

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KATHY H. PLOURDE and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, BROOKHAVEN SUBMISSION PROCESSING
CENTER, Holtsville, NY

*Docket No. 00-2448; Submitted on the Record;
Issued March 21, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

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

On April 4, 1997 appellant, then a 44-year-old section chief, sustained employment-related left knee, left elbow and lumbosacral strains when she slipped and fell at work. The Office later accepted that she additionally sustained employment-related right carpal tunnel syndrome.¹ She stopped work on April 15, 1997, was placed on the periodic rolls and underwent a carpal tunnel release on March 10, 1998. She returned to limited duty on November 16, 1998, working four hours per day. By decision dated June 4, 1999, the Office determined that appellant's actual earnings as a supervisory tax examining assistant for four hours per day represented her wage-earning capacity.

The Office continued to develop the claim and found that a conflict in medical opinion existed between the opinions of Dr. John Warren Acampa, appellant's treating orthopedic surgeon and Dr. Richard S. Goodman, a Board-certified orthopedic surgeon who provided a second opinion evaluation for the Office, regarding the need for continued physical therapy and arthroscopic examination of appellant's left knee. By letter dated August 31, 1999, the Office referred appellant to Dr. Robert V. Moriarty, a Board-certified orthopedic surgeon, for an impartial medical evaluation.² In an October 29, 1999 decision, the Office relied upon the opinion of Dr. Moriarty, who advised that appellant's knee was normal on examination and denied authorization for continued physical therapy and arthroscopic examination of appellant's

¹ The record also indicates that on November 2, 1999 appellant had another fall at work and the Office accepted that she sustained employment-related impingement syndrome of the left shoulder. For a period of time, the two claims were doubled, but were "undoubled" in April 2000.

² Drs. Goodman and Moriarty were furnished with the medical record, a statement of accepted facts and a set of questions.

left knee. On December 29, 1999 the Office authorized six weeks of physical therapy. On January 27, 2000 appellant, through counsel, requested reconsideration. The Office continued to authorize ongoing physical therapy. In a decision dated May 3, 2000, the Office noted that physical therapy had been authorized and denied modification of its prior decision regarding appellant's request for authorization of arthroscopic surgery.³ The instant appeal follows.

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

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.⁴ Proof of causal relation in a case such as this must include supporting rationalized medical evidence.⁵ Therefore, in order to prove that a surgical procedure for her left knee is warranted, appellant must submit evidence to show that the procedure is for a condition causally related to the employment injury and that the surgery is medically warranted. Both of these criteria must be met in order for the Office to authorize payment.

In this case, it is undisputed that appellant sustained a left knee strain while in the performance of her federal duties on April 11, 1997. Subsequently, appellant sought authorization for surgery.

The relevant medical evidence includes a magnetic resonance imaging (MRI) scan of the left knee completed on May 12, 1997 which revealed no evidence of internal derangement. A repeat MRI scan on September 30, 1998⁶ revealed a small amount of joint effusion with a four-to five-millimeter subchondral osteochondral defect on the anterior subchondral articular surface of the medial femoral condyle.

In a December 7, 1998 report, appellant's treating orthopedic surgeon, Dr. John Warren Acampa, diagnosed, *inter alia*, internal derangement of the left knee and requested authorization for arthroscopic evaluation of the left knee. Dr. Acampa continued to submit reports in which he noted appellant's complaints of knee pain and requested authorization for knee surgery. In an April 6, 1999 report, he advised that appellant had 0 to 115 degrees range of motion of the left knee with no gross instability and a questionable McMurray's test over the medial meniscus. By

³ The record further indicates that on April 5, 1999 the Office issued a preliminary determination that appellant received an overpayment of compensation in the amount of \$2,811.51 which arose because she continued to receive full wage-loss compensation after her return to work on November 16, 1998. By check dated April 22, 1999, appellant repaid the overpayment.

⁴ 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).

⁵ See *Debra S. King*, 44 ECAB 203 (1992); *Bertha L. Arnold*, 38 ECAB 282 (1986).

⁶ The MRI scan was done on September 30, 1998. The report was dated October 1, 1998.

report dated May 20, 1999, Dr. Acampa stated that appellant's "derangements will become so fixed that no surgeon will be able to reverse her pathology." In a November 16, 1999 report, he advised that bilateral x-rays of the knees revealed decreased medial joint intervals. A left knee examination on January 10, 2000 revealed a positive McMurray's test over the medial meniscus.

