

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARIANN J. JORLETT and SOCIAL SECURITY ADMINISTRATION,
CENTER FOR HUMAN RESOURCES, Philadelphia, PA

*Docket No. 03-330; Submitted on the Record;
Issued April 2, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant's bilateral total knee replacements were causally related to her accepted employment injuries.

The Office of Workers' Compensation Programs accepted that on September 9, 1999 appellant, then a 52-year-old administrative assistant, sustained left knee injury when she knelt to crawl on the floor to unplug a computer. Appellant had a preexisting left knee condition and on May 6, 1999 she had undergone an arthroscopy and meniscectomy of the left knee. The Office accepted that appellant sustained left knee sprain.

Appellant sought treatment from Dr. Thomas D. Beck, an osteopathic Board-certified orthopedic surgeon. Dr. Beck provided treatment for both of appellant's knees and ordered magnetic resonance imaging (MRI) of both knees, which were performed on November 11, 1999. The MRI was reported as demonstrating a recurrent tear of the left lateral meniscus and a tear of the posterior horn of the right medial meniscus and a tear of the posterior horn in the body of the lateral meniscus.

Appellant additionally claimed that she had injured her right knee as a result of the September 9, 1999 employment incident. She also had a preexisting right knee condition with a history of "locking" of the right knee since 1961, a partial meniscectomy performed in October 1991 and a fall at home and injury to the right knee in May 1995. Other preexisting conditions include Lyme Disease, fibromyalgia, scoliosis, hypertension and leg length discrepancy.

On December 2, 1999 Dr. Beck performed a left knee arthroscopy with a partial lateral meniscectomy and chondroplasty. He further recommended that a right knee arthroscopy be performed.

Appellant filed a claim for a second injury sustained on January 25, 2000, when she slid in a puddle of water and fell on her right knee and twisted her left knee. The Office accepted this claim for bilateral knee contusions.

The Office referred appellant, together with a statement of accepted facts, questions to be addressed and the relevant case record, to Dr. Thomas F. Leatherwood, II, a Board-certified orthopedic surgeon, for a second opinion examination.

By report dated March 17, 2000, Dr. Leatherwood reviewed appellant's factual and medical history, presented the results of his physical examination and opined:

“[Appellant] sustained a work-related injury on September 9, 1999 of a meniscal tear to both right and left knee. This was appropriately treated by Dr. Beck with meniscal surgery done arthroscopically in December 1999. I believe that the right knee should also undergo arthroscopic surgery as planned by Dr. Beck, which is related to the injury of September 9, 1999. The situation is further complicated, however, by the new injury of January 24, 2000, which also appears to be work related and the current condition of the left knee. Because of this, the knee remains symptomatic two months after surgery in spite of therapy treatment. I would re[do an] MRI scan of the left knee at some point in the near future and note that this may also require additional intervention in spite of the multiple surgeries already. Hopefully, this will not be the case and the left knee will become gradually asymptomatic.

“[Appellant] clearly has underlying osteoarthritis of both knees, which makes her more prone to meniscal injuries; however, I believe the injuries as described to me by her are discrete in nature and related to the incident at work. The osteoarthritis, which was preexisting and unrelated to work itself, can be expected to continue to deteriorate over time. This may necessitate further surgery based on the osteoarthritis alone for either debridement or even total knee replacement; however, these things would not be related to the job injuries which I have described above and which I do not believe contributed in a significant way to [appellant's] osteoarthritis. I do believe that [she] has current restrictions based on her work-related knee problems and I will fill out an estimated capacity form to accompany this report regarding those restrictions. After the knees have been dealt with in terms of the current meniscal problems, I believe that [appellant] will not require any further work-related restrictions based on her knees. Because of her underlying osteoarthritis, which is not a work-related condition, there may be restrictions necessary for nonwork-related reasons. In other words, I believe [appellant]'s current work-related restrictions should be temporary in nature; however, she may require permanent restrictions at some point in her future based on her underlying osteoarthritis, nonwork related.”

Based upon Dr. Leatherwood's report, the Office accepted that appellant sustained bilateral meniscal tears and required bilateral arthroscopies of her knees. Appellant underwent a right knee meniscectomy and chondroplasty on May 12, 2000 and a left knee meniscectomy and chondroplasty on June 29, 2000.

Appellant continued to see Dr. Beck for treatment and on April 24, 2001 he indicated that she had degenerative joint disease (DJD) of her knees and would eventually require total knee

replacement. Dr. Beck did not provide any opinion as to the cause of appellant's DJD or osteoarthritis bilateral knee conditions.

On May 15, 2001 Dr. Beck prescribed Syndics injections to provide symptomatic relief of knee pain and to put off the need for total knee replacement surgery. He did not discuss causal relation.

By letter dated July 11, 2001, the Office advised appellant that treatment for her bilateral degenerative joint disease of the knees, including Syndics injections and total knee replacements could not be authorized as the evidence of record failed to establish a causal relationship between the need for bilateral total knee replacements and her accepted work injuries.

