

**United States Department of Labor
Employees' Compensation Appeals Board**

A.W., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Sparta, NJ, Employer**

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**Docket No. 08-2060
Issued: April 22, 2009**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 21, 2008 appellant filed a timely appeal from the July 1, 2008 merit decision of the Office of Workers' Compensation Programs' hearing representative affirming a January 14, 2008 decision denying his claim for a recurrence of disability. Appellant also timely appealed from an April 10, 2008 merit decision affirming the denial of left knee surgery. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the claim.

ISSUES

The issues are: (1) whether appellant established that he sustained a recurrence on September 24, 2007 causally related to his April 26, 2006 employment injury; and (2) whether the Office abused its discretion by denying authorization for a total left knee arthroplasty.

FACTUAL HISTORY

On May 24, 2006 appellant, then a 48-year-old customer service agent, filed a traumatic injury claim alleging that on April 26, 2006 he twisted his left knee while pulling a postcon at

work.¹ He stopped work on May 8, 2006. On July 14, 2006 the Office accepted the claim for a tear of the left knee medial meniscus.

In a medical report dated October 19, 2006, Dr. Matthew T. Sugalski stated that appellant injured his left knee at work. Diagnostic tests revealed medial and lateral osteophytes, osteophytes of the patella and tibia and a complex tear of the posterior horn of the medial meniscus. Dr. Sugalski requested authorization for a partial medial meniscectomy to alleviate appellant's pain due to a complex tear of the posterior horn of the medial meniscus, as well as osteoarthritic changes. He noted that ultimately appellant would need a total knee replacement. The Office authorized a partial medial meniscectomy, performed on April 10, 2007. Appellant returned to light duty on September 1, 2007.²

On September 26, 2007 appellant filed a claim for a recurrence of disability (Form CA-2a) alleging that on September 24, 2007 he became off balance due to his work injury and was pushed back to the floor by a large swinging door. He stopped work on September 24, 2007 and sought emergency medical treatment. Hospital records dated September 24, 2007 stated that appellant fell after a door hit him at work, reinjuring his left knee. The employing establishment controverted the claim.³

In an October 1, 2007 medical report, Dr. Carl B. Weiss, Jr., a Board-certified orthopedic surgeon, stated that appellant presented with significant pain and discomfort in his left knee. Physical examination revealed medial joint line tenderness. X-rays showed a complete collapse of the medial compartment of the left knee, right medial joint line narrowing and moderate degenerative joint disease. Dr. Weiss diagnosed left knee pain and left knee degenerative joint disease. He opined that appellant was a candidate for total knee surgery and noted that his condition was work related and ongoing since April 26, 2006, but more recently appellant fell on September 24, 2007.

In a medical record dated October 8, 2007, Dr. Weiss stated that appellant presented for a recheck of his left knee and that he scheduled total left knee arthroplasty surgery for November 20, 2007. He diagnosed left knee pain and degenerative joint disease. On October 19, 2007 Dr. Weiss requested authorization for total knee arthroplasty.

By letter dated November 1, 2007, the Office notified appellant of the deficiencies in his claim. On November 2, 2007 it provided guidance on the evidence necessary to support his recurrence claim.

On November 19, 2007 the Office referred the medical record and a statement of accepted facts to an Office medical adviser, Dr. Arnold Berman. It requested an opinion as to

¹ In 2005 appellant was treated for an unrelated left knee injury.

² The record reveals that on May 7, 2008 appellant accepted a light-duty position and he returned to modified duty on May 8, 2008.

³ On October 23, 2007 appellant submitted a claim for wage-loss compensation (Form CA-7) for the period September 25 through October 23, 2007.

whether the total left knee arthroplasty was medically reasonable and related to appellant's work injury.⁴

In a November 19, 2007 medical report, Dr. Berman opined that the total left knee arthroplasty was medically reasonable; however, it was related to appellant's degenerative osteoarthritis and not the accepted medial meniscus tear. He noted that appellant had long-standing, preexisting osteoarthritic changes in his left knee prior to treatment for the work injury. Dr. Berman stated that a complete collapse of the medial compartment meant the disease was present for many years. He advised that there was no evidence that the work injury either aggravated or caused the preexisting osteoarthritis.

By decision dated December 7, 2007, the Office denied authorization for a total left knee arthroplasty, finding that the procedure was not work related but due to appellant's preexisting degenerative osteoarthritic condition.

On January 2, 2008 appellant requested a review of the written record by an Office hearing representative of the December 7, 2007 decision.

By decision dated January 14, 2008, the Office denied appellant's claim for a recurrence on the grounds that the medical evidence did not establish that his disability as of September 24, 2007 was related to the April 26, 2006 injury.

On January 22, 2008 appellant requested a telephonic hearing before a hearing representative of the January 14, 2008 decision.

By decision dated April 10, 2008, the Branch of Hearings and Review affirmed the December 7, 2007 denial of authorization for the total left knee arthroplasty. It found that the medical evidence did not support that the procedure was related to the accepted meniscus tear and that Dr. Berman opined that the knee replacement surgery was not based upon employment-related etiology.

