

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TAMARRA E. ESPEUT and U.S. POSTAL SERVICE,
POST OFFICE, Hyattsville, MD

*Docket No. 99-672; Submitted on the Record;
Issued March 15, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issues are: (1) whether the Office of Workers' Compensation Programs properly declined to authorize appellant's request for arthroscopic surgery of her right knee; and (2) whether appellant established that she was totally disabled as a result of her accepted employment-related injuries.

During the course of her federal employment, appellant sustained numerous work-related injuries to both her right shoulder and right knee. With regard to appellant's January 25, 1991 employment-related shoulder injury, the Office accepted the claim for tendinitis, right shoulder impingement and acromioplasty. Additionally, the Office accepted that appellant sustained three separate injuries to her right knee. On August 24, 1987 appellant sustained a partial tear of the anterior cruciate ligament. She also sustained a tear of the right lateral meniscus on July 26, 1989. And most recently, appellant sustained an employment-related right knee sprain on July 23, 1993.

In 1997 and 1998, appellant sought authorization for surgery on both her right shoulder and right knee.¹ Appellant also sought wage-loss compensation for total disability.

By decision dated October 7, 1998, the Office denied authorization of the recommended right knee arthroscopic surgery. However, on December 1, 1998, the Office authorized surgery for appellant's right shoulder. In its December 1, 1998 decision, the Office also determined that appellant failed to establish that she was totally disabled. Therefore, the Office denied any additional wage-loss compensation.

The Board finds that the case is not in posture for a decision.

¹ Dr. William Dorn, III, a Board-certified orthopedic surgeon, recommend arthroscopic surgery for treatment of internal derangement of the right knee. Dr. Dorn also indicated that appellant probably had a torn medial meniscus.

Section 8103(a) of the Federal Employees' Compensation Act provides for the furnishing of "services, appliances and supplies prescribed or recommended by a qualified physician" which the Office, 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."² In interpreting section 8103(a), the Board has recognized that the Office has broad discretion in approving services provided under the Act to ensure that an employee recovers from his or her injury to the fullest extent possible in the shortest amount of time.³ The Office has administrative discretion in choosing the means to achieve this goal, and the only limitation on the Office's authority is that of reasonableness.⁴

While the Office 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.⁵ Proof of causal relation must include rationalized medical evidence.⁶

In the instant case, the Office referred the claim to its medical adviser for an opinion as to the appropriateness of the recommended right knee surgical procedure. In a report dated September 10, 1998, the Office medical adviser noted that the indications for surgery were unclear. The Office medical adviser stated that Dr. Dorn's finding of internal derangement was too nonspecific. Additionally, the Office medical adviser recommended a second opinion surgical consultation to obtain a proper diagnosis of appellant's right knee condition and to ascertain whether surgery was required. The Office did not refer appellant for further medical evaluation as recommended, but instead denied authorization of the recommended procedure.

Once the Office undertakes to develop the medical evidence, it has the responsibility to do so in a proper manner.⁷ It is not clear why the Office declined to follow the advice of its medical adviser. Additionally, the Office failed to address recent reports submitted by Dr. Dorn.

Inasmuch as the Board's decisions are final as to the subject matter appealed, it is crucial that all relevant evidence that was properly submitted to the Office prior to the time of issuance of its final decision be addressed by the Office.⁸ Consequently, the Office's October 7, 1998 decision is set aside.

² 5 U.S.C. § 8103(a).

³ *Dale E. Jones*, 48 ECAB 648, 649 (1997).

⁴ *Daniel J. Perea*, 42 ECAB 214, 221 (1990) (holding that abuse of discretion by the Office 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).

⁵ *Debra S. King*, 44 ECAB 203, 209 (1992).

⁶ *Id.*

⁷ *Henry G. Flores*, 43 ECAB 901, 905 (1992).

⁸ 20 C.F.R. § 501.6(c); *see William A. Couch*, 41 ECAB 548, 553 (1990).

The case will, therefore, be remanded to the Office for referral to an appropriate specialist for a determination of whether the recommended right knee arthroscopy is a reasonable and necessary method for treating appellant's condition and whether appellant is currently disabled as a result of her accepted right knee condition.

The errors associated with the Office's handling of appellant's request for authorization of arthoscopic knee surgery clearly calls into question the appropriateness of the Office's December 1, 1998 determination that appellant is not entitled to additional wage-loss compensation for her claimed injury-related total disability. Accordingly, this latter determination is also set aside. However, the Office's December 1, 1998 decision authorizing right shoulder surgery is affirmed.

The December 1, 1998 decision of the Office of Workers' Compensation Programs is affirmed with respect to the determination regarding authorization of right shoulder surgery. The remainder of the December 1, 1998 decision as it pertains to appellant's claimed disability is set aside. Additionally, the Office's October 7, 1998 decision is set aside, and the case is remanded to the Office for further action consistent with this decision.

Dated, Washington, DC
March 15, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member