

FACTUAL HISTORY

On September 24, 2013 appellant, then a 51-year-old claims examiner, filed a traumatic injury claim (Form CA-1) alleging that on August 21, 2013 she sustained a left knee injury in the performance of duty. She alleged that she turned to place files on a cart and twisted her knee. Appellant submitted a September 18, 2013 report from Dr. Carl Freeman, an orthopedic surgeon. Dr. Freeman provided a history noting that she had reported left knee pain for one month. He further indicated that appellant had a prior history of left knee problems: anterior cruciate ligament reconstruction surgery in 1982, and a meniscal debridement in 2008, at which time she was told that she had bone-on-bone arthritis. Dr. Freeman reported that she had experienced intermittent left knee pain over the last 30 years that was exacerbated by the twisting injury one month earlier. X-ray results reported degenerative changes including ossific processes, subchondral sclerosis, and an irregular joint line. Dr. Freeman diagnosed left knee arthritis.

OWCP accepted the claim on November 6, 2013 for aggravation of left knee osteoarthritis. Appellant did not initially stop work, but claimed and received compensation for intermittent hours through February 21, 2014.

Appellant submitted a January 13, 2014 report from Dr. R. Stephen Lucie, an orthopedic surgeon. Dr. Lucie reported that she complained of right knee pain, that she had a prior left knee arthroscopic surgery in 2009, and that she had been treated with steroid and Hyalgan injections, along with physical therapy. He provided results on examination of both knees, diagnosed post-traumatic arthritis advanced, and reported that a total (left) knee replacement surgery was discussed, but that he doubted that workers' compensation would authorize surgery. Dr. Lucie concluded, "I do feel that the [w]orkers' [c]ompensation injury contributed to this as [appellant] was doing well until that; however, 75 or 80 [percent] of the need for total knee was attributed to a preexisting post[-]traumatic arthritis."

OWCP forward the medical evidence to an OWCP medical adviser. In a report dated February 27, 2014, the medical adviser determined that the record was incomplete as reports regarding injections and the prior left knee surgery were missing. By letter dated March 4, 2014, OWCP requested that appellant submit the missing medical evidence.

On March 18 and 24, 2014 appellant submitted additional evidence, including a September 3, 2013 report from Dr. Kenneth Meehan, an orthopedic surgeon. Dr. Meehan reported that appellant had been seen for evaluation of a long history of increasing left knee symptoms. He provided results on examination and diagnosed degenerative joint disease of the left knee. The report did not refer to an August 21, 2013 injury. Appellant also submitted an October 22, 2009 surgical report from Dr. Lucie for left knee arthroscopic surgery.

The medical adviser again reviewed the evidence and, in an April 10, 2014 report, he opined that the evidence was insufficient to justify authorization of total left knee replacement surgery as employment related. He noted that the September 3, 2013 report did not provide a history of a twisting injury on August 21, 2013.

By decision dated April 23, 2014, OWCP denied authorization for the left knee surgery.³ It found that the medical evidence did not establish that the proposed surgery was causally related to the August 21, 2013 employment injury.

On May 19, 2014 appellant requested a review of the written record by an OWCP hearing representative. She also submitted a new occupational disease claim (Form CA-2) alleging that she had a consequential injury to her right knee due to placing more weight on that leg. OWCP developed the claim as a claim for a consequential right knee condition. Appellant submitted a report dated June 13, 2014 from Dr. Freeman. Dr. Freeman reported that she had right knee pain that had worsened to some extent over the past year. He noted that appellant attributed her right knee symptoms to over compensation from her left knee injury. Right knee x-rays showed moderate degeneration with osteophytic processes and joint space narrowing. Dr. Freeman recommended a steroid injection.

By letter dated June 23, 2014, OWCP advised appellant of the evidence necessary to establish a claim for a consequential right knee injury. Appellant submitted a July 9, 2014 statement claiming that, since her left knee injury, she had been placing most of her weight on the right leg.

By decision dated July 31, 2014, OWCP found that appellant had not established a consequential right knee condition as the medical evidence was insufficient.

