United States Department of Labor
Employees' Compensation Appeals Board

STEVEN D. WOODFORD, Appellant	)	
and	)	**Docket No. 05-1747**
	)	**Issued: November 25, 2005**
U.S. POSTAL SERVICE, POST OFFICE, Des Moines, IA, Employer	)	

Appearances:
Steven D. Woodford, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
WILLIE T.C. THOMAS, Alternate Judge

JURISDICTION

On August 19, 2005 appellant filed an appeal from merit decisions of the Office of Workers' Compensation Programs' dated February 9 and April 29, 2005 denying surgical authorization and a nonmerit decision dated June 17, 2005 denying his request for reconsideration under 5 U.S.C. § 8128. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUES

The issues are: (1) whether the Office properly denied appellant's request for authorization of a left knee replacement on the grounds that he had not established that it was causally related to his accepted employment injury; and (2) whether the Office properly denied appellant's request for reconsideration of the merits of his case under section 8128(a).

FACTUAL HISTORY

On May 25, 2001 appellant, then a 53-year-old mail handler, filed an occupational disease claim for "locking up" of the left knee, which he attributed to factors of his federal

employment. He did not stop work. In a statement submitted in support of his claim, appellant noted that he underwent two surgeries for an employment-related right knee injury 13 years ago.[1] He indicated that he experienced "sharp pain" in his left knee on May 3, 2001. The Office accepted appellant's claim for an aggravation of osteoarthritis of the left knee.

By letter dated April 22, 2004, the Office informed appellant that he should submit a detailed rationalized report regarding the need for a total replacement of the left knee.

In a report dated April 28, 2004, Dr. Rodney E. Johnson, a Board-certified orthopedic surgeon, recommended a total knee replacement on the left side. He stated:

> "[Appellant] is a gentleman with progressive osteoarthritis of the left knee. He has been treated for this since 1988 after an injury at the [employing establishment] when he was loading a[n] [employing establishment] vehicle and twisted his knee. Arthroscopy was performed October 21, 1988. Postoperatively he did well but over the years he has had worsening pain in the left knee. X-rays demonstrate end stage osteoarthritis."

In an unsigned report dated June 9, 2004, Dr. Johnson noted that appellant was doing well after his right knee arthroplasty but that his left knee was "really the limiting factor in his being able to work." He indicated that he was awaiting surgical authorization for a left knee replacement.

An Office medical adviser reviewed the medical evidence relevant to appellant's request for authorization for a total knee replacement on the left side and recommended a second opinion evaluation. The Office referred appellant to Dr. Keith W. Riggins, a Board-certified orthopedic surgeon, for a rationalized opinion regarding his need for a total left knee replacement and its relationship to his employment.

In a report dated August 9, 2004, Dr. Riggins reviewed the medical evidence of record and listed findings on examination. He diagnosed degenerative arthritis "unrelated to occupational activities" and opined that a left knee replacement was an appropriate treatment. Dr. Riggins stated:

> "It is my opinion that the symptom complex in the left knee would be at the same level of severity irrespective of 'exposure to factors of federal employment.' The condition is considered degenerative in nature. [Appellant's] obesity has a significant influence on the progression of the condition and occupational activities are not considered to have changed the course of the condition of the left knee."

By decision dated February 9, 2005, the Office denied authorization for a total left knee replacement on the grounds that he had not established that it was due to factors of his federal employment or his previously accepted employment injury.

[1] Appellant had an accepted claim for a right knee condition, assigned file number 110090832. He underwent a right total knee replacement on March 16, 2004.

On April 4, 2005 appellant requested reconsideration. He submitted a report dated February 23, 2004 from Dr. Johnson, who related:

> "… I can state within a reasonable degree of medical certainty that, in my medical opinion, both the right and the left knee symptoms and subsequent interventions are related to the work you performed at the [employing establishment]. While there are other contributing factors, based on the information I have been provided, I would opine that the work you performed at the [employing establishment] is a significant contributing factor as it relates to the condition of both of your knees."

In a report dated March 23, 2005, Dr. Susan Kennedy, an osteopath, related that her office had treated appellant "for the past several years" and opined that his knee pain was "directly related to the type of work that he is doing at his place of employment." In an addendum dated April 1, 2005, Dr. Kennedy noted that she was referring to appellant's left knee.

By decision dated April 29, 2005, the Office denied modification of its February 9, 2005 decision.

On June 6, 2005 appellant indicated on a form that he desired reconsideration. He submitted no additional medical evidence and raised no legal argument.

In a decision dated June 17, 2005, the Office denied merit review of appellant's claim under section 8128.

LEGAL PRECEDENT -- ISSUE 1

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 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 section 8103, with the only limitation on the Office's authority begin that of reasonableness.[4] 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.[5] In order to be entitled to reimbursement for

[2] 5 U.S.C. § 8101-8193.

[3] 5 U.S.C. § 8103; *see Thomas W. Stevens*, 50 ECAB 288 (1999).

