U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of REYNE KAUFMAN and DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Hot Springs, SD

Docket No. 03-1073; Submitted on the Record;
Issued October 21, 2003

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 authorization for total left knee replacement surgery.

On February 21, 2001 appellant, a 47-year-old respiratory technician, filed a claim for traumatic injury alleging that, on February 15, 2001, she slipped and fell on ice, causing injury to her left knee. She stopped work that day. Since January 17, 2001, appellant had been assigned to a light-duty position in the employing establishment's revenue office as a result of a previous work-related injury.[1] On June 14, 2001 the Office accepted appellant's claim for left knee strain which was later upgraded to a left torn meniscus, and she received appropriate continuation of pay and wage-loss compensation. The Office also approved left knee arthroscopy and subsequent steroid injections on August 29, September 5 and 12, 2001.

On June 19, 2001 Dr. Stuart E. Fromm, an attending Board-certified orthopedic surgeon, performed an arthroscopic partial medial meniscectomy, left knee and chondroplasty, medial femoral condyle. The postoperative diagnosis was early degenerative joint disease and a small tear in the anterior horn of the medial meniscus. On June 25, 2001 appellant accepted a temporary light-duty position as a respiratory therapist.

In a report dated October 15, 2001, Dr. Fromm noted appellant's continuous and worsening pain and diagnosed mild arthritis in the medial compartment that was aggravated by the February 15, 2001 work-related injury. In reports dated November 14, 2001, Dr. Fromm advised that appellant had early arthritic changes but that her examination was benign. He provided restrictions to her physical activity.

[1] The record indicates that bilateral carpal tunnel syndrome with surgery was accepted and adjudicated by the Office under file number 12-1091280. The instant case was adjudicated under file number 12-2000762.

By report dated January 10, 2002, Dr. James A. Engelbrecht, a Board-certified rheumatologist, noted appellant's left quadriceps atrophy "at about 50 [to] 75 percent of normal." He advised that there was no evidence of any systemic inflammatory disease. In a report dated February 13, 2002, Dr. Mark Simonson, an attending Board-certified physiatrist, advised that appellant had chronic left knee pain and left lower extremity weakness as a result of other surgical procedures "in the context of underlying degenerative disease." In an attached work capacity evaluation report, Dr. Simonson advised that appellant was able to work eight hours a day with restrictions. He continued to submit reports in which he noted appellant's complaints of pain and reiterated his diagnosis and restrictions. Appellant underwent a series of physical therapy and left knee injections. On June 25, 2002 Dr. Simonson discharged appellant from his care.

On August 14, 2003 the Office referred appellant, a copy of her medical record, a statement of accepted facts, a copy of the modified position description and a list of questions for resolution to Dr. Dale Anderson, a Board-certified orthopedic surgeon, for a second opinion evaluation.

In a report dated August 19, 2002, Dr. Mark L. Harlow, a Board-certified orthopedic surgeon, noted findings on examination including slight effusion of the knee, tenderness along the medial collateral ligament, and a 1 plus medial pseudolaxity with valgus stress testing. He recommended a knee brace and restrictions to appellant's work activities.

In a report dated September 5, 2002, Dr. Anderson noted examination findings of mild effusion of the left knee with localized tenderness of the medial joint. X-rays revealed a narrowing of the medial compartment and early spur formation. He noted chondral draining and a torn meniscus but no atrophy. Dr. Anderson advised that appellant was able to function in her current position but that if she returned to her original position she would aggravate her knee condition. He advised that her work restrictions were appropriate as a laboratory technician and as a respiratory assistant. In a work capacity evaluation dated September 9, 2002, Dr. Anderson stated that appellant was restricted permanently to walking and standing for a maximum of two hours a day.

In a report dated November 22, 2002, Dr. Fromm diagnosed arthritis and pain over the medial aspect of the knee and noted that arthroscopic studies from her prior surgery revealed marked and diffuse degenerative changes. He advised that appellant was a candidate for total knee replacement surgery. By report dated January 14, 2003, Dr. Fromm stated that he agreed with Dr. Anderson that appellant had degenerative joint disease of the left knee and advised that she had failed treatment; she, therefore, was a candidate for total knee replacement surgery. He advised that appellant "may be at maximum medical improvement for her work injury," but that the injury "most likely was not, however, the major contributing cause to her arthritic change."

By decision dated January 30, 2003, the Office denied appellant's request for total knee replacement surgery on the grounds that the medical evidence failed to establish that the requested surgery was causally related to her accepted injury.

The Board finds that the Office properly denied authorization for total knee replacement surgery.

In this case, it is undisputed that appellant sustained a knee injury while in the performance of her federal duties on February 15, 2001. The Office accepted her claim for the condition of left knee meniscal tear for which she underwent left knee arthroscopy. Appellant thereafter sought authorization for total knee replacement surgery.

Section 8103 of the Federal Employees' Compensation Act[2] provides that 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 Office considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation.[3] In interpreting this section of the Act, the Board has recognized that the Office has broad discretion in approving services provided under the Act. The only limitation on the Office's authority is that of reasonableness. Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts.[4] It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.[5] 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.

As appellant seeks authorization for a total knee replacement surgery, she bears the burden of proof to establish that her knee condition is causally related to the accepted right injury and that the procedure is medically warranted.[6] Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.[7] Thus, in order for surgery to be authorized, appellant must submit evidence to show that such surgery 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. While the record in this case provides some support that appellant is in need of total knee replacement surgery, the medical evidence of record does not establish that the need for surgery is due to the employment-related condition.

The only evidence that addresses appellant's need for total knee replacement surgery are two reports from Dr. Fromm dated November 22 and December 20, 2002 in which he noted the degenerative changes in appellant's knee and prior failed treatment and advised that she needed total knee replacement. The Board however finds that these reports do not provide a rationalized medical opinion establishing a causal relationship between appellant's work-related knee injury and the need for total knee replacement surgery. While in his October 15, 2001 report, Dr. Fromm advised that appellant's arthritis was aggravated by the work-related injury, in his

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[2] 5 U.S.C. §§ 8101-8193.

[3] 5 U.S.C. § 8103.

[4] *Gregorio E. Conde*, 52 ECAB 410 (2001).

[5] *Daniel J. Perea*, 42 ECAB 214 (1990).

[6] *Cathy B. Millin*, 51 ECAB 331 (2000).

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

January 14, 2003 report, he stated that the February 15, 2001 injury "most likely was not ... the major contributing cause to her arthritic change." The Board has long held that medical opinions which are speculative or equivocal in character have little probative value[8] and therefore finds Dr. Fromm's opinion to be insufficient to establish that the medical need for total knee replacement surgery, appellant's degenerative arthritic condition, is caused by the employment injury.[9] The Board, therefore, finds that the Office properly denied authorization for total left knee surgery.

The decision of the Office of Workers' Compensation Programs dated January 30, 2003 is hereby affirmed.[10]

Dated, Washington, DC
October 21, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

[8] *See Jennifer L. Sharp*, 48 ECAB 209 (1996).

[9] *See Albert C. Brown*, 52 ECAB 152 (2000).

[10] On June 30, 2003 appellant requested review of the written record. This was, however, subsequent to her filing an appeal with the Board on March 10, 2003, and the Office and Board may not have concurrent jurisdiction over the same issue in the same case. *Cathy B. Millin, supra* note 6.