United States Department of Labor
Employees' Compensation Appeals Board

BRIAN ROMAN, Appellant	)	
and	)	**Docket No. 05-1956**
	)	**Issued: February 1, 2006**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Philadelphia, PA, Employer	)	

Appearances:
Thomas Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On September 22, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated May 5, 2005, which denied modification of the Office hearing representative's decision dated October 18, 2004, which affirmed denial of appellant's request for left knee surgery. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this issue.

ISSUE

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

FACTUAL HISTORY

On January 29, 1996 appellant, then a 34-year-old housekeeping aide, filed a traumatic injury claim alleging that, on that date, he slipped while going up steps to the first floor and landed on his left knee while in the performance of duty. Appellant stopped work on January 29, 1996 and returned on February 8, 1996.

Appellant submitted a January 29, 1996 x-ray of the left knee, read by Dr. Yen Wang, a Board-certified radiologist, which revealed no fracture, with questionable joint effusion or

hemorrhage. A February 18, 1996 magnetic resonance imaging (MRI) scan, read by Dr. Lawrence M. Neustadter, a Board-certified diagnostic radiologist, revealed an anterior cruciate ligament (ACL) tear and a large bone bruise. He noted that the posterior cruciate ligament and menisci appeared intact.

On February 29, 1996 the Office accepted the claim for left knee contusion.

In a March 22, 1996 report, Dr. Barry L. Marks, an osteopath Board-certified in family practice, diagnosed an ACL tear and internal derangement of the left knee. He advised that appellant would require surgery. In a March 26, 1996 report, Dr. Michael Sidor, a Board-certified orthopedic surgeon, diagnosed a partial ACL tear on the left. He opined that appellant was not a surgical candidate for reconstruction as the ACL tear maintained stability. He instead recommended aggressive physical therapy.

In an April 1, 1996 report, Dr. Mark I. Ellen, Board-certified in physical medicine and rehabilitation, diagnosed a partial tear of the left ACL, secondary patellar tendinitis, left and reactive synovitis, left knee.

Appellant returned to full duty on September 27, 1996.

By letter dated October 22, 1997, the Office referred appellant to Dr. B. David Grant, a Board-certified orthopedic surgeon, to determine the extent of any permanent impairment. In a November 25, 1997 report, Dr. Grant diagnosed a partial tear of the ACL left knee and patellofemoral pain syndrome left knee. He advised that appellant had not reached maximum medical improvement and recommended physical therapy.

The Office expanded the claim to include a partial tear of the ACL.

On September 11, 2000 appellant filed a notice of recurrence of disability commencing on August 21, 2000. Appellant described pain and clicking in his left knee when the weather changed. He also alleged sinus migraine headaches and a torn ligament in the left wrist.[1]

In an October 20, 2000 report, Dr. Ellen diagnosed a probable anterior horn medial meniscal tear of the left knee; patellofemoral pain syndrome (PFPS) of the left knee; and reactive synovitis, left knee.

By letter dated November 22, 2000, the Office advised appellant that additional factual and medical evidence was needed to support his claim.

In a November 29, 2000 report, Dr. Ellen diagnosed probable medial meniscal tear of the anterior horn of the left knee.

Appellant returned to full duty on December 4, 2000.

[1] Appellant referred to Claim No. A03-247882. However, that claim is not before the Board.

By decision dated January 11, 2001, the Office denied appellant's claim for a recurrence of disability on August 21, 2000, causally related to his January 29, 1996 employment injury.

By letter dated January 18, 2001, appellant's representative requested a hearing, which was held on June 13, 2001.

In a May 3, 2001 report, Dr. Marks noted that appellant's chief complaint was left knee pain and diagnosed ACL tear and internal derangement of the left knee. He advised that "it is within a reasonable degree of medical certainty that the injuries sustained were a direct result of the work[-]related accident, which occurred on [January 29, 1996] and his present left knee condition is directly related to the fall which occurred while working on that date." He also noted that there was no history of additional trauma or injury to the left knee since that time and that further care was warranted.

By decision dated August 16, 2001, the Office hearing representative affirmed the January 11, 2001 decision. The Office hearing representative found that appellant had not established that his disability in August 2000 was causally related to the January 29, 1996 employment injury.

In a February 10, 2002 MRI scan, Dr. Irene Darocha, a Board-certified diagnostic radiologist, opined that appellant had a "[p]eripheral tear undersurface posterior horn medial meniscus. This is associated with a tiny Baker's cyst."

In reports dated February 6 to March 19, 2002, Dr. Peter C. Vitanzo, Board-certified in family medicine, determined that appellant had left lateral knee pain and opined that it was likely secondary to an underlying meniscal tear. He continued to see appellant in follow-up visits.

In a June 12, 2002 report, Dr. Robert W. Frederick, a Board-certified orthopedic surgeon, diagnosed a degenerative medial meniscus tear. He noted that there was a question as to whether appellant's injury was work related. In a September 11, 2002 report, Dr. Frederick noted appellant's history of injury and treatment. He conducted a physical examination and noted that there was no effusion with a range of motion of 0 to 145 degrees, with mild pain on full flexion. The left knee was stable on ligamentous examination and a small Baker's cyst was noted postoperatively. Dr. Frederick also noted mild posteromedial joint line discomfort with a positive McMurray's, a degenerative medial meniscus tear and popliteal cyst. He indicated that appellant required surgery, which included a partial meniscectomy with interarticular debridement. He opined that appellant's intermittent symptoms began five years prior, while working as a housekeeping aide when he twisted his knee. Dr. Frederick noted that appellant's symptoms were initially intermittent but gradually progressed to the point that he was now limited from a functional standpoint and opined that the left knee medial meniscus tear was work related. In an October 2, 2002 clinic note, Dr. Frederick repeated his diagnosis of left knee degenerative medial meniscus tear and opined that "[u]nfortunately, we have to await approval by the Department of Labor prior to proceeding with surgery."

