U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GLORIA D. WILSON and U.S. POSTAL SERVICE,
EAST SIDE STATION, Tuscaloosa, AL

Docket No. 01-2244; Submitted on the Record;
Issued October 25, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
COLLEEN DUFFY KIKO

The issue is whether the Office of Workers' Compensation Programs properly refused to authorize a total left knee arthroplasty.

On May 12, 1999 appellant, then a 45-year-old carrier, filed a claim for a traumatic injury sustained on March 10, 1999 when a commode toppled and she fell onto her knees. The Office accepted that she sustained chondromalacia of the left knee as a result of this injury and authorized the two surgeries that were performed on her left knee: excision of an osteochondral loose body, synovectomy; and removal of an osteochondral defect at the medial femoral condyle on May 19, 1999; and a bilateral meniscectomy, extensive debridement and chondroplasty and removal of loose bodies on June 16, 2000.

In a report dated February 1, 2001, appellant's attending physician, Dr. Edward D. Hillard, a Board-certified orthopedic surgeon, requested authorization to perform a total left knee arthroplasty, stating: "[p]resently [appellant] pain has progressed to the point that I know of nothing that would be helpful short of total knee arthroplasty. She has progressive severe degenerative arthritis seen on x-ray and has continuous, unintermittent pain."

An Office medical adviser reviewed the medical evidence on February 9, 2001 and stated that a total knee arthroplasty was medically indicated, but that the need for surgery was not due to appellant's accepted condition of left knee chondromalacia, as the March 10, 1999 injury was not sufficient to cause a need for total knee arthroplasty, but appellant's preexisting chondromalacia and osteoarthritis were the cause.

In a report dated March 9, 2001, Dr. Jeffrey C. Davis, a Board-certified orthopedic surgeon to whom the Office referred appellant for a second opinion, diagnosed left knee arthritis with patellofemoral pain and stated:

> "[Appellant's] primary complaint is patellofemoral in origin. I think this is related to her weight, her injury and her preexisting condition and combination.

> Certainly a fall onto the knee, as she described, can create significant symptoms in the patellofemoral joint. This is going to be very difficult to resolve, even in the best of circumstances. With the underlying changes noted in the knee, size of [appellant] and activity level required, certainly this would be a very, very difficult problem to resolve. I would be very disappointed in her response to treatment thus far. I think that with [appellant] putting in for disability and saying that she can[no]t do a sedentary job, that the likelihood of her responding to any type of treatment at this time would be very low. I am not sure [appellant] would have the motivation to try to improve at this point. I do think that, again, the injury [appellant] described could have significantly increased her symptoms. It is conceivable that without a prior history of this knee, that the injury itself may have caused many of the findings noted on the patella and the femur, although I doubt that is the case.
>
> "Again, I believe that injury has caused her symptoms to worsen and perhaps alter the course of the underlying arthritic process. I would be very hesitant to offer a total knee arthroplasty at this point. I think most of [appellant's] symptoms seem to be patellofemoral in origin and I would recommend a concerted effort at working on that. I think that my recommendations would be to try a concerted effort at weight loss, strengthening exercises and consideration for braces, including a Protonic[']s brace."

In response to an Office request for a supplemental report, Dr. Davis stated in an April 12, 2001 report:

> "I believe that the aggravation of the patellofemoral chondromalacia is permanent. I believe that the injury, as described by [appellant], may have caused a material change that altered the course of the underlying disease. Again, as noted in my dictation, I would be very hesitant to offer or recommend a total knee arthroplasty, but if it is necessary, I believe the timing, particularly now, would be a result of the injury and subsequent progression of her disease rather than the underlying process. She certainly may have been a candidate for total knee arthroplasty at some point in the future, had she not had an injury, but it would not have been at this time."

By decision dated May 1, 2001, the Office found: "[t]he evidence establishes that the surgery of total knee arthroplasty is not necessary at this time."

The Board finds that there is an unresolved conflict of medical opinion as to whether appellant needs a total knee arthroplasty.

Section 8103(a) of the Federal Employees' Compensation Act provides: "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, which the Secretary of Labor considers likely to cure, give relief, reduce the degree or period of disability

or aid in lessening the amount of the monthly compensation."[1] 20 C.F.R. § 10.310(a) provides: "The employee is entitled to receive all medical services, appliances or supplies which a qualified physician prescribes or recommends and which [the Office] considers necessary to treat the work-related injury."

Appellant's attending Board-certified orthopedic surgeon, Dr. Hillard, concluded, after two knee surgeries did not alleviate appellant's pain, that nothing short of a total knee arthroplasty would be helpful. An Office medical adviser stated that the total knee arthroplasty was medically indicated but that this was not due to her employment injury. Dr. Davis, a Board-certified orthopedic surgeon, to whom the Office referred appellant for a second opinion, concluded that the proposed surgery was at least in part related to her March 10, 1999 employment injury and that the employment injury hastened the need for this surgery. He, however, concluded that a total knee arthroplasty was not necessary at the time of his examination, as appellant was unlikely to respond to any treatment.

The total knee arthroplasty was recommended by appellant's attending Board-certified orthopedic surgeon, a qualified physician. Based on the report of the Board-certified orthopedic surgeon to whom it referred appellant for a second opinion, the Office found that the proposed surgery was not necessary and not likely to cure appellant's condition or lessen her disability. To resolve this conflict of medical opinion, the Office should, pursuant to section 8123(a) of the Act,[2] refer appellant to an appropriate medical specialist for a reasoned medical opinion on the need for a total knee arthroplasty.

[1] 5 U.S.C. § 8103(a).

[2] 5 U.S.C. § 8123(a) states in pertinent part "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."

The May 1, 2001 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to the Office for action consistent with this decision of the Board.

Dated, Washington, DC
October 25, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

Colleen Duffy Kiko
Member