

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**LEONARDO LOPEZ, Appellant**

**and**

**DEPARTMENT OF THE AIR FORCE, LUKE  
AIR FORCE BASE, AZ, Employer**

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**Docket No. 04-2104  
Issued: January 24, 2005**

*Appearances:*  
*Oscar Nandin, for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Member  
WILLIE T.C. THOMAS, Alternate Member  
MICHAEL E. GROOM, Alternate Member

**JURISDICTION**

On August 16, 2004 appellant filed an appeal of a decision dated June 16, 2004 in which the Office of Workers' Compensation Programs denied authorization for a total left knee replacement and for disability related to the surgery. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the June 16, 2004 decision.

**ISSUES**

The issues are: (1) whether the Office properly denied authorization for total left knee replacement surgery; and (2) whether appellant's disability beginning March 15, 2004 is causally related to his federal employment.

**FACTUAL HISTORY**

On March 26, 2004 appellant, a 61-year-old sheet metal mechanic, filed a claim for an employment-related left knee strain after he fell at work on March 15, 2004. He stopped work that day.

In support of his claim, appellant submitted a March 15, 2004 attending physician's report in which Dr. L. Kim Abts, an employing establishment physician, Board-certified in emergency medicine, noted a history of a previous knee problem and diagnosed internal derangement of the left knee. Dr. Abts checked the "yes" box, indicating that the condition was employment related and advised that appellant could return to light sedentary duty. By report dated March 16, 2004, Dr. Ronald J. Bitza, an osteopath specializing in family medicine, advised that appellant should work light duty or take time off until further notice.

In reports dated March 22, 2004, Dr. Daniel Heller, a Board-certified orthopedic surgeon, noted a history that appellant had experienced left knee pain for more than a year and recently fell when his knee gave way. He diagnosed osteoarthritis of the left knee and advised that a total knee replacement should be considered. He indicated that appellant should be off work for four weeks. An x-ray of the left knee demonstrated osteoarthritis. In an April 8, 2004 report, Dr. Heller noted that appellant had a preexisting and underlying osteoarthritis of the knee that was aggravated by, but was not a result of, the March 15, 2004 employment-related left knee sprain. He advised that the standard period of disability for such a diagnosis is six weeks for acute symptoms, up to a total of four months. On April 12, 2004 Dr. Heller advised that appellant should be off work until July 12, 2004 when he could return to limited duty with no kneeling or climbing ladders. Appellant underwent a total left knee replacement on April 13, 2004. Osteoarthritis of the left knee was the operative diagnosis.

On April 21, 2004 appellant filed a Form CA-7, claim for compensation, for the period April 30 to July 12, 2004. By letter dated April 23, 2004, the Office advised him to submit additional medical evidence so that it could determine whether he was entitled to wage-loss compensation and whether the total left knee replacement surgery would be authorized.

Appellant submitted reports dating from October 10 to November 21, 2002 in which Dr. Neal L. Rockowitz, Board-certified in orthopedic surgery, noted a history of left knee pain and findings on examination of mild effusion. X-rays of the left knee on October 25 and November 11, 2002 demonstrated degenerative changes with severe degenerative joint disease. In a November 11, 2002 report, Dr. Rockowitz diagnosed severe degenerative joint disease of the left knee and recommended total knee replacement.

Dr. Rockowitz also submitted a treatment note dated March 9, 2004 in which he noted a complaint of left knee pain. In a March 16, 2004 note, he reported pain and swelling and, in a note dated April 23, 2004, the physician advised that appellant's knee was "doing OK with intermittent pain until he fell at work."

In an April 28, 2004 statement, James A. Schroeder, Jr., an employing establishment supervisor, advised that on March 16, 2004 appellant brought in Dr. Bitza's report advising that he should be put on light duty. Mr. Schroeder advised that no light duty was available at that time.

By decision dated June 16, 2004, the Office denied authorization for the knee replacement surgery finding that, as Dr. Rockowitz had first recommended surgery in 2002, prior to the March 15, 2004 employment injury and the medical evidence did not establish that the

surgery was causally related to his employment. The Office found that, as the surgery was not employment related, any disability related to it was not compensable.