By letter dated January 23, 2003, the Office informed appellant's representative that the Office hearing representative had denied his request for treatment or surgery by decision dated August 16, 2001. It was noted that the meniscal tear was not adequately shown to be related to

the January 29, 1996 incident and that the evidence did not support that appellant's condition in August 2000 and subsequent to that time was causally related. By letter dated February 6, 2003, appellant's representative advised that there was no decision relative to appellant's request for surgery and that a decision was warranted.

By letter dated March 6, 2003, appellant's representative requested that the Office address appellant's request for left knee surgery. He enclosed a copy of Dr. Frederick's September 11, 2002 report.

By decision dated October 22, 2003, the Office denied appellant's request for authorization for left knee arthroscopic surgery. The Office found that there was a gap in treatment from January 30, 1998 until August 3, 2000 and that the evidence was insufficient to support a "'progression' of the work injury to the point of developing a medial meniscus tear from an ACL tear." The Office determined that the evidence was insufficient to show that surgery was needed for any effects of the employment related ACL tear sustained in 1996.

By letter dated October 24, 2003, appellant's representative requested a hearing, which was held on July 1, 2004 and submitted additional evidence.

In a December 4, 2002 report, Dr. Frederick diagnosed left knee "degenerative medial meniscus tear, Baker's cyst and degenerative arthritis, mild." He noted that appellant required operative intervention for diagnostic arthroscopy and either a partial or medial meniscectomy or repair. He noted that appellant's previous MRI scan of February 2002 revealed what "appeared to be a peripheral medial meniscus tear that might have been repairable." Dr. Frederick explained that, due to the time that had passed, the tear might not be repairable and could require a partial meniscectomy.

In a July 9, 2003 report, Dr. Frederick repeated his previous diagnoses and opined that "it was not absolute that he had to have surgery at this time." He also noted that it was uncomfortable for appellant going up and down the stairs and noted that authorization for a left knee arthroscopy had been denied.

By decision dated October 18, 2004, the Office hearing representative, affirmed the October 22, 2003 decision, denying appellant's request for surgery. The Office hearing representative determined that the medical evidence lacked rationale or reasoning to support that the left knee condition for which he was requesting surgery was related to the 1996 employment injury.

By letter dated April 6, 2005, appellant's representative requested reconsideration and submitted additional evidence. Appellant also submitted several handwritten medical notes from Dr. Frederick, dated October 2, 2002 to July 9, 2003, addressing physical findings and symptoms.

By decision dated May 5, 2005, the Office denied modification of the October 18, 2004 decision. The Office determined that the medical evidence was insufficient to establish that the torn left medial meniscus resulted from the January 29, 1996 employment injury.

LEGAL PRECEDENT

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 the 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 being 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 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 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 the requested surgery is medically warranted. Both of these criteria must be met in order for the Office to authorize payment.[7]

ANALYSIS

The Office accepted the claim for left knee contusion and partial tear of the ACL ligament. Appellant subsequently requested authorization for left knee surgery due to a torn left medial meniscus.

In support of his request for left knee surgery, appellant submitted reports from Dr. Ellen dated October 20 and November 29, 2000, who diagnosed a probable medial meniscus tear of the anterior horn and PFPS in the left knee. However, the reports did not address causal relationship. Dr. Ellen did not provide any explanation to support that the left knee meniscus tear was related to the accepted employment injury. He did not explain how the medial meniscus was torn, especially in light of his previous diagnoses in April 1996, which did not include a tear of the meniscus. The Board also notes that the February 18, 1996 MRI scan showed that the medial menisci appeared intact. Medical evidence which does not offer any opinion regarding

[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).

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

[7] *See id.*

the cause of an employee's condition is of limited probative value on the issue of causal relationship.[8]

Appellant also submitted reports dated February 6 to March 19, 2002 from Dr. Vitanzo, who opined that appellant had left lateral knee pain likely secondary to an underlying meniscal tear. However, he did not discuss the cause of appellant's diagnosed meniscal tear. The Board finds that Dr. Vitanzo's report is of diminished probative value.[9]

Dr. Frederick diagnosed a degenerative medial meniscus tear, Baker's cyst and mild degenerative arthritis and discussed the need for a partial meniscectomy with probable interior debridement. He noted that appellant's symptoms began five years prior when he twisted his knee and progressed to the point that his left knee medial meniscus tear was work related. However, he did not address the prior medical evidence of record, particularly the February 18, 1996 MRI scan which indicated that the medial menisci appeared intact. Dr. Frederick did not address the other contemporaneous reports, which did not find any problem with the medial meniscus. While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty, neither can such opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment. Such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.[10] Dr. Frederick did not provide a rationalized opinion explaining how the diagnosed torn medial meniscus and the need for surgery were related to the 1996 employment injury. The handwritten notes from Dr. Frederick and reports of diagnostic testing do not address the employment injury of January 29, 1996 as a cause of the condition for which treatment was rendered.

The Board finds that appellant has not established through rationalized medical evidence that the torn left medial meniscus and required left knee surgery was caused by his accepted left knee injury. The Office thus properly denied authorization for his left knee surgery.

CONCLUSION

The Board finds that the Office properly denied appellant's authorization for left knee surgery.

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

[9] *Id*.

[10] *Samuel Senkow*, 50 ECAB 370 (1999); *Thomas A. Faber*, 50 ECAB 566 (1999).

ORDER

IT IS HEREBY ORDERED THAT the May 5, 2005 and October 18, 2004 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 1, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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