



In a report dated August 4, 2004, Dr. Scott D. Gillogly, a Board-certified orthopedic surgeon, rendered a primary diagnosis of a tear in the left lateral meniscus and a secondary diagnosis of degenerative arthritis. He related that appellant had undergone three arthroscopies since 1987 and had no functional meniscus at the time of his report. Dr. Gillogly concluded that appellant's chronic degenerative arthritis was secondary to loss of lateral meniscus and recommended meniscal transplant surgery and distal femoral osteotomy.

The Office consulted with its medical adviser in order to ascertain whether the proposed surgery was both medically necessary and causally related to appellant's February 12, 2004 employment injury. In reports dated October 10, November 15 and 17, 2004, the medical adviser opined that the proposed procedures were not indicated in the treatment of appellant's employment-related injury, in that the valgus deformity and degenerative arthritis were preexisting conditions and not work related.

By decision dated November 17, 2004, the Office denied authorization for the requested osteotomy and lateral meniscal transplant on the grounds that the procedures were not related to appellant's accepted February 12, 2004 work-related injury.

On March 18, 2005 appellant requested reconsideration of the Office's November 17, 2004 decision.

The Office determined that a conflict in medical opinion existed between appellant's physician and the medical adviser. In order to resolve the conflict in medical opinion, the Office referred appellant, together with a statement of accepted facts and the medical record, to Dr. Douglas Hein, a Board-certified orthopedic surgeon, for an impartial medical examination. In a report dated April 22, 2005, Dr. Hein provided a history of appellant's condition, findings on examination and the results of x-rays, electromyograms and other diagnostic tests. The report reflected that appellant had undergone multiple arthroscopies with lateral meniscal procedures; an April 8, 2004 surgical procedure; and a femoral osteotomy and meniscal transplant in December 2004. He stated that appellant had returned to a minimally symptomatic state. Dr. Hein opined that appellant had significant preexisting degenerative changes in his left knee with a prior partial meniscectomy and lateral meniscal deficit that antedated the accepted injury. He further concluded that the requested surgeries would not be a result of the February 12, 2004 injury but rather for the preexisting pathology.

By decision dated May 6, 2005, the Office denied modification of its November 17, 2004 decision, finding that the weight of the medical evidence, contained in the opinion of Dr. Hein, established that authorization for the requested surgeries should be denied.

### **LEGAL PRECEDENT**

Section 8103(a) of the Federal Employees' Compensation Act provides for the furnishing of "services, appliances and supplies prescribed or recommended by a qualified physician" which the Office, under authority delegated by the Secretary, "considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of monthly

compensation.”<sup>1</sup> In interpreting section 8103(a), the Board has recognized that the Office has broad discretion in approving services provided under the Act to ensure that an employee recovers from his or her injury to the fullest extent possible in the shortest amount of time.<sup>2</sup> The Office has administrative discretion in choosing the means to achieve this goal and the only limitation on the Office’s authority is that of reasonableness.<sup>3</sup>

While the Office is obligated to pay for treatment of employment-related conditions, appellant has the burden of establishing that the expenditure is incurred for treatment of the effects of an employment-related injury or condition.<sup>4</sup> Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.<sup>5</sup> Therefore, in order to prove that the surgical procedure is warranted appellant must submit evidence to show that the procedure was for a condition causally related to the employment injury and that the surgery was medically warranted. Both of these criteria must be met in order for the Office to authorize payment.<sup>6</sup>

The Act provides that, if there is a 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.<sup>7</sup> The implementing regulation states that, if a conflict exists between the medical opinion of the employee’s physician and the medical opinion of either a second opinion physician or an Office medical adviser or consultant, the Office shall appoint a third physician to make an examination. This is called a referee examination and the Office will select a physician who is qualified in the appropriate specialty and who has had no prior connection with the case.<sup>8</sup>

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 proper factual and medical background, must be given special weight.<sup>9</sup>

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<sup>1</sup> 5 U.S.C. § 8103(a).

<sup>2</sup> *Dale E. Jones*, 48 ECAB 648, 649 (1997).

<sup>3</sup> *Daniel J. Perea*, 42 ECAB 214, 221 (1990) (holding that abuse of discretion by the Office is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or administrative actions which are contrary to both logic and probable deductions from established facts).

<sup>4</sup> See *Dona M. Mahurin*, 54 ECAB \_\_\_\_ (Docket No. 01-1032, issued January 6, 2003); see also *Debra S. King*, 44 ECAB 203, 209 (1992).

