

knees. The record indicates that appellant filed CA-7 claims for periods of compensation: December 10 through 26, 2006; July 9 to 10 and July 25 to 30, 2007.¹

On July 9, 2007 Dr. Perry, appellant's treating physician, stated that appellant had osteoarthritis of both knees. He advised that he had discussed with appellant the possibility of undergoing a total knee arthroplasty procedure. Dr. Perry opined that appellant's arthritis was sufficiently advanced so that ameliorative injections, which he had previously administered, would not improve his condition. He asserted that appellant would eventually require a total knee arthroplasty.

On July 26, 2007 Dr. Perry requested authorization for total knee replacement surgery.

In a July 30, 2007 report, an Office medical adviser reviewed the request for surgery and recommended that the Office deny authorization for the requested knee replacement surgery. He noted that appellant's bilateral knee osteoarthritis had not been evaluated for several years and that no examination findings for either knee had been reported; asserting that severe obesity was a more likely explanation for his bilateral knee condition. The Office medical adviser concluded that there was no medical basis for the Office to accept that his reported work activity had caused, aggravated, accelerated or precipitated any condition in his right or left knees.

The Office found that there was a conflict in the medical evidence between the opinions of Dr. Perry, appellant's treating physician, and the Office medical adviser regarding whether the proposed right knee replacement surgery was necessitated by an accepted condition. In order to resolve the conflict, the Office referred appellant to Dr. Richard C. Lehman, a Board-certified orthopedic surgeon, for a referee medical examination. In a September 20, 2007 report, Dr. Lehman stated:

“[Appellant's] diagnosis is endstage psoriatic arthritis of his knees. The only surgical procedure that would help resolve the progression of arthritis for this gentleman would be bilateral total knee replacements. I do not feel the patient's activities have caused, aggravated, accelerated or precipitated his bilateral knee condition. I do believe he needs a total knee replacement and is a candidate for such. Unfortunately, I believe the need for total knee replacements is directly related to the patient's psoriatic arthritis and not the patient's work activities or the trigger, as I reviewed the job description.”

By decision dated October 15, 2007, the Office terminated appellant's compensation. It found that appellant had no continuing disability or residuals stemming from his accepted 2006 work injury, and that Dr. Lehman's impartial opinion represented the weight of the medical evidence. The Office also denied authorization for right knee replacement surgery, finding that Dr. Lehman's referee opinion represented the weight of the medical evidence. It determined that the recommended surgical intervention was not related to a work-related condition.

¹ The Office offered appellant a sedentary, light-duty job based on restrictions dated July 2007 from Dr. Clayton Perry, a Board-certified orthopedic surgeon. A leave analysis sheet dated August 2, 2007 indicates that appellant returned to work for eight hours on July 8, 9 and 12, 2007. However, a leave analysis sheet dated August 7, 2007 indicates that appellant has not worked since that time.

On November 13, 2007 appellant requested an oral hearing, which was held on March 12, 2008. He stated that he already underwent the procedure for right knee replacement;² he advised that he planned on having left knee replacement surgery as soon as his right knee had sufficiently healed.

In an April 2, 2008 report, Dr. Perry advised that driving heavy equipment over rough terrain increased the progression of appellant's preexisting right knee osteoarthritis. He stated that appellant would have required total right knee replacement surgery regardless of whether he drove heavy equipment, but indicated that such driving aggravated his arthritis and made it progress much more quickly than if he had not been driving the machines.

By decision dated May 29, 2008, an Office hearing representative affirmed the October 15, 2007 decision.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.³ The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation. To terminate authorization for medical treatment, the Office must establish that a claimant no longer has residuals of an employment-related condition which require further medical treatment.⁴

ANALYSIS -- ISSUE 1

The Board finds that the Office did not meet its burden to terminate appellant's compensation. The Office accepted a claim for temporary aggravation of bilateral knee osteoarthritis. As noted above, to terminate both medical and wage-loss benefits, it retained the burden of proving that the residuals had ceased in order to justify termination of all compensation. On October 15, 2007 the Office issued a decision terminating appellant's compensation for total disability and medical treatment based upon the report of the impartial medical specialist, Dr. Lehman. The Board notes initially that at the time appellant was referred to Dr. Lehman the conflict of medical opinion existed only regarding the question of whether appellant required bilateral knee replacement surgery. There was no rationalized medical opinion of record explaining when the accepted condition had ceased. Dr. Lehman therefore did not serve as an impartial medical specialist regarding the question of whether appellant's accepted condition had ceased. While Dr. Lehman stated that appellant's diagnosis was endstage psoriatic arthritis of his knees, which he opined was not caused by appellant's "activities," he did not actually address the issue of whether appellant's accepted condition had ceased. The Board therefore finds that the Office erred by terminating appellant's compensation in its October 15,

