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

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| **DEBORAH K. SPICKARD, Appellant** | ) | |
| **and** | ) | **Docket No. 05-596** |
| | ) | **Issued: June 13, 2005** |
| **TENNESSEE VALLEY AUTHORITY, Chattanooga, TN, Employer** | ) | |

*Appearances:*
*Deborah K. Spickard, pro se*
*Office of the Solicitor, for the Director*

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member

### ***JURISDICTION***

On January 12, 2005 appellant filed a timely appeal from an October 27, 2004 Office of Workers' Compensation Programs' decision denying authorization for left knee replacement surgery. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

### ***ISSUE***

The issue is whether the Office abused its discretion by denying appellant authorization for left knee replacement surgery.

### ***FACTUAL HISTORY***

On February 23, 1999 appellant, a 49-year-old assistant unit operator, filed a claim for benefits, alleging that she injured her left knee when she fell to the floor from a defective chair. The Office accepted appellant's claim for left medial meniscus tear, sprain/strain of the left knee, patella and osteoarthrosis of the left lower leg and chondromalacia of the left knee.

On July 23, 1999 Dr. C.R. Dyer, a Board-certified orthopedic surgeon and appellant's treating physician, performed an arthroscopy, with partial medial meniscectomy, chondroplasty on appellant's left knee. Dr. Dyer stated that appellant's x-rays showed minimal degenerative changes, although he advised that with her age this was an additional factor contributing to her condition.

In a report dated April 28, 2003, Dr. Dyer stated that appellant had experienced significant degenerative changes in her left knee following a traumatic episode. He stated in a September 3, 2003 report, that with severe degenerative changes likely in the future she would be a candidate for a total knee replacement. In a May 4, 2004 report, Dr. Dyer stated that appellant had severe debilitating pain of her left knee, with x-rays showing essentially bone on bone apposition in the medial compartment of the left knee. Dr. Dyer stated:

> "Currently, after a very [lengthy] discussion about treatment options she has been through arthroscopy and injections and I have followed her for a total of four years after this fall on her knee. She did not have previous knee problems prior to this fall although there may have been some underlying changes, which were severely aggravated by the injury. Currently, her only option for further treatments will be to consider knee replacement surgery and with [her] ever degenerative arthritis I believe this is a reasonable option for her. I believe the changes and pains in her knee are related to her work injury with underlying changes in the knee which were aggravated by this injury."

Dr. Dyer's office subsequently requested authorization from the Office for left knee replacement surgery on July 19, 2004.

In a report dated July 28, 2004, Dr. David I. Krohn, the Office medical adviser and a Board-certified orthopedic surgeon, reviewed the medical record and denied authorization for knee replacement surgery. Dr. Krohn stated that the initial reports of injury revealed degenerative changes, which were preexisting. He indicated that, while appellant had sustained a temporary aggravation of her knee condition, the primary cause for the knee replacement was the degenerative changes in her knees.

The Office found that there was a conflict in the medical evidence regarding whether appellant's proposed left total knee replacement surgery was medically connected to the 1999 left knee injury and referred the case to Dr. Lloyd A. Walwyn, Board-certified in orthopedic surgery, for an independent medical evaluation to resolve the conflict in medical evidence. In a report dated September 14, 2004, Dr. Walwyn, after thoroughly reviewing the medical evidence of record and the statement of accepted facts and stating findings on examination, he stated:

> "I believe [appellant] has a painful condition of her left knee and that she may, indeed, be in need of total knee surgery to treat it. However, the appearance of the surgical photographs on July 23, 1999 is such that the injury is most likely to have predated her injury of February 23, 1999 in that the degree of disease is unlikely to have appeared to that extent in just the space of five months. Therefore, I believe that she must have had the disease prior to her injury and as

such that her present need for total knee replacement should not be considered to be work related."

By decision dated October 27, 2004, the Office, relying on Dr. Walwyn's referee medical report, denied authorization for left knee replacement surgery.

## ***LEGAL PRECEDENT***

Section 8103 of the Federal Employees' Compensation Act[1] 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.[2] 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 Office has the general objective of ensuring that an employee recovers from his injury to the fullest extent possible in the shortest amount of time. The Office therefore has broad administrative discretion in choosing means to achieve this goal. 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. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.[3]

The Act at section 8123(a) provides that, 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. It is well established that, when a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical back ground, must be given special weight.[4]

## ***ANALYSIS***

In this case, the Office accepted that appellant had sustained the conditions of left medial meniscus tear, sprain/strain of the left knee, patella and osteoarthrosis of the left lower leg and chondromalacia of the left knee. Dr. Dyer, the attending physician, performed arthroscopic surgery on July 23, 1999 and indicated that x-rays revealed degenerative changes in appellant's left knee. He stated in reports dated April 28 and September 3, 2003, that appellant had experienced severe, significant, degenerative changes in her left knee following a traumatic episode and advised that due to the likelihood of such severe degenerative changes in the future she would be a candidate for a total knee replacement. In his May 4, 2004 report, Dr. Dyer stated that appellant had severe debilitating pain of her left knee; while she did not have knee

[1] 5 U.S.C. § 8101 *et seq*.

[2] 5 U.S.C. § 8103.

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

[4] *Gloria E. Godfrey*, 52 ECAB 486 (2001).

problems prior to her February 1999 work injury she may have had some underlying changes in the knee which were severely aggravated by the injury. He concluded that her only option for further treatment, given her degenerative arthritis, was to consider knee replacement surgery. Dr. Dyer opined that the changes and pains in appellant's left knee were related to her work injury, with underlying changes in the knee which were aggravated by the injury. He accordingly requested authorization for total knee replacement.

Appellant's authorization request was reviewed by Dr. Krohn, the Office medical adviser, who recommended that the Office deny the request because: (a) the initial reports of injury revealed degenerative changes which were preexisting; and (b) while appellant had sustained a temporary aggravation of her knee condition, the primary cause for the knee replacement was the degenerative changes in her knees. Dr. Krohn concluded that the proposed left knee replacement was neither warranted nor necessitated as a result of the accepted work injury.

As noted above, the Board found that Dr. Krohn's September 20, 1999 report created a conflict in the medical evidence regarding whether appellant's left knee replacement was medically necessitated because of his employment injury and the Office properly referred the case file to Dr. Walwyn to resolve the conflict in medical evidence. Dr. Walwyn agreed that appellant had a painful left knee condition which might require total knee replacement; he stated, however, that based on the July 23, 1999 surgical photographs appellant's knee degenerative knee condition most likely predated her injury of February 23, 1999. He indicated that given the degree of her degenerative condition as of July 23, 1999, the severity of her left knee condition was unlikely to have progressed to that extent in a period of only five months. Dr. Walwyn therefore concluded that appellant must have had the disease prior to her injury and as such that her current need for total knee replacement should not be considered work related.

As noted above, the only restriction on the Office's authority to authorize medical treatment is one of reasonableness. Dr. Walwyn, the impartial medical examiner, properly found that the medical evidence was not sufficient to establish a causal relationship between appellant's left knee condition and factors of her employment. Therefore, given the fact that the medical evidence of record indicates that appellant's degenerative left knee condition is not work related, the Office did not unreasonably deny appellant's request for surgery to ameliorate this condition. The Office did not abuse its discretion to deny appellant authorization for left knee replacement surgery.

## ***CONCLUSION***

The Board finds that the Office did not abuse its discretion by denying appellant's request for authorization for left knee replacement surgery.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the October 27, 2004 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: June 13, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member