Dr. Henry Marano, who provided a second opinion evaluation for the Office in March 1998, provided a supplementary report dated October 3, 1998 in which he acknowledged reviewing the September 30, 1998 MRI scan and advised that, based on the MRI scan findings and his examination, appellant was recovering from an injury/contusion of her femoral condyle. He recommended a reevaluation.

On May 11, 1999 the Office referred appellant to Dr. Richard S. Goodman, a Board-certified orthopedic surgeon for a second opinion evaluation. In a report dated May 25, 1999, Dr. Goodman noted the history of injury, his review of the medical record and examination findings. Regarding the left knee, he stated:

"The left knee was stable. There was no evidence of fluid. The left knee had no tenderness. The left knee had full range of motion in flexion and extension. The left knee was stable on push, pull, varus, valgus, Slocum, McMurray and pivot shift tests."

In a supplementary report dated June 15, 1999, Dr. Goodman stated:

"The findings of the MRI [scan] performed on October 1, 1998 are not related to the injury of April 11, 1997. The left knee arthroscopy is not indicated for [appellant] nor is it related to the injury of April 11, 1997."

Finding that a conflict existed between the opinions of Drs. Acampa and Goodman regarding the need for arthroscopic evaluation, on August 31, 1999, the Office referred appellant to Dr. Moriarty, a Board-certified orthopedic surgeon for an independent medical evaluation. In a report dated September 9, 1999, Dr. Moriarty related the history of injury, his review of the medical records and examination findings. Examination of the left knee revealed no visible deformities with no swelling or atrophy and full range of motion. There was no ligamentous laxity or joint-line tenderness and, overall, he advised that the knee appeared quiescent. Dr. Moriarty concluded that the knee was normal on examination with no findings beyond some subjective guarding on the part of appellant. He opined that the MRI scans were "fairly unimpressive," noting that the May 12, 1997 study was essentially normal. Regarding the September 30, 1998 MRI scan, he stated:

"A subsequent MRI [scan] of September 30, 1998 revealed a small subchondral defect, which could be consistent with either a direct trauma or the evolution of degenerative disease and unrelated to trauma. In any event, [appellant's] left knee examination is unremarkable. There is no effusion, loss of motion, significant joint line tenderness or instability to suggest that arthroscopic management is required."

In this case, the Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Moriarty, the impartial examiner, who advised that

appellant did not need arthroscopic surgery on her left knee. While appellant's treating physician, Dr. Acampa, continued to recommend arthroscopic evaluation and noted some increased findings on examination subsequent to Dr. Moriarty's impartial examination, he did not provide sufficient explanation to indicate that the requested procedure was for a condition causally related to the employment injury and that the surgery was medically warranted. The Office, therefore, properly denied such authorization.⁷

On appeal appellant also contends that the accepted conditions should be expanded to include appellant's cervical condition. The Office, however, has not issued a final decision regarding her contention. The only formal final decisions before the Board at the time of this appeal are the October 29, 1999 and May 3, 2000 decisions in which the Office denied appellant's request for authorization for arthroscopic evaluation. Thus, as the issue of whether appellant has established that her cervical condition is employment related was not addressed by the Office in a final decision issued within one year of appellant's appeal,⁸ it is not now before the Board for its consideration.⁹

Finally, appellant contends on appeal that she has been entitled to four hours of wage-loss compensation since her return to work on November 16, 1998. Inasmuch as more than one year had elapsed between the date of the Office's wage-earning capacity decision dated June 4, 1999 and the filing of appellant's appeal with the Board on July 13, 2000, the Board lacks jurisdiction to review this aspect of appellant's claim.¹⁰

⁷ The Board further notes that on February 9, 2001 arthroscopic surgery of the left knee was authorized.

⁸ The Board's jurisdiction to decide appeals from final decisions of the Office is limited to reviewing the evidence that was before the Office at the time of its final decision. *Laura E. Vasquez*, 49 ECAB 362 (1998).

⁹ See *Royal E. Smith*, 49 ECAB 516 (1998).

¹⁰ 20 C.F.R. § 501.3(d)(2).

The decisions of the Office of Workers' Compensation Programs dated May 3, 2000 and October 29, 1999 are hereby affirmed.

Dated, Washington, DC
March 21, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member