were a significant amount of MRI scans which were incorrectly read by a radiologist as normal when they were positive for meniscus tears. He repeated the diagnosis of torn medial meniscus. Dr. Infante did not explain how the accepted sprain would cause or contribute to a torn medial meniscus first diagnosed some nine years after injury. He did not provide sufficient medical rationale explaining the reasons why the 1999 injury contributed to a meniscal tear for which surgery was medically warranted.[10] In a January 6, 2010 report, Dr. Infante opined that appellant's right knee medial meniscal tear was sustained when she fell in the emergency room after being placed in a brace for her left knee injury. This report does not support that the right knee meniscus tear was related to the April 14, 1999 work injury; rather, he attributed the condition to an unrelated fall in 2008.[11] Other medical records do not provide an opinion on the causal relationship between appellant's requested right knee surgery and her April 14, 1999 work injury.

The Office medical adviser and the second opinion physician found that the proposed right knee arthroscopic surgery was not warranted for treatment of appellant's injury of April 14, 1999. For a surgical procedure to be authorized, a claimant must show that the surgery is medically warranted and is for a condition causally related to an employment injury.[12]

[9] *A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[10] *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

[11] Should appellant feel that the need for right knee surgery is a consequence of her left knee injury, she may wish to pursue the matter before the Office under the claim for her left knee, File No. xxxxxx449.

[12] 5 U.S.C. § 8103; *see also R.C.*, 58 ECAB 238 (2006) (where the Board found that 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).

Appellant did not submit sufficient medical opinion and the Office properly denied authorization for the requested surgery.

CONCLUSION

The Board finds that the Office did not abuse its discretion under 5 U.S.C. § 8103 when it denied appellant's claim for authorization of right knee arthroscopic surgery.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 18, 2010 is affirmed.

Issued: February 2, 2011
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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