United States Department of Labor
Employees' Compensation Appeals Board

F.G., Appellant	)	
and	)	**Docket No. 13-571**
	)	**Issued: July 22, 2013**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Nashville, TN, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On January 15, 2013 appellant timely appealed the September 24, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) which denied his recurrence claim. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.[2]

ISSUE

The issue is whether appellant's claimed recurrence beginning March 1, 2012 is causally related to his June 1, 2007 employment injury.

[1] 5 U.S.C. §§ 8101-8193.

[2] The record includes evidence received after the September 24, 2012 decision. As this evidence was not part of the record when OWCP issued its final decision, the Board is precluded from considering it for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

Appellant, a 66-year-old retired health technician, has an accepted traumatic injury claim for right medial meniscus tear which occurred on June 1, 2007 while repositioning a patient in bed. There was also evidence of preexisting right knee degenerative joint disease which OWCP has not accepted as employment related.[3] Appellant underwent arthroscopic surgery on September 11, 2007 performed by Dr. J. Thomas McClure, a Board-certified orthopedic surgeon. The procedure, which OWCP preauthorized, included right knee medial and lateral partial meniscectomies, chondroplasty of the medial and lateral femoral condyle and trochlear groove and resection of hypertrophic medial plica.[4] Appellant returned to work in a limited-duty capacity on October 3, 2007, and continued to undergo physical therapy.

In mid-November 2007, Dr. McClure discontinued physical therapy because it was thought to have aggravated appellant's right knee condition. In January 2008, he implemented a series of five Supartz injections. Dr. McClure subsequently performed a right total knee arthroplasty. His July 8, 2008 pre and postoperative diagnoses were degenerative joint disease of the right knee. OWCP declined to authorize appellant's July 8, 2008 knee replacement surgery.

On November 7, 2008 appellant received a schedule award for 28 percent impairment of the right lower extremity.[5] The overall rating included impairment attributable to his preexisting arthritis 20 percent and his right medial and lateral partial meniscectomies 10 percent. The award covered a period of 80.64 weeks beginning March 24, 2008.

Appellant voluntarily retired effective April 30, 2010.

Six weeks after his retirement, Dr. McClure examined appellant and noted he could "continue to work without restrictions." When he saw appellant on June 16, 2010, approximately two years had passed since the right total knee arthroplasty. Dr. McClure noted that the latest x-rays showed good alignment and position without any evidence of loosening. He also indicated that appellant was doing "reasonably well."[6] With respect to his right knee, Dr. McClure advised that appellant should continue to have annual radiographs and he should follow-up in a year's time to make sure there was no evidence of loosening of the prosthesis.

On July 26, 2012 appellant filed a notice of recurrence (Form CA-2a) for medical treatment only. He identified March 1, 2012 as the date of recurrence. Appellant explained that for several months he had been experiencing pain in his knee area. He also reported limited mobility and numbness in his right leg muscle.

---

[3] A June 4, 2007 right knee x-ray revealed, *inter alia*, tri-compartmental osteoarthritis.

[4] The postoperative diagnoses included severe right knee tri-compartmental arthritis, medial plica with impingement, grade 4 chondromalacia, medial meniscal tear and lateral meniscal tear.

[5] The award was calculated under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (2001).

[6] However, appellant also reported having some significant problems with his back for which he was seeing a chiropractor.

The recurrence claim was preceded by a July 24, 2012 request for authorization from Dr. McClure, who sought preapproval for treatment of appellant's right knee prosthesis (ICD-9 Code(s) 996.49, V43.65).

By letter dated August 17, 2012, OWCP acknowledged receipt of appellant's recurrence claim. Appellant was reminded that his June 1, 2007 employment injury had been accepted only for right medial meniscus tear. OWCP further explained that the July 8, 2008 knee replacement surgery had not been approved because it was due to his nonwork-related osteoarthritis. Dr. McClure's latest authorization request was also for treatment of appellant's nonwork-related condition. OWCP noted that the current evidence did not fully explain the necessity for further medical treatment due to the accepted right knee meniscus injury. Additionally, the August 17, 2012 development letter explained the legal criteria for demonstrating a recurrence for medical treatment only and the evidence required to establish appellant's claim. OWCP afforded appellant at least 30 days to submit the requested information.

By decision dated September 24, 2012, OWCP denied appellant's claim. The decision noted, *inter alia*, that he had not submitted anything in response to OWCP's August 17, 2012 recurrence development letter.

LEGAL PRECEDENT

A recurrence of a medical condition means a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage.[7] Continuous treatment for the original condition or injury is not considered a "need for further medical treatment after release from treatment," nor is an examination without treatment.[8] A claim for recurrent medical treatment must, at a minimum, include an attending physician's statement supporting causal relationship between the current condition and the accepted condition.[9]

ANALYSIS

The record indicates that appellant had preexisting right knee degenerative joint disease. OWCP has not accepted that the June 1, 2007 employment incident aggravated his right knee osteoarthritis. Thus far, the only accepted condition is right medial meniscus tear.[10] As noted, OWCP also authorized a September 2007 arthroscopic procedure to repair appellant's torn right meniscus. However, it specifically declined to authorize the July 2008 right total knee arthroplasty.

[7] 20 C.F.R. § 10.5(y).

[8] *Id.*; *see J.F.*, 58 ECAB 124, 126-27 (2006).

[9] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.5 (May 2003).

[10] Where an employee claims that a condition not accepted or approved by OWCP 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. *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

Appellant's recurrence claim coincided with Dr. McClure's July 2012 medical authorization request which pertained to the right knee prosthesis he implanted four years prior. According to the records provided, it had been at least two years since Dr. McClure had last treated appellant for his right knee condition. Treatment records from June 2010 indicated that appellant was doing reasonably well at the time and was capable of working without restrictions. Although appellant had been advised to follow-up in a year, there is no indication that he returned to see Dr. McClure in 2011 or received any other treatment elsewhere.

Although OWCP had not terminated medical benefits for appellant's accepted right knee meniscus injury, a significant interval of time had passed since he had received any treatment for his right knee condition. Because of the significant lapse of time, it was incumbent upon him to demonstrate a causal relationship between his accepted June 1, 2007 employment injury and Dr. McClure's proposed treatment in July 2012. OWCP fully explained the legal and medical criteria for establishing a recurrence for medical treatment only. The August 17, 2012 development letter afforded appellant 30 days within which to submit the required information to support his claim. Appellant, however, failed to respond in a timely manner.

As noted, a claim for recurrent medical treatment must, at a minimum, include an attending physician's statement supporting causal relationship between the current condition and the accepted condition.[11] Dr. McClure's July 24, 2012 authorization request provided no insight as to the necessity of the proposed treatment. He also did not specifically relate the proposed treatment to appellant's June 1, 2007 accepted employment injury and/or OWCP-approved September 11, 2007 arthroscopic procedure. Accordingly, OWCP properly denied appellant's recurrence claim.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision.[12]

CONCLUSION

Appellant failed to establish the need for continuing medical treatment causally related to his June 1, 2007 employment injury.

[11] *See supra* note 10.

[12] *See* 5 U.S.C. § 8128(a); 20 C.F.R. §§ 10.605, 10.607.

ORDER

IT IS HEREBY ORDERED THAT the September 24, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 22, 2013
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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