

United States Department of Labor
Employees' Compensation Appeals Board

B.S., Appellant)

and)

DEPARTMENT OF LABOR, OFFICE OF)
WORKERS' COMPENSATION PROGRAMS,)
Jacksonville, FL, Employer)

Docket No. 07-762
Issued: August 10, 2007

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 25, 2007 appellant filed a timely appeal from merit decisions of the Office of Workers' Compensation Programs dated June 1 and November 1, 2006 denying her claim for consequential injury and her request for surgery. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether the Office properly refused to authorize appellant's request for surgery; and (2) whether appellant has established that she sustained an emotional condition as a consequence of her accepted employment injury.

FACTUAL HISTORY

On October 13, 2005 appellant, a 62-year-old claims examiner, sustained injuries to her knees while walking down a flight of stairs during a fire drill. The Office accepted her claim for infrapatellar bursitis of the left knee and aggravation of osteoarthritis of the lower right leg.¹

On February 27, 2006 appellant requested that her claim be expanded to include depression resulting from her right knee pain. On March 9, 2006 appellant, through her physician, Dr. Richard David Heekin, a Board-certified orthopedic surgeon, requested authorization for total right knee arthroscopy and revision of the knee joint.

In a report dated November 4, 2005, Dr. Heekin indicated that appellant's degenerative joint disease in the right knee was aggravated by the October 13, 2005 injury. He stated that, at some point in time, should the right knee pain become activity limiting, he would consider total knee replacement. On December 5, 2005 Dr. Heekin's associate, Dr. Rahul Deshmukh, a Board-certified orthopedic surgeon, noted continued stiffness and pain in the right knee. X-rays of the right knee showed marked joint-space narrowing along the medial compartment. On February 9, 2006 Dr. Heekin indicated that appellant experienced persistent pain in her right knee since aggravating her preexisting degenerative joint disease at work during a fire drill. He also stated that she had endured an episode of depression due to her inability to walk. Physical examination revealed range of motion in the left knee of 0 to 128 degrees. Range of motion in the right knee was 0 to 30 degrees. Dr. Heekin found tenderness in the left knee at the lower pole of the patella. Hamstrings angle was 30 degrees. Dr. Heekin found no varus-valgus laxity. Examination showed the right limb to be neurovascular intact. He found positive patellofemoral crepitation with range of motion and positive patellofemoral grind in the right knee. X-rays of the right knee demonstrated "medial compartment near bone-on-bone degenerative changes with patella a small osteophyte seen on sunrise view." Dr. Heekin provided impressions of "left total knee replacement with postoperative infrapatellar branch saphenous neuritis and patellar tendinitis" and "right knee degenerative joint disease aggravated by recent stair climbing." He recommended that appellant consider unicompartmental versus total right knee replacement "when symptoms warrant and the depressive episode is medically controlled." On March 9, 2006 Dr. Heekin's office submitted a request form seeking authorization for unicompartmental right knee replacement and arthroscopy. By letter dated April 7, 2006, the Office informed appellant that the information submitted in support of her request for authorization of right knee surgery was insufficient. The Office asked appellant to provide x-rays and other medical records documenting her right knee condition and a report from a physician containing a rationalized opinion explaining how her need for surgery was causally related to her accepted condition.

Appellant submitted reports dated January 31, February 14 and 28, 2006 from Dr. Michael Paul Pruitt, a Board-certified psychiatrist. On January 31, 2006 Dr. Pruitt stated that she "appears to have major depression, single episode, severe without psychosis and panic disorder with agoraphobia." Indicating that appellant had been in psychotherapy "off and on" for many years, he related her belief that her current depression was triggered by her chronic

¹ Appellant's CA-1, filed on October 18, 2005, reflected that she had a preexisting condition of osteoarthritis of both knees and had undergone a total left knee replacement in 2003.

knee problems and work-related stress, resulting from discontinuing benefits on people with severe psychiatric and medical problems. In an accompanying disability slip, Dr. Pruitt stated that appellant would need to be out of work until further notice. On February 14, 2006 he reported that appellant was still dealing with stress related to her knee condition and was processing her feelings about her work. Dr. Pruitt stated that appellant and her therapist had agreed that she could not perform the duties of her job. On February 28, 2006 Dr. Pruitt noted that appellant had been more depressed and hopeless about her situation and her future. She felt overwhelmed thinking about a return to work and was considering retirement.

Dr. Christopher Holland, Board-certified in the fields of emergency and preventive medicine, reviewed appellant's medical records for purposes of determining her eligibility under the Family Medical Leave Act (FMLA). In a report dated February 28, 2006, Dr. Holland related Dr. Pruitt's conclusion that appellant's panic attacks and depression were due to the stressful job functions encountered in her recent job change, including having to interview and make decisions about terminating benefits. Appellant submitted copies of memoranda from Joseph Poole of the employing establishment to all claims examiners, citing software problems that allegedly created problems at work and caused anxiety.

