United States Department of Labor
Employees' Compensation Appeals Board

NATHAN B. KNIGHT, Appellant	)	
and	)	**Docket No. 05-103**
	)	**Issued: May 6, 2005**
U.S. POSTAL SERVICE, POST OFFICE, Nashville, TN, Employer	)	

Appearances:
Shiva K. Bozarth, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On October 12, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated July 12, 2004, which denied his request for total left knee replacement surgery. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether the Office properly denied appellant's request for total left knee replacement surgery.

FACTUAL HISTORY

On June 5, 2002 appellant, then a 53-year-old tractor trailer operator, filed a traumatic injury claim alleging that on May 3, 2002 he injured his left knee when attempting to load wire onto a truck. The Office accepted his claim for medical meniscus tear of the left knee and authorized an arthroscopic medial meniscectomy. Appellant did not stop work, but returned to a light-duty position.

Appellant came under the treatment of Dr. Michael S. LaDouceur, a Board-certified orthopedic surgeon, who noted on June 10, 2002 that he sustained a left knee injury while loading his truck. He noted that appellant had a history of left knee problems and in November 2001, he underwent a partial medial meniscectomy. Dr. LaDouceur diagnosed advanced medial compartment osteoarthrosis bilateral knees, left greater than right and left knee with possible medial meniscal tears and loose body. In a report dated June 26, 2002, he noted continuing symptoms and diagnosed osteoarthrosis left knee with chronic anterior cruciate ligament insufficiency and probable meniscal pathology as well as loose bodies. Dr. LaDouceur recommended left knee arthroscopy, debridement and loose body removal and noted that given his advanced osteoarthrosis he did not believe ligament reconstruction was appropriate but that a total knee arthroplasty would likely be needed. In reports dated July 22 and August 19, 2002, he noted that appellant was status post-arthroscopic surgery and was healing properly. Dr. LaDouceur diagnosed a history of a work-related event on May 6, 2002 with aggravation of preexisting chronic anterior cruciate ligament insufficiency and underlying post-traumatic osteoarthrosis. In his report of September 5, 2002, Dr. LaDouceur opined that, although appellant had underlying osteoarthritis, it was the work-related event of May 6, 2002 that resulted in a significant aggravation of his underlying osteoarthrosis. He further opined that appellant was not having a significant problem until his May 6, 2002 injury, which started a cascade of events, which resulted in persistent pain. Dr. LaDouceur further noted that in the absence of the work-related event appellant would likely continue to be asymptomatic regarding his osteoarthritis.

A magnetic resonance imaging (MRI) scan dated May 24, 2002 revealed that appellant was status post medial meniscectomy involving the removal of the posterior body and posterior horn. There was a small low signal density present medial to the medial femoral epiphysis which might be a loose body or partial tear of the anterior cruciate ligament.

In an operative report dated July 18, 2002, Dr. LaDouceur noted performing a diagnostic arthroscopy, partial medial and lateral meniscectomies, chondroplasty of the patella and trochlear groove and major synovectomy of all three compartments. He diagnosed left knee osteoarthrosis, post-traumatic, chronic anterior cruciate ligament disruption, posterior horn medial meniscal tear, posterior horn lateral meniscal tear, diffuse synovitis and chondromalacia patella.

Appellant filed a claim for a schedule award. On March 7, 2003 the Office medical adviser determined that he sustained a 16 percent impairment of the left lower extremity. In a decision dated March 26, 2003, the Office granted him a 16 percent impairment of the left lower extremity. The period of the award was from January 16 to December 4, 2003.

Appellant underwent a functional capacity evaluation on January 21, 2003, which revealed that he was capable of performing medium level.

Appellant continued to submit reports from Dr. LaDouceur, who noted on November 13 and 21, 2002 that he underwent a series of injections to control his left knee pain; however, he continued to experience persistent medial joint line pain. He recommended a total knee arthroplasty to reduce the knee pain. In his report of January 6, 2003, Dr. LaDouceur noted appellant's complaints of chronic pain and diagnosed osteoarthrosis of the left knee status post-

arthroscopic intervention. Dr. LaDouceur advised that appellant had reached maximal medical improvement and opined that his condition would not improve to any great degree until he has undergone a total knee arthroplasty.