² The hearing transcript indicates that appellant incorrectly stated he had the right knee replacement surgery on "March 19, [20]08" -- one week after the hearing was held. Dr. Perry subsequently submitted a March 19, 2008 report in which he stated that he had performed the surgery three weeks previously.

³ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

⁴ *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

2007 decision. It remains the Office's burden of proof to terminate compensation, and the Board finds that the Office terminated wage-loss compensation benefits without meeting its burden in this case. The Board will reverse the Office's determination terminating appellant's compensation.

LEGAL PRECEDENT -- ISSUE 2

Section 8103 of the Federal Employees' Compensation Act⁵ 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.⁶ In interpreting this section of the Act, the Board has recognized that the Office has broad discretion in approving services provided under the Act. The Office has the general objective of ensuring that an employee recovers from his injury to the fullest extent possible in the shortest amount of time. It therefore has broad administrative discretion in choosing means to achieve this goal. The only limitation on the Office's authority is that of reasonableness. 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.⁷

Section 8123(a) of the Act provides that, if there is 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.⁸

ANALYSIS -- ISSUE 2

The Board finds that the case is not in posture for decision with regard to the issue of whether appellant's right knee replacement surgery was necessitated by his accepted right knee osteoarthritis condition. In the present case, there was disagreement between the Office medical advisor and Dr. Perry regarding whether appellant's osteoarthritis of the right knee required right knee replacement surgery to ameliorate this condition. The Office therefore referred appellant to Dr. Lehman, the impartial medical examiner, who found that appellant's right knee osteoarthritis condition did necessitate surgery but was not related to employment factors. Dr. Lehman's opinion, however, is not well rationalized and was not based on an accurate factual foundation. The Office had accepted that appellant sustained a condition of temporary aggravation of osteoarthritis, both knees. It instructed Dr. Lehman to determine whether appellant's proposed right knee replacement surgery was necessitated by the accepted right knee osteoarthritis condition. Contrary to this instruction, and contrary to the statement of accepted facts, Dr. Lehman found that appellant's osteoarthritis condition was not caused by factors of his

⁵ 5 U.S.C. § 8101 *et seq.*

⁶ *Id.* at § 8103.

⁷ *Dale E. Jones*, 48 ECAB 648 (1997); *Daniel J. Perea*, 42 ECAB 214 (1990).

⁸ 5 U.S.C. § 8123(a).

employment. Having accepted right knee osteoarthritis as a work-related condition, the Office erred in relying on a report from a physician whose opinion regarding the necessity of right knee replacement surgery disregarded this finding.⁹

Because the Office relied on Dr. Lehman's opinion to find that the proposed right knee replacement surgery was not necessitated by an accepted condition, the Board finds that it abused its discretion. The Board will set aside the October 15, 2007 Office decision and remand for further development regarding the issue of whether the Office properly denied authorization for appellant's right knee replacement surgery.

Accordingly, the Office's October 15, 2008 surgery determination is set aside and the case remanded to the Office for referral to a new medical specialist, to resolve the outstanding conflict in the medical evidence regarding whether the Office properly denied authorization for appellant's right knee replacement surgery. After such development of the case record as it deems necessary, the Office shall issue a *de novo* decision.

CONCLUSION

The Board finds that the Office did not meet its burden of proof to terminate appellant's compensation benefits in its October 15, 2007 decision. The Board finds that the case is not in posture for a decision regarding whether the Office properly denied appellant authorization for right knee replacement surgery.

⁹ The Board notes that the Office medical adviser, in his July 30, 2007 report, also indicated, erroneously, that the condition of bilateral knee osteoarthritis condition accepted by the Office was not caused by factors of appellant's employment.

ORDER

IT IS HEREBY ORDERED THAT the May 29, 2008 decision of the Office of Workers' Compensation Programs is reversed in part and set aside and remanded in part, in accordance with this decision.

Issued: September 15, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board