On April 12, 2006 the Office referred the medical record and a statement of accepted facts to the district medical adviser for an opinion as to whether the requested surgery was appropriate and as to whether appellant had sustained an emotional condition as a consequence of her accepted employment injury. On April 12, 2006 a district medical adviser recommended that the Office deny appellant's request for surgery, noting that she had only minimal abnormalities in her right knee on examination. He also opined that appellant's claimed emotional condition was not a consequence of her accepted condition but rather, predated the accepted injury. The district medical adviser noted that appellant had been in therapy for approximately six years and had a history of sexual abuse by her father.

On April 12, 2006 the employing establishment informed the Office that appellant had not worked since January 2006 and that her claim for a work-related psychological condition was denied by the Office on February 22, 2006 under File No. 112032152. In its February 22, 2006 decision, the Office found that appellant had failed to establish a compensable factor of employment.

By letter dated April 19, 2006, Jennifer Valdivieso of the employing establishment challenged appellant's claim, noting that her emotional condition claim was formally denied on February 22, 2006. The employing establishment provided a copy of its February 9, 2006 letter controverting appellant's emotional condition claim on the grounds that her condition was long-standing. On April 25, 2006 the Office asked appellant to provide within 30 days all medical reports related to her psychological condition for the past six years.

By decision dated June 1, 2006, the Office denied appellant's claim for consequential injury finding that the medical evidence failed to demonstrate that the claimed emotional condition was causally related to her accepted October 13, 2005 employment injury. The Office also denied appellant's request for authorization for right knee surgery finding that the medical evidence was insufficient to establish that the need for the surgery requested was a result of the accepted work incident.

By letter dated May 31, 2006, appellant reiterated that her emotional condition was due to factors of employment and was unrelated to her father's sexual abuse. She indicated that she had asked Dr. Heekin to forward medical reports to the Office. On June 29, 2006 the Office asked appellant to provide additional medical evidence supporting her claim that her underlying knee condition changed permanently as a result of the October 13, 2005 injury.

In a July 6, 2006 report, Dr. Heekin stated that he performed a total left knee replacement in 2003. On November 4, 2005 he treated appellant for an October 13, 2005 work-related injury to her right knee. Dr. Heekin opined that appellant aggravated her degenerative joint disease in the right knee when she was required to walk down a flight of stairs on that date. Placing all of appellant's weight on her right knee, while favoring the left knee, likely caused aggravation of her right knee arthritis. Dr. Heekin further opined that surgery was necessary to correct the painful arthritic condition.

On July 14, 2006 appellant requested reconsideration of the Office's June 1, 2006 decision. By decision dated November 1, 2006, the Office denied modification of its previous decision.

LEGAL PRECEDENT -- ISSUE 1

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.² 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.³ 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.⁴

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.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. Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.⁶ Therefore, in order to prove that the

² 5 U.S.C. § 8103(a).

³ *Dale E. Jones*, 48 ECAB 648, 649 (1997).

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

⁵ *Debra S. King*, 44 ECAB 203, 209 (1992).

⁶ *Id.*; *Bertha L. Arnold*, 38 ECAB 282 (1986).

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.⁷ Both of these criteria must be met in order for the Office to authorize payment.⁸

ANALYSIS -- ISSUE 1

The Board finds that the Office did not abuse its discretion in declining to authorize surgery.

The Office accepted appellant's claim for infrapatellar bursitis of the left knee and aggravation of osteoarthritis of the lower right leg. On March 9, 2006 appellant's physician, Dr. Heekin, requested authorization for total right knee arthroscopy and revision of the knee joint. Medical evidence submitted in support of appellant's request included reports from her physicians, Drs. Heekin and Deshmukh. None of the reports submitted was sufficient to prove that the requested surgical procedure was for a condition causally related to the employment injury and that the surgery was medically warranted.

On November 4, 2004 Dr. Heekin indicated that appellant's degenerative joint disease in the right knee was aggravated by the October 13, 2005 injury and stated that, at some point in time, should the right knee pain become activity limiting, he would consider total knee replacement. On December 5, 2005 Dr. Deshmukh noted that x-rays of the right knee showed marked joint space narrowing along the medial compartment. On February 9, 2006 Dr. Heekin indicated that appellant had experienced persistent pain in her right knee since aggravating her preexisting degenerative joint disease at work during a fire drill. Examination of the right knee revealed range of motion of 0 to 130 degrees and positive patellofemoral crepitation with range of motion and positive patellofemoral grind. X-rays demonstrated "medial compartment near bone-on-bone degenerative changes with patella a small osteophyte seen on sunrise view." Dr. Heekin recommended that appellant consider unicompartmental versus total right knee replacement "when symptoms warrant and the depressive episode is medically controlled." Although the above-referenced reports addressed the aggravation of appellant's right knee condition and discussed the possible need for corrective surgery, they were equivocal in nature and did not explain how the need for surgery was causally related to the accepted employment injury. Therefore, they are of diminished probative value. On July 6, 2006 Dr. Heekin opined that appellant aggravated her degenerative joint disease in the right knee when she was required to walk down a flight of stairs on October 13, 2005; that placing all of her weight on her right knee, while favoring the left knee, likely caused aggravation of her right knee arthritis; and that surgery was necessary to correct the painful arthritic condition. The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence, *i.e.*, medical evidence presenting a physician's well-reasoned opinion on how the established factor of employment caused or contributed to claimant's diagnosed condition. To be of probative value, the opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the

⁷ *Joseph P. Hofmann*, 57 ECAB ____ (Docket No. 05-1772, issued March 9, 2006).