On May 9, 2008 appellant's counsel testified before a hearing representative that appellant was told by the Office to file a recurrence claim although he should have been advised to file a traumatic injury claim. The hearing representative recommended appellant file a new injury claim.

By decision dated July 1, 2008, a hearing representative affirmed the denial of appellant's recurrence claim on the grounds that he identified a new traumatic injury. He noted that appellant recently filed a new traumatic injury claim.

LEGAL PRECEDENT -- ISSUE 1

A recurrence of disability means "an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that

⁴ Appellant underwent the total left knee arthroplasty on November 20, 2007.

caused the illness.”⁵ A person who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable, and probative evidence that the disability for which he claims compensation is causally related to the accepted injury. This burden of proof requires that an employee furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.⁶ Where no such rationale is present, medical evidence is of diminished probative value.⁷

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained a torn medial meniscus of the left knee on April 26, 2006. The issue is whether appellant established that he sustained a recurrence of disability on September 24, 2007 causally related to his accepted injury. The Board finds appellant has not met his burden of proof in establishing his claim.

Appellant alleged that on September 24, 2007 he lost his balance and was pushed to the floor by a large swinging door while at work, causing him to reinjure his left knee. The Board finds that appellant’s claim does not constitute a recurrence as defined in the Office’s regulations, as he did not sustain a spontaneous recurrence of his medial meniscus tear. Rather, appellant identified new work factors, including being hit by a large swinging door, as the cause of the September 24, 2007 injury.

Moreover, the medical evidence is insufficient to support appellant’s claim for a recurrence of disability. Appellant submitted hospital records from the date of the September 24, 2007 injury, stating that he fell at work. These records do not address appellant’s previous medial meniscus tear and do not provide any opinion regarding causal relationship. The medical records from Dr. Weiss also fail to provide an opinion on whether appellant’s left knee pain and degenerative joint disease was related to his accepted April 26, 2006 injury. Dr. Weiss merely noted that the current left knee condition was work related, had been ongoing since April 26, 2006 and that appellant fell on September 24, 2007. He did not specifically address the relationship between the accepted medial meniscus tear and appellant’s current injury after falling. The Board finds that the medical evidence is insufficient to establish a recurrence of disability causally related to the accepted injury.

LEGAL PRECEDENT -- ISSUE 2

Section 8103(a) of the 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, and reduce the degree or the

⁵ R.S., 58 ECAB ____ (Docket No. 06-1346, issued February 16, 2007); 20 C.F.R. § 10.5(x).

⁶ I.J., 59 ECAB ____ (Docket No. 07-2362, issued March 11, 2008); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

⁷ See *Ronald C. Hand*, 49 ECAB 113 (1957); *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

period of disability or aid in lessening the amount of monthly compensation.⁸ 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.⁹ 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.¹⁰

While the Office is obligated to pay for treatment of employment-related conditions, a claimant has the burden of establishing that the expenditure is incurred for treatment of the effects of an employment-related injury or condition.¹¹ Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.¹² Therefore, in order to prove that the surgical procedure is warranted, the claimant 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.¹³

ANALYSIS -- ISSUE 2

The Board finds that the Office did not abuse its discretion in denying appellant's request for a total left knee arthroplasty.

The Office accepted that appellant sustained a torn medial meniscus of the left knee. In medical reports dated October 1 and 8, 2007, Dr. Weiss diagnosed left knee pain and left knee degenerative joint disease and opined that the condition was work related. Diagnostic tests revealed a complete collapse of the medial component of the left knee. On October 19, 2007 Dr. Weiss requested authorization of total left knee arthroplasty. However, he did not provide a rationalized opinion explaining how the accepted medial meniscus tear caused or contributed to the collapse of the medial compartment or why residuals from the accepted injury required a total knee arthroplasty. Appellant failed to submit sufficient medical evidence explaining the relationship between the accepted medial meniscus tear and the need for the total knee arthroplasty.

Dr. Berman, an Office medical adviser, determined that the surgery was medically reasonably, but unrelated to appellant's accepted employment injury in 2006. Dr. Berman citing to the medical records, found that the total knee arthroplasty was related to treatment for

⁸ 5 U.S.C. § 8103(a).

⁹ *Dale E. Jones*, 48 ECAB 648, 649 (1997).

¹⁰ *Daniel J. Perea*, 42 ECAB 214 (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 establishment facts).

¹¹ See *Debra A. King*, 44 ECAB 203, 209 (1992).

¹² *Id.* See also *Bertha L. Arnold*, 38 ECAB 282 (1986).

¹³ See *Cathy B. Millin*, 51 ECAB 331 (2000).

appellant's preexisting degenerative osteoarthritic condition, which was not caused or aggravated by the employment injury.

The Board finds that Dr. Boris provided a thorough and well-rationalized opinion that the requested surgical procedure was unrelated to the accepted medial meniscus tear. The Office did not abuse its discretion in denying authorization of the total knee arthroplasty.

CONCLUSION

The Board finds that appellant did not establish that he sustained a recurrence on September 24, 2007 causally related to his accepted work injury of April 26, 2006. The Board also finds that the Office did not abuse its discretion by denying authorization for a total left knee arthroplasty.

ORDER

IT IS HEREBY ORDERED THAT the July 1 and April 10, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 22, 2009
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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