Appellant requested a review of the written record on August 27, 2014. She submitted an August 19, 2014 surgical report from Dr. Freeman. Dr. Freeman reported that the preoperative diagnosis was a meniscal tear and the surgery was arthroscopic meniscal debridement. In a report dated September 16, 2014, he reported that the meniscal tear “may have been aggravated by or may have [been] a direct result of [appellant’s] on-the-job injury one year ago.”

By report dated October 3, 2014, Dr. Lucie provided results on examination and diagnosed left knee severe post-traumatic arthritis. He wrote that appellant’s work injury resulted in an aggravation of a preexisting arthritis, but he did not believe that there was any permanent impairment.

By decision dated December 19, 2014, the hearing representative affirmed the April 23 and July 31, 2014 OWCP decisions. He found that OWCP had properly denied authorization for the left knee total arthroplasty surgery. In addition, the hearing representative that found that appellant had not established a consequential right knee injury.

On February 23, 2105 appellant requested reconsideration. She submitted a January 15, 2015 report from Dr. Freeman, who reported that she had hip pain and left knee pain. X-rays of the right hip reflected an ossified labrum and Dr. Freeman diagnosed trochanteric bursitis.

³ OWCP initially issued a decision dated April 17, 2014 and then issued the April 23, 2014 decision as a “corrected” decision.

In a decision dated May 11, 2015, OWCP reviewed the merits and denied modification, finding the evidence insufficient to warrant modification of the December 19, 2014 OWCP decision.

LEGAL PRECEDENT-- ISSUE 1

Section 8103(a) of FECA provides for the furnishing of services, appliances, and supplies prescribed or recommended by a qualified physician which OWCP, under authority delegated by the Secretary, 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 section 8103(a), the Board has recognized that OWCP has broad discretion in approving services provided under FECA to ensure that an employee recovers from his or her injury to the fullest extent possible in the shortest amount of time.⁵ OWCP has administrative discretion in choosing the means to achieve this goal and the only limitation on OWCP's authority is that of reasonableness.⁶

While OWCP is obligated to pay for treatment of employment-related conditions, appellant has the burden of establishing that the expenditure is incurred for treatment of the effects of an employment-related injury or condition.⁷ Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.⁸ Therefore, in order to prove that the surgical procedure is warranted, appellant must establish that the procedure was for a condition causally related to the employment injury and that the surgery was medically warranted. Both of these criteria must be met in order for OWCP to authorize payment.⁹

ANALYSIS -- ISSUE 1

In the present case, OWCP accepted that appellant sustained an aggravation of left knee osteoarthritis when she twisted her knee on August 21, 2013. Appellant seeks authorization for a proposed left total knee replacement surgery. She must submit, as discussed above, rationalized medical evidence establishing that the surgery is causally related to the employment injury.

The Board finds that the medical evidence in this case does not establish that the left knee replacement surgery is related to an August 21, 2013 employment injury. Dr. Lucie briefly opined that the employment injury "contributed" to the need for surgery in his January 13, 2014 report, although he indicated 75 to 80 percent was due to a preexisting arthritis. The deficiency in the report is not the apportionment, as it is unnecessary that the employment injury be the sole

⁴ 5 U.S.C. § 8103(a).

⁵ *Dale E. Jones*, 48 ECAB 648, 649 (1997).

⁶ *Daniel J. Perea*, 42 ECAB 214, 221 (1990) (holding that abuse of discretion by OWCP is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or administrative actions which are contrary to both logic, and probable deductions from established facts).

⁷ *See Debra S. King*, 44 ECAB 203, 209 (1992).

⁸ *Id.*; *see also Bertha L. Arnold*, 38 ECAB 282 (1986).

