United States Department of Labor
Employees' Compensation Appeals Board

M.C., Appellant	)	
and	)	**Docket No. 09-2233**
	)	**Issued: July 13, 2010**
DEPARTMENT OF THE ARMY, CORPUS CHRISTI DEPOT, Corpus Christi, TX, Employer	)	

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 September 8, 2009 appellant filed an appeal of an August 6, 2009 merit decision of the Office of Workers' Compensation Programs denying authorization for left knee surgery. Pursuant to 20 C.F.R. §§ 501.2 and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether the Office abused its discretion by denying authorization for appellant's second arthroscopic left knee surgery.

FACTUAL HISTORY

On May 3, 2006 appellant, then a 48-year-old aircraft electrician, injured his neck, back and both knees when he tripped over a pylon stand. The Office accepted bilateral knee sprain and bilateral knee meniscus tears. Appellant stopped work on June 8, 2007.

Appellant was initially treated by Dr. Michael Pendleton, an internist, who diagnosed left knee internal derangement.[1] Dr. Pendleton subsequently referred appellant to Dr. Charles Breckenridge, a Board-certified orthopedic surgeon. In a January 11, 2007 report, Dr. Breckenridge diagnosed status post left knee contusion with traumatic chondromalacia patella, intermittent effusions, mechanical symptomatology, abnormality of meniscus, possible tear. He prescribed a course of conservative care and physical therapy. On May 16, 2007 Dr. Breckenridge requested that an arthroscopic examination of appellant's left knee be authorized with meniscal debridement chondroplasty as indicated and possible lateral release. He explained that appellant's left knee had not responded to conservative care and his symptomatology was consistent with a meniscus tear and post-traumatic changes of the patellar region. The Office authorized left knee surgery, which appellant underwent on June 8, 2007. Dr. Breckenridge diagnosed left knee posterior horn medial meniscus tear; chondromalacia of patellofemoral articulation with chondral flap tears; significant lateral tracking of the patella with lateral retinacular scarring. In June 12 and 21, 2007 reports, Dr. Breckenridge indicated that appellant was status post left knee arthroscopy with partial medial meniscectomy, status post chondroplasty with significant post-traumatic chondromalacia and arthroscopic lateral release. He advised that the Doppler ultrasound of the left leg was negative. In a June 26, 2007 report, Dr. Breckenridge recommended physical therapy and released appellant for office-type work starting July 2, 2007. On August 7, 2007 he stated that appellant's left knee was gradually improving but he continued having problems with his right knee. Appellant underwent authorized right knee surgery on September 28, 2007.

Following appellant's knee surgeries, the Office accepted the conditions of bilateral meniscus tears and bilateral chondromalacia patella. Appellant returned to full-time work in a modified position on November 26, 2007.

In a December 4, 2007 report, Dr. Breckenridge advised that appellant had bilateral knee pain but was gradually improving. He recommended continued modified work activity and physical therapy. On January 22, 2008 Dr. Breckenridge found that appellant reached maximum medical improvement regarding his knees and assigned permanent impairment ratings.[2]

In a May 1, 2008 report, Dr. Breckenridge advised that appellant continued to have bilateral knee difficulty and would benefit from Hyalgan injections as there were significant post-traumatic chondromalacic changes. On June 26, 2008 Dr. Breckenridge noted that appellant had intra-articular effusion in his left knee. He noted that an ultrasound was negative for deep vein thrombus and localized pain both medially and laterally. Dr. Breckenridge stated that appellant was initially doing quite well and was progressing with exercising, but recently had increased swelling. He recommended a repeat left knee MRI scan to rule out further internal derangement. Dr. Breckenridge noted that appellant could continue with modified work activity.

[1] May 3, 2006 left knee x-rays showed degenerative changes. A September 18, 2006 magnetic resonance imaging (MRI) scan of the left knee indicated Grade 3 chondromalacia within the patellofemoral compartment, with chondral thinning and deep chondral ulcerations involving the trochlea, without underlying subchondral bone marrow reaction; small knee effusion; mucoid degeneration within the posterior horn of the medial and, to a much lesser extent, lateral meniscus, without meniscal tear; and a tiny nondehisced Baker's cyst.

[2] On April 7, 2008 the Office granted appellant schedule awards for two percent right leg impairment and seven percent left leg impairment. The awards ran for the period January 22 to July 21, 2008.

On July 29, 2008 appellant underwent a magnetic resonance imaging (MRI) scan of the left knee. The report noted recent trauma to appellant's left knee and revealed a medial meniscus trizonal flap tear with the posterior horn, moderate joint effusion and soft tissue swelling and moderate arthrosis. In a July 31, 2008 report, Dr. Breckenridge reviewed the MRI scan results and diagnosed large trizonal medial meniscus tear with effusion, and traumatic chondromalacia tricompartmental. He advised that appellant did quite well for some time post surgery, but then had increasing pain that appellant related to ambulatory activity, especially at work. Dr. Breckenridge discussed treatment options and advised appellant to continue his present modified work activity. In an accompanying duty status report, Dr. Breckenridge advised that appellant must use a chair when doing bench work.

On August 6, 2008 Dr. Breckenridge requested authorization for a repeat left knee arthroscopy. The Office sent a letter of authorization on August 11, 2008. However, in an August 20, 2008 letter to Dr. Breckenridge, the Office noted that a review of appellant's file revealed no supporting medical opinion to support further surgery to the left knee. It noted that appellant worked in a sedentary position and was not required to walk any distances on a regular basis in the performance of his sedentary duties. The Office requested that Dr. Breckenridge provide further explanation of how appellant's medial meniscus tear was causally related to his current limited-duty position. Dr. Breckenridge did not respond.

