

In a report dated March 30, 1998, Dr. Joseph C. Tauro, a Board-certified orthopedic surgeon and Office referral physician, diagnosed bilateral knee contusions, left worse than right. Physical examination of the left knee revealed no effusion. However, Dr. Tauro noted tenderness over the patellofemoral joint with patellofemoral crepitation. He also noted evidence of a healed contusion with no laxity or joint line pain and no atrophy of the leg. Dr. Tauro commented that a magnetic resonance imaging (MRI) scan of the left knee was negative, thus indicating no serious intra-articular pathology. He advised that appellant should continue with physical therapy for six to eight weeks and continue with her temporary work restrictions. Dr. Tauro stated that appellant's condition would then reach a plateau and no further treatment would be necessary. He stated that appellant's prognosis for recovery was good and after the additional therapy, her condition should resolve with no permanency or work limitations.

Based on the advice of her physician, appellant resumed her full-time, regular duties on April 21, 1998.

Appellant filed a claim for recurrence of disability beginning September 16, 1998. In a report dated September 25, 1998, Dr. Barry S. Gleimer, D.O., a Board-certified orthopedic surgeon, stated that appellant sustained a patellofemoral joint injury as a result of her December 8, 1997 fall. He noted that appellant's bursal effusion had resolved; however, the impact of the fall resulted in subsequently progressive patellofemoral arthralgia and injury to the articular surface. On October 21, 1998 Dr. Gleimer diagnosed left knee internal derangement and advised that appellant was able to perform only six hours of limited duty a day.¹ Dr. Gleimer released appellant to resume her full duties effective December 2, 1998. He also recommended that appellant undergo a diagnostic arthroscopy and reiterated that appellant's condition was due to the injury she sustained on December 8, 1997.

In a decision dated March 31, 1999, the Office denied appellant's recurrence of disability claim, finding that she failed to establish a causal relationship between her left knee condition and the December 8, 1997 employment injury.

Appellant resigned from the employing establishment effective June 11, 1999.

In treatment notes from July to November 1999, Dr. Gleimer continued to recommend surgery. On November 9, 1999 he performed a left knee partial medial meniscectomy, chondroplasty of the patella and medial femoral condyle and removal of pathologic synovial plica. On March 15, 2000 appellant's counsel requested that the Office authorize the November 9, 1999 surgery.

The Office determined that a conflict of medical opinion existed between Drs. Gleimer and Tauro, and referred appellant for an impartial medical examination with Dr. Robert R. Bachman, a Board-certified orthopedic surgeon. In a report dated August 29, 2001, Dr. Bachman diagnosed contusion of the knees, traumatic prepatellar bursitis, left knee and status postoperative left knee. He attributed the bilateral knee contusions and left knee traumatic

¹ Dr. Gleimer had previously restricted appellant to four hours of limited duty beginning October 9, 1998. Additionally, his diagnosis of left knee internal derangement was based in part on an October 1, 1998 electromyography.

prepatellar bursitis to the December 8, 1997 employment injury, which he found to have resolved. With regard to the November 9, 1999 surgery, Dr. Bachman found that it was not causally related to the December 8, 1997 work injury. He explained that the medical evidence revealed that appellant had recovered from her December 8, 1997 injury prior to the surgery.

By decision dated February 12, 2002, the Office denied authorization of the November 9, 1999 surgery on the basis that appellant failed to establish that it was causally related to the December 8, 1997 employment injury. The Office based its decision on Dr. Bachman's August 29, 2001 report.

Appellant requested a hearing before an Office hearing representative.