In a letter received July 3, 2001, appellant requested authorization to change treating physicians to Dr. Robert C. Booth, a Board-certified orthopedic surgeon, due to his experience in performing total knee replacements.

The Office denied appellant's request on August 9, 2001. No formal final decision was issued.

By decision dated November 9, 2001, the Office denied authorization for medical treatment, including Syndics injections and eventual total knee replacements for appellant's bilateral degenerative joint disease of the knees. The Office determined that these procedures were for appellant's underlying condition and not for her employment injuries as explained by Dr. Leatherwood.

Appellant, through her representative, disagreed with the November 9, 2001 decision and requested a hearing before an Office hearing representative, which was held on May 15, 2002, at which she testified. She reviewed her history of injuries and surgeries and claimed that following the surgeries her knees continued to worsen. Appellant noted that Dr. Beck had recommended Syndics injections and told her that she would eventually need total knee replacements, which were denied by the Office. Appellant stated that on February 21, 2002 Dr. Norman A. Johanson, a Board-certified orthopedic surgeon, performed bilateral total knee replacements and she noted that her condition had improved with surgery and she was scheduled to return to work on June 3, 2002. Her representative argued that Dr. Leatherwood's opinion could not carry the weight of the medical evidence as he examined appellant prior to the arthroscopic surgeries in May and June 2000 and he argued that there was a conflict in medical opinion between Dr. Leatherwood and Dr. Johanson. Appellant's representative also submitted two reports from Dr. Johanson, an initial January 29, 2002 report and the February 21, 2002 operative report, neither of which discussed causal relation with appellant's employment.

By decision dated August 19, 2002, the hearing representative affirmed the November 9, 2001 decision, finding that appellant had not submitted sufficient medical evidence to establish that her total knee replacements were causally related to her accepted employment injuries. The hearing representative noted that the conditions accepted by the Office were limited to bilateral meniscal tears of her knees which necessitated arthroscopic surgeries, with meniscectomies and chondroplasties performed on December 2, 1999 (left), May 12, 2000 (right) and June 29, 2000 (left). He further noted that DJD or osteoarthritis of the knees was preexisting and was not an

employment-related condition. The hearing representative noted that on April 24, 2001 Dr. Beck indicated that appellant's DJD of the knees would probably not get better and would eventually necessitate total knee replacements and that the Syndics would provide temporary symptomatic relief to put off the need for surgery. He found that, therefore, treatment on and after April 24, 2001, including the recommended injections and eventual total knee replacement was for appellant's DJD or osteoarthritis of the knees, not for her meniscal tears. The hearing representative found that Dr. Beck did not provide any opinion as to whether appellant's DJD of the knees and the need for total knee replacement was causally related either to her accepted employment incidents or to the meniscal tears or repairs. However, he found that Dr. Leatherwood did provide such an opinion clearly stating that appellant had underlying pre-existing DJD or osteoarthritis of her knees which was unrelated to the employment injuries and which would deteriorate over time and may necessitate total knee replacement. Dr. Leatherwood reiterated that this eventuality would not be related to her employment injuries and was not aggravated by those injuries. The hearing representative found that the reports of Dr. Johanson did not address causal relation of appellant's degenerative knee condition and the need for replacement surgery and, therefore, did not conflict with the report of Dr. Leatherwood.

The Board finds that appellant has failed to establish that bilateral total knee replacements were causally related to her accepted employment injuries.

Appellant has the burden of establishing by the weight of reliable, probative and substantial evidence that the injury claimed was caused or aggravated by her federal employment. As part of this burden, appellant must submit a rationalized medical opinion, based upon a complete and accurate factual and medical background, showing a causal relationship between the injury claimed and factors of her federal employment.¹ Causal relationship is a medical issue that can be established only by medical evidence.² The Board notes that the fact that a condition manifests itself or worsens during a period of employment does not raise an inference of an employment relationship.³ Neither the fact that the condition became apparent during a period of employment nor the belief of the employee that the condition was caused or aggravated by the employment or employment incidents is sufficient to establish causal relation.⁴

Appellant submitted a great deal of medical evidence from Dr. Beck which indicated that appellant had preexisting degenerative joint disease or osteoarthritis of her knees in addition to sustaining work injuries accepted by the Office which he diagnosed as meniscal tears. He performed several arthroscopic surgeries which included meniscectomies and chondroplasties of both knees and opined that appellant would benefit from Syndics injections to provide symptomatic relief of knee pain and to put off the need for total knee replacement surgery. Dr. Beck, however, did not relate appellant's DJD or osteoarthritis of her knees, nor the need for Syndics or total knee replacements, to the accepted work injuries, either by causation or

¹ *Steven R. Piper*, 39 ECAB 312 (1987); *See* 20 C.F.R. § 10.110(a).