In a letter dated April 21, 2003, the Office requested that Dr. LaDouceur address whether the proposed total left knee replacement was causally related to the accepted injury of May 3, 2002.

In a letter dated April 23, 2003, Dr. LaDouceur responded to the Office's April 21, 2003 letter and advised that appellant had underlying osteoarthritis of both knees prior to his work-related injury. However, he opined that the May 3, 2002 work-related event caused an aggravation of his underlying osteoarthritis to the point where the left knee was extremely symptomatic despite successful meniscal surgery. Dr. LaDouceur advised that he exhausted all other treatment options and his only remaining option would be the total knee arthroplasty. He indicated that, although it was clear that appellant's employment did not cause his osteoarthritis, Dr. LaDoucer opined that appellant had the work-related event of May 3, 2002 not occurred, it was very likely that his left knee would have remained at the same level of minimal symptoms as his right knee and he would not require a total left arthroplasty. He stated with reasonable medical certainty that appellant's work-related event of May 2002 was the aggravating factor which made his left knee symptomatic.

On April 29, 2003 appellant underwent a fitness-for-duty examination performed by Dr. Daniel J. McHugh, Board-certified in physical medicine and rehabilitation, who diagnosed degenerative osteoarthritis of both knees, anterior cruciate ligament deficient left knee, status post strain and possible partial subluxation of the left knee and status post arthroscopic left knee meniscectomy. He opined that appellant's current complaints of knee pain were primarily due to his underlying degenerative arthritis. Dr. McHugh noted that his work injury of May 3, 2002 likely contributed to his anterior cruciate ligament deficient knee and the intra-articular loose body leading to the medial meniscus tear treated by his arthroscopy. He opined that appellant had fully recovered from his arthroscopic medial meniscectomy and that his injury had resolved. Dr. McHugh further opined that his left knee replacement was not a direct result of the described work injury but rather, due to the underlying chronic degenerative joint disease.

In a memorandum dated May 16, 2003, an Office medical adviser indicated that the surgery request should be denied as the MRI scan could not confirm a definite tear. He advised that a twisting injury like appellant sustained on May 3, 2002 would not be the cause of a total knee replacement in a degenerative knee.

On May 30, 2003 the Office referred appellant for a second opinion to Dr. John W. Lamb, a Board-certified orthopedic surgeon. The Office provided him with his medical records, a statement of accepted facts, as well as a detailed description of his employment duties.

In a medical report dated June 13, 2003, Dr. Lamb indicated that he reviewed the records provided to him and performed a physical examination of appellant. He indicated the history of his knee injury. Dr. Lamb diagnosed osteoarthritis of both knees, left worse than right, status post repeated arthroscopy and absent anterior cruciate ligament of the left knee. He opined that appellant's knee replacement was related to the osteoarthritis and that there was not a significant

change in the course of the disease process as a result of the work injury. Dr. Lamb advised that appellant would have required knee replacements with or without the specific work injury. He noted that the MRI scan performed prior to the most recent arthroscopy was clearly indicative of severe degenerative joint disease, which likely would have required treatment within a reasonable period of time.

In a decision dated August 4, 2003, the Office denied appellant's claim on the grounds that the proposed surgery was neither warranted nor causally related to his accepted work-related injury of May 3, 2002.

On September 17, 2003 appellant requested an oral hearing before an Office hearing representative. The hearing was held on May 4, 2004. Appellant submitted additional medical reports from Dr. W. Scott Dube, a Board-certified orthopedist, dated January 9, 2004, which noted that he was status post left knee replacement in September 2003.[1] He noted that appellant's work of carrying mail and working on a tractor trailer would contribute to his arthritis and a meniscal injury could have accelerated his need for a knee replacement. Dr. Due's report of March 16, 2004, advised that appellant sustained a work-related injury on May 3, 2002 for which he underwent a knee arthroscopy. He opined that he did support Dr. LaDouceur's position that appellant's work-related injury led up to his need for a total knee replacement in 2003.