In a September 9, 2009 letter, the Office notified Dr. Breckenridge that it was rescinding the prior surgical authorization. It noted that appellant had a sedentary position at work and that the physician did not present any medical opinion causally relating appellant's current condition and need for surgery to the May 3, 2006 work injury.

In a January 12, 2009 decision, the Office denied authorization for additional left knee surgery, finding that the medical evidence did not establish that the condition for which surgery was requested was causally related to the accepted work injury of May 3, 2006.

On January 25, 2009 appellant, through his attorney, requested a telephonic hearing, which was held on May 14, 2009. Counsel argued that it was unclear what condition the Office was seeking clarification for in order to grant authorization for the proposed left knee surgery. Appellant testified that, after his prior knee surgery, he had difficulty walking and getting up from a seated position. He advised that he did a fair amount of walking and rising up from his workstation. After the MRI scan, Dr. Breckenridge told him that the new tear was larger than the one previously fixed and he was not supposed to do any walking. He denied any additional or intervening injuries between his first left knee surgery and the July 2008 MRI scan which revealed a new tear of the meniscus.

By decision dated August 6, 2009, an Office hearing representative affirmed the January 12, 2009 decision.

LEGAL PRECEDENT

Section 8103 of the Federal Employees' Compensation Act[3] 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.[4] 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.[5]

For a surgery to be authorized, a claimant must submit evidence to show that the requested procedure is for a condition causally related to the employment injury and that it is medically warranted. Both of these criteria must be met in order for the Office to authorize payment.[6]

ANALYSIS

The Office accepted appellant's claim for bilateral knee sprain, meniscus tears and chondromalacia of the patella, for which he underwent authorized surgeries. In a June 26, 2008 report, Dr. Breckenridge first reported that appellant had intra-articular effusion in his left knee. As the ultrasound was negative for deep vein thrombus, he recommended that appellant undergo a repeat MRI scan of the left knee, which appellant underwent on July 29, 2008. In a July 31, 2008 report, Dr. Breckenridge noted the results of the MRI scan examination and diagnosed left knee large trizonal medial meniscus tear with effusion, traumatic chondromalacia tricompartmental. He stated that appellant did well post surgery, but then had increasing pain which appellant related to ambulatory activity, especially at work. On August 6, 2008 Dr. Breckenridge requested authorization for left knee arthroscopy. By letter dated August 20, 2008, the Office requested that Dr. Breckenridge provide a medical explanation of how appellant's current medial meniscus tear was causally related to any employment-related incident or activity. Dr. Breckenridge, however, did not respond. By decision dated January 12, 2009, the Office denied authorization for left knee surgery on the grounds that the medical evidence failed to establish that the need for such surgery was causally related to any employment-related

[3] 5 U.S.C. § 8101 *et seq*.

[4] 5 U.S.C. § 8103.

[5] *Daniel J. Perea*, 42 ECAB 214 (1990).

[6] *R.C.*, 58 ECAB 238 (2006).

incident or activity. This decision was affirmed by an Office hearing representative on August 6, 2009.

As noted above, the only restriction on the Office's authority to authorize medical treatment is one of reasonableness. The record indicates appellant initially underwent left knee surgery because he had symptomatology consistent with a meniscus tear and post-traumatic changes about the patellar region. Appellant's postoperative diagnoses were left knee posterior horn medial meniscus tear, chondromalacia of the patellofemoral articulation with chondral flap tears and significant lateral tracking of the patella with lateral retinacular scarring. He also underwent a right knee surgery. Post surgery for both his left and right knee, appellant underwent physical therapy and had Hyalgan injections. Dr. Breckenridge advised that appellant was gradually improving with respect to his knees. He did not note any problems with the left knee until June 26, 2008 when intra-articular effusion was noted. Dr. Breckenridge subsequently diagnosed a left knee medial meniscus tear with effusion. The Office advised Dr. Breckenridge in its August 20, 2008 letter that appellant was in a sedentary position at work and was not required to walk any distances on a regular basis in the performance of his duties. As noted, Dr. Breckenridge failed to respond to the Office's request.

Appellant's current left knee medial meniscus tear developed subsequent to his prior authorized knee surgeries. Due to the length of time following his prior left knee surgery and the fact that appellant was working in a sedentary position which did not require him to walk any distances on a regular basis, it was reasonable for the Office to request clarification from his physician as to how the diagnosis and need for surgery related to his sedentary duties or prior treatment. Contrary to counsel's assertion that it was not clear on which condition the Office requested clarification, the Office's August 20, 2008 letter to Dr. Breckenridge clearly noted that it needed additional opinion regarding the recent MRI scan and proposal for additional surgery. Dr. Breckenridge did not submit a report explaining the causal connection between the new meniscus tear and either the original left knee injury of May 3, 2006 or appellant's limited-duty work. The medical opinion evidence of record is not sufficient to establish that the procedure in question is necessary for treatment of appellant's accepted work injury or a consequence of his limited-duty work. The Board finds that the Office did not abuse its discretion in denying authorization for the procedure and will affirm the August 6, 2009 decision.

CONCLUSION

The Board finds that the Office did not abuse its discretion by denying appellant's request for authorization to undergo additional left knee surgery.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated August 6, 2009 is affirmed.

Issued: July 13, 2010
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