<sup>5</sup> See *Debra S. King*, *supra* note 4; *Bertha L. Arnold*, 38 ECAB 282 (1986).

<sup>6</sup> See *Dona M. Mahurin*, *supra* note 4; see also *Cathy B. Millin*, 51 ECAB 331, 333 (2000).

<sup>7</sup> 5 U.S.C. §§ 8101-8193, 8123.

<sup>8</sup> 20 C.F.R. § 10.321.

<sup>9</sup> *Elaine Sneed*, 56 ECAB \_\_\_\_ (Docket No. 04-2039, issued March 7, 2005).

## ANALYSIS

The Board finds that the report of the impartial medical specialist, which is well rationalized and based on a thorough review of the record and a comprehensive examination of appellant, represents the weight of the medical evidence and establishes that the surgeries requested by appellant were prescribed to treat his preexisting degenerative arthritis, rather than his accepted lateral meniscus tear. The Board further finds that the opinion of Dr. Gillogly is insufficient to overcome the special weight accorded to Dr. Hein's opinion.

In order to prove that the requested surgical procedures were warranted, appellant had the burden of establishing both that the procedure was for a condition causally related to the employment injury and that the surgery was medically warranted.<sup>10</sup> Although appellant's physician, Dr. Gillogly, found that appellant's condition left him with no functional meniscus and that a distal femoral osteotomy and meniscal transplant surgeries were required, he failed to establish that the February 12, 2004 employment injury was the cause of his condition. In fact, in his August 4, 2004 report, Dr. Gillogly referred to appellant's three previous arthroscopies since 1987 and provided a secondary diagnosis of degenerative arthritis. Although the primary diagnosis of a lateral meniscus tear in the left knee was accepted as being related to the employment injury, degenerative arthritis, by definition, implies a gradual deterioration of the knee. Dr. Gillogly did not explain how such a gradual deterioration could be caused by the accepted employment injury.

Finding a conflict between the opinions of Dr. Gillogly and the Office's medical adviser, who opined that appellant's valgus deformity and degenerative conditions were not work related, the Office properly referred appellant to Dr. Hein for an impartial medical examination in order to resolve the conflict. His opinion is well rationalized and supports the conclusion that appellant's condition preexisted and was unrelated to the February 12, 2004 employment injury. Dr. Hein provided a history of appellant's condition, findings on examination and the results of x-rays, EMGs and other diagnostic tests. The report reflected that appellant had undergone multiple arthroscopies with lateral meniscal procedures; an April 8, 2004 surgical procedure; and a femoral osteotomy and meniscal transplant in December 2004. Dr. Hein stated that appellant had returned to a minimally symptomatic state. Based on his examination of appellant and review of the entire record, he opined that appellant had significant preexisting degenerative changes in his left knee with prior partial meniscectomy and lateral meniscal deficit that antedated the accepted injury. He further concluded that the requested surgeries "would not be a result of this [February 12, 2004] injury" but rather for the preexisting pathology. As Dr. Hein provided a detailed and well-rationalized report based on a proper factual background, his opinion is entitled to the special weight accorded an impartial medical examiner.<sup>11</sup> The remaining evidence of record is insufficient to outweigh that special weight.

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<sup>10</sup> See *Dona M. Mahurin*, *supra* note 4; see also *Cathy B. Millin*, *supra* note 6.

<sup>11</sup> See *Roger Dingess*, *supra* note 5.

The only limitation on the Office's authority in approving services under the Act is that of reasonableness.<sup>12</sup> In the instant case, the Office authorized arthroscopic knee surgery to treat appellant's accepted lateral meniscal tear. After appellant's physician recommended meniscal transplant surgery and distal femoral osteotomy, the Office consulted with its medical adviser to ascertain whether or not the proposed surgeries were medically necessary and causally related to the accepted employment injury. Finding a conflict in opinion, the Office sought an independent opinion from Dr. Hein. Based upon his well-reasoned report, the Office concluded that authorization for the requested surgeries should be denied. The Board finds that the Office's refusal to authorize the meniscal transplant surgery and distal femoral osteotomy was reasonable and did not constitute an abuse of discretion.

The Board finds that appellant has not met his burden of showing that the proposed meniscal transplant surgery and distal femoral osteotomy were for a condition causally related to the accepted employment injury.

### **CONCLUSION**

The Board finds that the Office properly exercised its discretion in refusing to authorize appellant's request for surgery.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the May 6, 2005 and November 17, 2004 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 21, 2005  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>12</sup> *Daniel J. Perea, supra* note 3.