⁸ *Dona M. Mahurin*, 54 ECAB 309 (2003); *Cathy B. Millin*, 51 ECAB 331, 333 (2000).

specific employment factors identified by the claimant.⁹ Dr. Heekin's opinion was not expressed to a reasonable degree of medical certainty and failed to provide adequate medical rationale explaining how the requested knee surgery was due to the accepted injury as opposed to a natural progression of her underlying degenerative condition. It was, therefore, of limited probative value and was insufficient to prove that the surgical procedure was warranted. As appellant has neither established that the requested surgery is for an employment condition, nor that it is medically warranted, the Board finds that the Office did not abuse its discretion in declining to authorize surgery.

LEGAL PRECEDENT -- ISSUE 2

It is an accepted principle of workers' compensation law that when the primary injury is shown to have arisen out of, and in the course of, employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause which is attributable to the employee's own intentional conduct. Once the work-connected character of any injury has been established, the subsequent progression of that condition remains compensable so long as the worsening is not shown to have been produced by an independent nonindustrial cause and so long as it is clear that the real operative factor is the progression of the compensable injury, associated with an exertion that in itself would not be unreasonable under the circumstances.¹⁰

ANALYSIS -- ISSUE 2

The Board finds that appellant submitted insufficient medical evidence to establish a consequential relationship between her depression and the accepted conditions of infrapatellar bursitis of the left knee and aggravation of osteoarthritis of the lower right leg.

The evidence relevant to appellant's depression consists primarily of reports from her psychiatrist, Dr. Pruitt. On January 31, 2006 Dr. Pruitt stated that appellant "appears to have major depression, single episode, severe without psychosis and panic disorder with agoraphobia." Indicating that she had been in psychotherapy "off and on" for many years, he related appellant's belief that her current depression was "triggered by her chronic knee problems and work-related stress, resulting from discontinuing benefits on people with severe psychiatric and medical problems." Dr. Pruitt did not provide a definitive diagnosis or an opinion as to the cause of appellant's depression. The Board has long held that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹¹ Dr. Pruitt merely related appellant's perception as to the cause of her depression. An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish a causal

⁹ *Leslie C. Moore*, 52 ECAB 132, 134 (2000); *see also Ern Reynolds*, 45 ECAB 690, 695 (1994).

¹⁰ *See Robert J. Wescoe*, 54 ECAB 162 (2002).

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

relationship.¹² On February 14, 2006 Dr. Pruitt reported that appellant was still dealing with stress related to her knee condition and was processing her feelings about her work. He stated that appellant and her therapist had agreed that she could not perform the duties of her job. On February 28, 2006 Dr. Pruitt noted that appellant had been more depressed and hopeless about her situation and her future. She felt overwhelmed thinking about a return to work and was considering retirement. Dr. Pruitt did not provide any medical rationale explaining how appellant's accepted knee condition caused or contributed to her depression. He did not describe the onset of appellant's condition or address her preexisting psychological condition, for which she had received treatment for many years. Accordingly, Dr. Pruitt's report is of limited probative value.

On February 28, 2006 Dr. Holland reviewed appellant's medical records for purposes of determining her eligibility under the FMLA. He related Dr. Pruitt's conclusion that appellant's panic attacks and depression were due to the stressful job functions encountered in her recent job change, including having to interview and make decisions about terminating benefits. However, the record does not contain a report from Dr. Pruitt containing the opinion allegedly provided to Dr. Holland. As Dr. Holland did not examine appellant, provide a factual or medical background or provide his own rationalized opinion as to the cause of appellant's depression, his report is of diminished probative value.

The Board finds that the evidence of record is insufficient to discharge appellant's burden of establishing that her depression was a consequence of her accepted conditions.

CONCLUSION

The Board finds that the Office did not abuse its discretion in denying appellant's request for surgery. The Board further finds that appellant did not meet her burden of proof in establishing that her depression was a consequence of her accepted conditions of infrapatellar bursitis of the left knee and aggravation of osteoarthritis of the right lower leg.

¹² *Phillip L. Barnes*, 55 ECAB 426 (2004); *see also Dennis M. Mascarenas*, 49 ECAB 215 (1997)

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated November 1 and June 1, 2006 are affirmed.

Issued: August 10, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board