² *Mary J. Briggs*, 37 ECAB 578 (1986); *Ausberto Guzman*, 25 ECAB 362 (1974).

³ *Paul D. Weiss*, 36 ECAB 720 (1985); *Hugh C. Dalton*, 36 ECAB 462 (1985).

⁴ *Ruth C. Borden*, 43 ECAB 146 (1991).

aggravation and he did not indicate that total knee replacements were for the accepted employment meniscal injuries.

Dr. Johanson, who performed the bilateral knee replacement surgeries, did not provide any opinion as to the causal relation of the conditions for which surgery was performed, with any factor of her federal employment. Therefore, his reports do not support that the total knee replacements were causally related to appellant's employment injuries, nor do they create any conflict with the report of Dr. Leatherwood.

The Office second opinion specialist, Dr. Leatherwood, however, clearly explained that appellant's work injuries were discreet meniscal tears, which were appropriately treated by repeat arthroscopic surgery, but that the DJD or osteoarthritis was underlying, was preexisting and unrelated to appellant's work itself and was not aggravated by the work-related meniscal tear injuries. He opined that her DJD or osteoarthritis would continue to deteriorate and would eventually require total knee replacements, but explained that this would not be related to her work injuries.

With regard to surgical authorization, section 8103(a) of the Federal Employees' Compensation Act provides for furnishing to an injured employee "the services, appliances and supplies prescribed by a qualified physician" which the Office "considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of monthly compensation."⁵ The Board has found that the Office has great discretion in determining whether a particular type of treatment is likely to cure or give relief.⁶ In the present case, however, the Office did not abuse its discretion in denying appellant's request for surgical reimbursement as she has not presented medical evidence from a qualified physician supporting that the surgery was causally related to her accepted work injuries.

In order to be entitled to reimbursement of medical expenses, appellant must establish that the expenditures were incurred for treatment of the effects of an employment-related injury. Proof of causal relation in a case such as this must include supporting rationalized medical evidence.⁷ Appellant has submitted no such rationalized medical evidence supporting that the bilateral total knee replacements were in any way causally related to her accepted employment-related meniscal tear injuries.

Neither Dr. Beck nor Dr. Johanson provided any rationalization relating the need for bilateral total knee replacement to any of appellant's work incidents or accepted work-related meniscal injuries. Dr. Leatherwood, on the other hand, provided an extensive report explaining how and why appellant's employment injuries were discreet meniscal tears, which were adequately treated by arthroscopic surgery and why the bilateral total knee replacements were not related to her employment. Dr. Leatherwood explained that appellant's bilateral knee DJD or

⁵ 5 U.S.C. § 8103(a).

⁶ *James E. Archie*, 43 ECAB 180 (1991); *Daniel J. Perea*, 42 ECAB 214 (1990); *William F. Gay*, 38 ECAB 59 (1987).

⁷ *Bertha L. Arnold*, 38 ECAB 282 (1986); *Delores May Pearson*, 34 ECAB 995 (1983); *Zane H. Cassell*, 32 ECAB 1537 (1981); *John R. Benton*, 15 ECAB 48 (1963).

osteoarthritis was preexisting and would continue to deteriorate and ultimately require total knee replacements, independent of her discreet employment-related sprains, contusions and meniscal tear injuries. As neither Dr. Beck nor Dr. Johanson provided a rationalized medical opinion supporting the causal relationship of the total knee replacements to appellant's employment injuries or to the employment incidents, their opinions do not create any conflict with the report of Dr. Leatherwood, such that resolution would be required.

On appeal appellant's representative argues that Dr. Leatherwood's opinion was rendered prior to two of her arthroscopic surgeries. The Board finds that this is not a problem as he was opining on her underlying, preexisting bilateral DJD or osteoarthritis condition, which he explained would not be affected by the arthroscopic surgeries for meniscectomies and chondroplasties that took place after his opinion was provided. Dr. Leatherwood stated that the arthroscopic meniscectomies and chondroplasties were the appropriate treatment for appellant's employment-related meniscal injuries and he clearly indicated that these had no affect on appellant's underlying condition nor was the underlying condition aggravated by these arthroscopic surgeries. Consequently, the fact that two meniscal surgeries were performed after Dr. Leatherwood opined regarding appellant's underlying pathology, is irrelevant, as the evidence of record supports that the surgical intervention did not change the underlying course of appellant's bilateral degenerative disease.

It is appellant's burden of proof to establish that her bilateral total knee replacements were causally related to either the implicated work events or to her accepted employment-related meniscal injuries and this burden must be met through the submission of rationalized medical evidence explaining the causal relationship. As appellant has not submitted such rationalized medical evidence explaining the causal relationship, she has not met her burden of proof to establish her claim.

Accordingly, the decisions of the Office of Workers' Compensation Programs dated November 9, 2001 and August 19, 2002 are hereby affirmed.

Dated, Washington, DC
April 2, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member