

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL W. McCONNELL and DEPARTMENT OF AGRICULTURE,
FOREST SERVICE, FLATWOODS JOB CORPS CENTER, Coeburn, VA

*Docket No. 01-166; Submitted on the Record;
Issued August 27, 2001*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for authorization for surgery.

On June 7, 1994 appellant, then a 40-year-old warehouse worker, sustained a right knee sprain when he was injured exiting a forklift.¹ He did not stop work. On January 4, 1995 the Office accepted that his condition was related to his federal employment and on January 26, 1995 he underwent arthroscopic surgery. On February 13, 1998 appellant sustained a similar work injury, again exiting from a forklift. His treating physician, Dr. S.C. Kotay, a Board-certified orthopedic surgeon, recommended surgery. By decision dated June 22, 1998, the Office accepted that appellant sustained an employment-related right knee strain but found that, as Dr. Kotay indicated, the surgery was needed for a congenital varus deformity, it was not authorized.

Appellant timely requested a review of the written record and submitted an additional report from Dr. Kotay. In a December 9, 1998 decision, an Office hearing representative affirmed the prior decision. On January 4, 1999 appellant requested reconsideration and submitted additional medical evidence. On December 10, 1999 he underwent arthroscopic surgery. By decision dated February 23, 2000, the Office denied modification of the prior decision. Appellant again requested reconsideration and submitted additional evidence. In an August 21, 2000 decision, the Office again denied modification. The instant appeal follows.

The Board finds that the Office properly denied appellant's request for authorization for surgery.

¹ The record also indicates that appellant sustained a right knee injury on July 19, 1984 when he was privately employed. He received workers' compensation from the Commonwealth of Virginia.

Appellant sustained an injury while in the performance of his federal duties on February 13, 1998. The Office accepted his claim for the condition of right knee strain. Appellant has sought authorization for surgery that was performed December 10, 1999.

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.² Proof of causal relation in a case such as this must include supporting rationalized medical evidence.³ Therefore, in order to prove that the surgical procedure of December 10, 1999 was warranted, appellant must submit evidence to show 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 the Office to authorize payment.

The record in this case contains no such evidence. The relevant medical evidence includes a number of reports from appellant's treating Board-certified orthopedic surgeon, Dr. Kotay, who began treating appellant in 1984 for the nonfederal industrial knee injury.⁴ In reports dated February 13, 1998, the date of appellant's most recent employment injury, Dr. Kotay diagnosed an articular cartilage lesion from the 1984 injury aggravated by the February 13, 1998 injury. He also noted appellant had a bilateral congenital varus deformity of the knees⁵ and recommended arthroscopic surgery. By letter dated March 3, 1998, appellant informed Dr. Kotay that he wished to postpone surgery. In a report dated April 28, 1998, Dr. Kotay noted that he had originally seen appellant in 1984 at which time he underwent arthroscopy for an articular cartilage lesion. He described the 1994 injury, advising that arthroscopy surgery at that time consisted of removal of a loose body and shaving the articular cartilage lesion. Dr. Kotay described the February 13, 1998 injury and concluded:

"I have suggested repeat arthroscopy with possible OATS procedure, as well as upper tibial osteotomy on the right side to correct the varus deformity in that knee. I feel it is necessary to do this because of the articular cartilage lesion that is present on that side. As I have said, [appellant] has varus deformity on both knees; however, since there is no articular cartilage lesion on the left side there is no need for correction on this side at this time."

In a July 16, 1998 report, Dr. Kotay further explained that the correction of the varus deformity on the right side was only necessary because of the articular cartilage lesion that

² See 5 U.S.C. § 8103(a) (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, that the Office considers likely to cure, give relief, reduce the degree or the period of disability or aid in lessening the amount of any monthly compensation). To be entitled to reimbursement of medical expenses, however, the employee must establish that the expenditures were incurred for treatment of the effects of an employment-related injury. Proof of causal relation must include supportive rationalized medical evidence. *Carolyn F. Allen*, 47 ECAB 240 (1995).

³ See *Debra S. King*, 44 ECAB 203 (1992); *Bertha L. Arnold*, 38 ECAB 282 (1986).

⁴ *Supra* note 1.

⁵ Bent inward; denoting a deformity in which the angulation of the part is toward the midline of the body; "knock-kneed." *Dorland's Illustrated Medical Dictionary*, (29th ed. 2000).

existed on that side following his “work-related” injury, stating that appellant developed the articular cartilage lesion following the 1984 knee injury. He again recommended surgery.

X-ray of the right knee dated November 4, 1999 demonstrated a slight irregularity of the articular surface of the medial femoral condyle and an approximately five millimeter bony density adjacent to the anterior tibial spine which could represent a loose body or be related to calcification related to the cruciate ligament. Magnetic resonance imaging of the right knee that day revealed a small focal osteochondral defect of the medial femoral condyle.

Dr. Danny A. Mullins, an orthopedic surgeon, performed diagnostic arthroscopic surgery on December 10, 1999 which consisted of removal of a loose body, chondroplasty of the medial femoral condyle and drilling of the exposed femoral cortical bone. Postoperative diagnoses included Grade 3 and 4 chondromalacia. Degenerative change of the medial femoral condyle with an area of Grade 4 defect extending from the anterior portion of the weight-bearing surface posteriorly was noted. In a March 25, 2000 report, Dr. Mullins advised that appellant had reported a twisting-type work injury and further noted that he performed arthroscopy on December 10, 1999 which revealed degenerative changes as well as “what appeared to be a loose body.” He concluded:

“[Appellant’s] stated mechanism of injury and type of injury noted at arthroscopy is potentially consistent with the described mechanism of injury. I think [he] most likely had some degenerative changes developing but the injury could potentially have sheared off a piece of cartilage leading to the loose body.”

In the instant case, appellant had a nonfederal employment-related right knee injury in 1984, a federal employment-related right knee injury in 1994 and a federal employment-related right knee strain in 1998. He underwent surgery on December 10, 1999. None of the medical reports of record provide a rationalized opinion explaining how the December 1999 surgery was caused or aggravated by factors of appellant’s federal employment. In fact, in his report dated July 16, 1998, Dr. Kotay opined that appellant’s knee condition was caused by the 1984 injury when appellant was working for a private employer. Appellant, therefore, has failed to establish that the December 10, 1999 surgical procedure was necessitated in treatment of his federal employment injuries.

The decisions of the Office of Workers' Compensation Programs dated August 21 and February 23, 2000 are hereby affirmed.

Dated, Washington, DC
August 27, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member