⁹ *See Cathy B. Millin*, 51 ECAB 331, 333 (2000).

or significant contributor to the need for surgery,¹⁰ but is the lack of any explanation for his opinion that the employment injury contributed to the need for total knee replacement surgery. Dr. Lucie reported only that appellant had been “doing well” until the injury. He does not discuss in detail the medical history prior to the August 21, 2013 employment injury and, in a September 3, 2013 report from Dr. Meehan, which was the first medical report after the employment injury, he suggested that she had increasing symptoms over a long period of time, with no mention of an August 21, 2013 employment-related twisting injury. Dr. Lucie’s own October 3, 2014 report indicated that there was no permanent residual from the employment injury. A rationalized medical opinion would have to clearly explain what happened to the left knee on August 21, 2013 and how this contributed to the need for a total knee replacement surgery.

OWCP has discretion under 5 U.S.C. § 8103 regarding authorization of medical treatment. Based on the evidence of record, it did not abuse its discretion in denying authorization for left knee surgery in this case.

On appeal appellant argues that she has an accepted knee injury and she needs a total knee replacement, but as discussed, she must clearly establish some connection between the employment injury and the surgery. The medical evidence of record is insufficient to establish causal relationship and OWCP did not abuse its discretion in denying authorization for surgery.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

LEGAL PRECEDENT -- ISSUE 2

With respect to consequential injuries, it is an accepted principle of workers’ compensation law that, when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause which is attributable to the employee’s own intentional conduct.¹¹ The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.¹²

A claimant bears the burden of proof to establish a claim for a consequential injury.¹³ As part of this burden, he or she must present rationalized medical opinion evidence, based on a

¹⁰ There is no apportionment under FECA. *See J.C.*, Docket No. 15-1295 (issued November 24, 2015); *Beth C. Chaput*, 37 ECAB 158 (1985) (it is not necessary to show a significant contribution of employment factors to a diagnosed condition to establish causal relationship). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(d) (February 2013) (schedule awards may include preexisting impairments as there is no apportionment under FECA).

¹¹ *Albert F. Ranieri*, 55 ECAB 598 (2004).

¹² *See A. Larson, The Law of Workers’ Compensation* § 10.01 (November 2000).

¹³ *J.A.*, Docket No. 12-603 (issued October 10, 2012).

complete factual and medical background, showing causal relationship. Rationalized medical evidence is evidence, which relates a work incident or factors of employment to a claimant's condition, with stated reasons of a physician. The opinion must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship of the diagnosed condition and the specific employment factors or employment injury.¹⁴

ANALYSIS -- ISSUE 2

Appellant has alleged that she developed a right knee condition because she placed more weight on her right leg due to her left knee injury. To meet her burden of proof, however, she must submit rationalized medical evidence showing that a diagnosed right knee condition was the direct and natural result of the left knee employment injury.

In this regard the evidence is of limited probative value. Dr. Freeman noted in his June 13, 2014 report that appellant had right knee degenerative changes and he diagnosed osteoarthritis. He did not relate it to the August 21, 2013 employment injury. After appellant underwent right knee meniscal surgery on August 19, 2014, Dr. Freeman then indicated that the diagnosis was a meniscal tear. In the September 16, 2014 report, he opined that the August 21, 2013 injury "may" have either aggravated or caused the condition. This speculative opinion is of little probative value without further explanation based on a proper background. Medical opinions using such terms as "may" or "could be" causally related are speculative and diminish the probative value of the medical opinion evidence.¹⁵ A physician must provide a complete factual and medical background and clearly explain how the accepted knee injury caused a consequential injury in the other leg.¹⁶

The Board accordingly finds that appellant failed to meet her burden of proof to establish a consequential right knee injury in this case. On appeal appellant reports that her right knee never caused her problems before her left knee injury and she believes that she has a consequential injury. The issue is a medical issue and, for the reasons discussed, the medical evidence of record is not sufficient to establish a consequential right knee injury.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that OWCP did not abuse its discretion by denying authorization for left knee replacement surgery. The Board further finds that appellant did not meet her burden of proof to establish a consequential right knee injury.

¹⁴ *Id.*

¹⁵ *Kathy A. Kelley*, 55 ECAB 206, 211 (2004); *see also B.P.*, Docket No. 11-1036 (issued March 27, 2012).

¹⁶ *See L.J.*, Docket No. 12-1494 (issued December 6, 2012).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 11, 2015 is affirmed.

Issued: March 24, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board