### **LEGAL PRECEDENT -- ISSUE 1**

Section 8103 of the Federal Employees' Compensation Act<sup>1</sup> 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.<sup>2</sup> In interpreting this section of the Act, the Board has recognized that the Office has broad discretion in approving services provided under section 8103, with the only limitation on the Office's authority being that of reasonableness.<sup>3</sup> 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. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.<sup>4</sup> 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.<sup>5</sup>

Proof of causal relationship must include supporting rationalized medical evidence. In order for a surgical procedure to be authorized, a claimant must submit evidence to show that the surgery is for a condition causally related to an employment injury and that it is medically warranted. Both of these criteria must be met in order for the Office to authorize payment.<sup>6</sup>

### **ANALYSIS -- ISSUE 1**

The Office accepted that on March 15, 2004 appellant sustained a left knee strain. He stopped work that day and on April 13, 2004 underwent left total knee replacement. The Board finds that the record does not establish that the April 13, 2004 surgical procedure was causally related to the March 15, 2004 employment injury. The medical evidence of record includes reports dating back to October 20, 2002 in which Dr. Rockowitz noted a history of left knee pain with x-ray findings of degenerative joint disease. In a report dated November 11, 2002, he first recommended a total left knee replacement. In reports dated March 22, 2004, Dr. Heller, who performed the surgery, noted a history of left knee pain for more than a year, diagnosed osteoarthritis and recommended a total knee replacement. In an April 8, 2004 report, Dr. Heller noted that appellant's underlying left knee osteoarthritis was aggravated by but was not the result of the March 15, 2004 employment injury.

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> 5 U.S.C. § 8103; *see Thomas W. Stevens*, 50 ECAB 288 (1999).

<sup>3</sup> *James R. Bell*, 52 ECAB 414 (2001).

<sup>4</sup> *Claudia L. Yantis*, 48 ECAB 495 (1997).

<sup>5</sup> *Cathy B. Mullin*, 51 ECAB 331 (2000).

<sup>6</sup> *Id.*

The Board finds that the medical evidence establishes that the total left knee replacement procedure was for a preexisting condition, osteoarthritis, a condition that has not been accepted as employment related. The Office did not abuse its discretion in denying authorization for the procedure because it was not causally related to the accepted March 15, 2004 left knee strain.<sup>7</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

Under the Act, the term “disability” means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury. Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages. An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in the Act.<sup>8</sup> Furthermore, whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence.<sup>9</sup>

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.<sup>10</sup> Rationalized medical evidence is medical evidence which includes a physician’s rationalized medical opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>11</sup> Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>12</sup>

### **ANALYSIS -- ISSUE 2**

As stated above, the Office accepted that appellant sustained an employment-related left knee strain when he fell at work on March 15, 2004. In a report dated March 15, 2004, Dr. Abts diagnosed internal derangement of the left knee and advised that appellant could return to work with restrictions. On March 16, 2004 Dr. Bitza advised that appellant should work light duty until further notice and, in a March 22, 2004 report, Dr. Heller advised that appellant should be

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<sup>7</sup> *Id.*

<sup>8</sup> *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

<sup>9</sup> *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>10</sup> *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>11</sup> *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

<sup>12</sup> *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

off work for four weeks. On April 8, 2004 Dr. Heller advised that the March 15, 2004 employment injury aggravated appellant's underlying left knee osteoarthritis and, following appellant's total knee replacement on April 13, 2004, continued to advise that appellant should not work. In an April 28, 2004 statement, an employing establishment supervisor, Mr. Schroeder, advised that no light duty was available at the time of the employment injury.

The Board notes that, as the total left knee replacement procedure was not causally related to appellant's federal employment, any disability from the date of surgery, April 13, 2004 forward, would not be compensable. The Board, however, finds the case not in posture for decision regarding any disability for the period March 15 to April 13, 2004. Appellant was immediately seen by Dr. Abts following the injury. She advised that appellant could only perform sedentary duty, and Mr. Schroeder advised that light duty was not available. In an April 8, 2004 report, Dr. Heller advised that the March 15, 2004 left knee strain aggravated appellant's underlying osteoarthritis and that the standard period of disability for such a diagnosis was from six weeks to four months.

The Board finds that, while these reports lack detailed medical rationale sufficient to discharge appellant's burden of proof to establish the period of disability causally related to the March 15, 2004 left knee strain, this does not mean that they may be completely disregarded by the Office. In the absence of medical evidence to the contrary, the physicians' reports are sufficient to require further development of the record.<sup>13</sup> It is well established that proceedings under the Act are not adversarial in nature, and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.<sup>14</sup> The case will be remanded to the Office to determine if appellant is entitled to disability for any period between March 15 and April 13, 2004. After this and such further development deemed necessary, the Office shall issue an appropriate decision.

### CONCLUSION

The Board finds that the Office properly found that appellant's total left knee replacement procedure was not causally related to his March 15, 2004 injury. The Board also finds this case is not in posture for decision regarding any period of disability between March 15 and April 13, 2004.

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<sup>13</sup> *Jimmy A. Hammons*, 51 ECAB 219 (1999); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>14</sup> *See Jimmy A. Hammons*, *supra* note 13.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated June 16, 2004 be affirmed in part and vacated in part and the case remanded to the Office for further proceedings consistent with this opinion of the Board.

Issued: January 24, 2005  
Washington, DC

Colleen Duffy Kiko  
Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member