In a decision dated July 12, 2004, the hearing representative affirmed the decision of the Office dated August 4, 2003.

LEGAL PRECEDENT

Section 8103(a) of the Federal Employees' Compensation Act 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] 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]

Proof of causal relationship in a case such as this must include supporting rationalized medical evidence. Thus, in order for a total knee replacement surgery to be authorized, appellant

[1] The record does not contain the operative report for this surgical procedure.

[2] 5 U.S.C. § 8103(a).

[3] *Francis H. Smith,* 46 ECAB 392 (1995); *Daniel J. Perea,* 42 ECAB 214 (1990).

must submit evidence to show that this procedure is for a condition causally related to the employment injury and that it was medically warranted. Both of these criteria must be met in order for the Office to authorize payment.[4]

ANALYSIS

In this case, the Office accepted that appellant sustained a medial meniscus tear of the left knee and authorized arthroscopic medial meniscectomy. He returned to work full-time light duty in May 2002. In a decision dated July 12, 2004, the hearing representative affirmed the Office decision, which determined that the proposed total left knee replacement was neither warranted nor causally related to appellant's accepted work-related injury of May 3, 2002. The Board finds, however, that there is a conflict in medical opinion between Dr. Lamb, the Office referral physician, and Dr. LaDouceur, appellant's treating physician, both of whom are Board-certified specialists in their respective fields.

In his report dated June 13, 2003, Dr. Lamb, a second opinion referral physician, diagnosed osteoarthritis of both knees, left worse than right, status post repeated arthroscopy and absent anterior cruciate ligament of the left knee. He opined that appellant's knee replacement was related to the osteoarthritis and that the MRI scan performed prior to the most recent arthroscopy was clearly indicative of severe degenerative joint disease, which likely would have required treatment within a reasonable period of time regardless of his work-related injury. By contrast, in a report dated September 5, 2002, Dr. LaDouceur, appellant's treating physician, noted that, although he had underlying osteoarthritis, it was the work-related event of May 3, 2002 that resulted in a significant aggravation of his underlying osteoarthrosis and the need for the total left knee replacement. In his report dated April 23, 2003, Dr. LaDouceur indicated that, although it was clear that his work employment did not cause his osteoarthritis, he opined that had the work-related event of May 3, 2002 not occurred, it was very likely that appellant's left knee would have remained asymptomatic and the total left knee replacement would not have been necessary. He stated with reasonable medical certainty that appellant's work-related event of May 3, 2002, was the aggravating factor which made his left knee symptomatic and surgical intervention necessary. Dr. LaDouceur has consistently supported that the proposed total left knee replacement was causally related to the May 3, 2002 work-related injury, while Dr. Lamb found that appellant's knee replacement was related to underlying osteoarthritis and the natural progression of severe degenerative joint disease and not to the work-related injury of May 3, 2002. The Board, therefore, finds that a conflict in medical opinion has been created.

Section 8123 of the Act[5] provides that, if there is a disagreement between the physician making the examination for the United States and the employee's physician, the Office shall appoint a third physician who shall make an examination.[6] As there is a disagreement between appellant's treating physician and the second opinion physician, the Office should have referred

[4] *Cathy B. Mullin*, 51 ECAB 331 (2000).

[5] 5 U.S.C. §§ 8101-8193.

[6] 5 U.S.C. § 8123(a); *Shirley L. Steib*, 46 ECAB 39 (1994).

appellant to an impartial medical examiner to resolve the existing conflict.[7] As the Office did not refer the case to an impartial medical examiner, there remained an unresolved conflict in the medical evidence.

Accordingly, the case is remanded to the Office for referral of appellant, the case record and a statement of accepted facts to a Board-certified orthopedic surgeon selected in accordance with the Office's procedures, to resolve the outstanding conflict in the medical evidence with regard to the proposed surgery. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

CONCLUSION

The Board finds that the case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 12, 2004 denying surgery is vacated and this case is remanded for further consideration consistent with this opinion.

Issued: May 6, 2005
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

[7] *Id.*