In a decision dated December 13, 2002, an Office hearing representative set aside the February 12, 2002 decision and remanded the case for further development of the record. The hearing representative instructed the Office to obtain a supplemental report from Dr. Bachman because he had not reviewed the November 9, 1999 operative report.²

In a supplemental report dated March 11, 2003, Dr. Bachman stated that he reviewed additional medical evidence, which included x-rays, MRI scans and the November 9, 1999 operative report; however, this information did not change his prior opinion. He explained that the injury appellant sustained on December 8, 1997 did not affect the knee joint and that the noted effusion involved the prepatellar bursa exterior to the knee joint as indicated on the January 13, 1998 MRI scan of the left knee. This MRI scan also revealed no evidence of any meniscal tear or ligamentous abnormality. Dr. Bachman found no medical documentation of an intra-articular injury. He stated that the record documented resolution of appellant's prepatellar traumatic bursitis, noting that, had there been any intra-articular damage as a result of the accident, one would expect to have seen some evidence of intra-articular pathology such as a joint effusion, which was not present.

By decision dated April 18, 2003, the Office found that the left knee surgery performed on November 9, 1999 was not causally related to appellant's December 8, 1997 employment injury. Appellant requested an oral hearing, which was held on November 19, 2003. Appellant also submitted a December 26, 2003 report from Dr. Gleimer, who took issue with Dr. Bachman's opinion that there was no evidence of intra-articular pathology. He commented that, even in the absence of joint effusion, there was sufficient evidence demonstrating articular damage that warranted surgery. In a decision dated February 18, 2004, the Office hearing representative affirmed the April 18, 2003 decision.

LEGAL PRECEDENT

An 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 a work-related injury.³ While the Office is obligated to pay for treatment of employment-related

² Appellant's counsel submitted Dr. Gleimer's November 9, 1999 operative report along with additional medical records at the October 23, 2002 hearing.

³ 5 U.S.C. § 8103(a); 20 C.F.R. § 10.310(a) (1999); see *Lisa DeLindsay*, 51 ECAB 634, 635 (2000).

conditions, appellant has the burden of establishing that the expenditure is incurred for treatment of the effects of an employment-related injury or condition.⁴ To be entitled to reimbursement of medical expenses by the Office, appellant must establish a causal relationship between the expenditure and the treatment by submitting rationalized medical evidence supporting such a connection and demonstrating that the treatment is necessary and reasonable.⁵

ANALYSIS

The Office determined that a conflict of medical opinion existed based on the opinions of Drs. Gleimer and Tauro and properly referred appellant to an impartial medical examiner.⁶ Dr. Bachman, the impartial medical examiner, found no medical documentation of an intra-articular injury and stated that the record documented resolution of appellant's prepatellar traumatic bursitis. He explained that, had there been intra-articular damage as a result of the injury, he would expect to have seen some evidence of intra-articular pathology such as a joint effusion, which was not present. Dr. Bachman concluded that appellant's accepted condition had resolved and that the November 9, 1999 surgery was unrelated to the December 8, 1997 employment injury. The Board finds that the Office properly relied on the impartial medical examiner's opinion.⁷ Dr. Bachman's opinion is sufficiently well rationalized and based upon a proper factual background. He examined appellant and reviewed her medical records. Dr. Bachman reported accurate medical and employment histories. Accordingly, the Office properly accorded determinative weight to Dr. Bachman's findings.

Dr. Gleimer's December 26, 2003 report is insufficient to overcome the weight of the medical evidence as reflected by the impartial medical examiner's opinion. Dr. Gleimer essentially reiterated his prior opinion on causal relationship. Moreover, because he was on one side of the conflict that Dr. Bachman resolved, Dr. Gleimer's additional report is insufficient to overcome the special weight accorded Dr. Bachman's opinion or to create a new conflict.⁸

CONCLUSION

The Board finds that the Office properly denied authorization for payment of appellant's November 9, 1999 left knee surgery.

⁴ *Dale E. Jones*, 48 ECAB 648, 649 (1997).

⁵ *Cathy B. Millin*, 51 ECAB 331, 333 (2000); *Id.*

⁶ The Federal Employees' Compensation Act provides that, if there is disagreement between the physician making the examination for the Office and the employee's physician, the Office shall appoint a third physician who shall make an examination. 5 U.S.C. § 8123(a); *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

⁷ In cases where the Office has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight. *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

⁸ *See Alice J. Tysinger*, 51 ECAB 638, 646 (2000).

ORDER

IT IS HEREBY ORDERED THAT the February 18, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 20, 2004
Washington, DC

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member