[4] *James R. Bell*, 52 ECAB 414 (2001).

[5] *Claudia L. Yantis*, 48 ECAB 495 (1997).

medical expenses, a claimant must establish that the expenditures were incurred for treatment of the effects of an employment-related injury.[6]

Proof of causal relationship in a case such as this must include supporting rationalized medical evidence. Thus, in order for a surgery to be authorized, appellant must submit evidence to show that the requested procedure is for a condition causally related to the employment injury and that it is medically warranted. Both of these criteria must be met in order for the Office to authorize payment.[7]

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained an employment-related aggravation of osteoarthritis of the left knee. In a report dated April 28, 2004, Dr. Johnson noted the history of injury as appellant experiencing "progressive osteoarthritis of the left knee" subsequent to a 1988 work injury and arthroscopy. He recommended a total left knee replacement. Dr. Johnson, however, relied upon an inaccurate history of injury, that of appellant sustaining an employment injury and surgery to his left knee in 1988. It is well established that medical reports must be based on a complete and accurate factual and medical background and medical opinions based on an incomplete or inaccurate history are of little probative value.[8]

On June 9, 2004 Dr. Johnson requested authorization to perform a total knee replacement on the left side. He noted that appellant was doing well after a right total knee replacement but that his left knee was limiting his ability to work. Dr. Johnson, however, did not address the cause of appellant's knee condition and thus his opinion is of diminished probative value.[9]

In a report dated February 23, 2004, Dr. Johnson opined that appellant's work at the employing establishment was "a significant contributing factor" to both his right and left knee conditions. Dr. Johnson, however, provided no rationale for his opinion and did not discuss how appellant's employment-related left knee condition progressed such that he required a total knee replacement. His opinion, consequently, is insufficient to meet appellant's burden of proof.[10]

Dr. Kennedy, in a report dated March 23 and addendum dated April 1, 2005, found that appellant's left knee pain was due to his employment. Dr. Kennedy, however, provided no medical reasoning in support of her conclusory opinion on causal relationship. The Board has held that a medical opinion not fortified by medical rationale is of diminished probative value.[11]

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

[7] *Id*.

[8] *Douglas M. McQuaid*, 52 ECAB 382 (2001).

[9] *Willie E. Miller*, 53 ECAB 697 (2002).

[10] *Jimmie H. Duckett*, 52 ECAB 332 (2001) (medical reports not containing rationale on causal relation are entitled to little probative value).

[11] *Michael E. Smith*, 50 ECAB 313 (1999).

Moreover, the record contains evidence that supports that the proposed left knee replacement is not employment related. In a report dated August 9, 2004, Dr. Riggins, who performed a second opinion evaluation, found that a total knee replacement on the left side was "an appropriate treatment" for appellant. He opined, however, that "the symptom complex in the left knee would be at the same level of severity" regardless of employment factors. Dr. Riggins concluded that appellant's "obesity has a significant influence on the progression of the condition and occupational activities are not considered to have changed the course of the condition of the left knee."

The Board finds that appellant has not established through rationalized medical evidence that he required a total left knee replacement caused by his accepted employment injury of an aggravation of osteoarthritis of the left knee. The Office thus properly denied authorization for his left knee replacement.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Act,[12] the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) submit relevant and pertinent new evidence not previously considered by the Office.[13] To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.[14] When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.[15]

ANALYSIS -- ISSUE 2

The Office denied appellant's request for surgery because the medical evidence did not establish that he required a total left knee replacement due to his accepted employment injury. The relevant issue in this case is, therefore, medical in nature and can only be resolved through the submission of relevant medical evidence.[16] Appellant, however, did not submit any medical evidence with his request for reconsideration. He further did not raise any legal argument with his request for reconsideration.

As appellant did not submit relevant evidence not previously considered with his request for reconsideration, raise a substantive legal question or show that the Office erroneously applied

[12] 5 U.S.C. §§ 8101-8193. Section 8128(a) of the Act provides that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application."

[13] 20 C.F.R. § 10.606(b)(2).

[14] 20 C.F.R. § 10.607(a).

[15] 20 C.F.R. § 10.608(b).

[16] *Ronald M. Cokes*, 46 ECAB 967 (1995).

or interpreted a specific point of law, the Office properly refused to reopen his claim for further review of the merits.[17]

CONCLUSION

The Board finds that the Office properly denied appellant's request for authorization for a left knee replacement on the grounds that he did not establish that it was due to his accepted employment injury. The Board further finds that the Office properly denied appellant's request for reconsideration of the merits of his claim pursuant to section 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 17, April 29 and February 9, 2005 are affirmed.

Issued: November 25, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

[17] Subsequent to the Office's June 17, 2005 decision, appellant submitted a medical report from Dr. Johnson dated June 1, 2005. The Board's jurisdiction is limited to a review of the evidence that was before the Office at the time of its final decision. *See* 20 C.F.R. § 501.2(c). Appellant may submit this evidence to the Office with a request for reconsideration under 5 U.S.C. § 8128(a).