United States Department of Labor
Employees' Compensation Appeals Board

N.E., Appellant	)	
	)	
and	)	**Docket No. 10-1757**
	)	**Issued: April 6, 2011**
DEPARTMENT OF THE NAVY, NORFOLK NAVAL BASE, SEWELLS POINT MAINTENANCE DIVISION, Norfolk, VA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 22, 2010 appellant filed a timely appeal from a May 21, 2010 decision of the Office of Workers' Compensation Programs denying authorization for surgery. Pursuant to the Federal Employees' Compensation Act[1] and 20 C.F.R. §§ 501.2(c) 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 a left knee arthroplasty.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

The Office accepted that on September 13, 2005 appellant, then a 57-year-old pipe fitter, sustained a left knee contusion when a metal toolbox containing a power saw fell on his left knee. At the time of the injury, appellant was on light duty due to osteoarthritis in his right knee with partial chondroplasty in 2003. He stopped work on September 13, 2005 and returned to light duty on November 28, 2005.

Dr. Arthur J. Wardell, an attending Board-certified orthopedic surgeon, followed appellant beginning in 2003 for osteoarthritis of both knees with partial arthroplasty of the right knee. He treated appellant for the accepted left knee injury beginning September 13, 2005. In reports dated through 2007, Dr. Wardell diagnosed worsening post-traumatic osteoarthritis of the left knee with a popliteal cyst, swelling, effusion, crepitus and flexion contracture.

On February 1, 2008 Dr. Wardell requested that the Office authorize a total left knee replacement and three-day hospitalization. The Office requested that Dr. Wardell submit additional information. In letters of February 29 and December 29, 2008, Dr. Wardell explained that the September 13, 2005 injury caused appellant to develop post-traumatic arthritis in the left knee, requiring total arthroplasty.

On January 6, 2009 the Office deferred approval of surgery pending additional medical development.[2] On April 22, 2009 it obtained a second opinion report from Dr. Steven C. Blasdell, a Board-certified orthopedic surgeon, who diagnosed severe tricompartmental osteoarthritis of the left knee, unrelated to the September 13, 2005 contusion. Dr. Blasdell stated that the proposed arthroplasty was unrelated to the accepted injury.

By decision dated June 4, 2009, the Office denied authorization for left knee arthroplasty, based on Dr. Blasdell's opinion that the requested surgery was unrelated to the accepted injury.

In a June 30, 2009 letter, appellant requested a telephonic hearing, held on October 1, 2009. At the hearing, he asserted that he had no left knee symptoms prior to the September 13, 2005 injury. In a June 12, 2009 letter, Dr. Wardell stated that, while appellant may have had underlying degenerative changes in the left knee, "had it not been for his injury of September 13, 2005, he would not require a total knee replacement for symptom relief." On October 7, 2009 Dr. Wardell explained that the September 13, 2005 injury damaged the articular cartilage in the left knee, permanently aggravating previously asymptomatic arthritis. He opined that appellant's left knee symptoms were "caused completely by his accident of September 13 2005. … Had it not been for the September 13, 2005 he would not be symptomatic in regard to his left knee."

By decision dated November 19, 2009, an Office hearing representative set aside the Office's June 4, 2009 decision. The hearing representative found a conflict of medical opinion between Dr. Blasdell, for the government and Dr. Wardell, for appellant, regarding whether the proposed left knee arthroplasty was required to treat the accepted September 13, 2005 left knee

[2] Dr. Wardell submitted reports through March 2009 reiterating the need for left knee arthroplasty.

contusion. The hearing representative remanded the case to the Office for appointment of an impartial medical examiner to resolve the conflict.

On February 16, 2010 the Office referred appellant, the medical record and a statement of accepted facts to Dr. Jeffrey Moore, a Board-certified orthopedic surgeon, for an impartial medical examination. Dr. Moore submitted a March 2, 2010 report noting swelling and flexion contractures in both knees, laxity in the left knee and that appellant walked with a cane. He obtained x-rays showing complete loss of articular cartilage in the medial compartment of the left knee and advanced osteoarthritis bilaterally. Dr. Moore diagnosed severe tricompartmental degenerative disease of both knees. He opined that appellant required a left knee arthroplasty due to the natural progression of preexisting degenerative arthritis that would have become symptomatic with or without the September 13, 2005 injury. Dr. Moore also opined that, while it was unlikely that the September 13, 2005 contusion directly caused "all of the problems" in appellant's left knee, it was "certainly possible that the contusion injury aggravated or precipitated his degenerative symptoms to some degree." He concluded that he was in "more of an agreement" with Dr. Blasdell than Dr. Wardell but did not state directly whether or not the Office should approve the requested left knee arthroplasty.

By decision dated May 21, 2010, the Office denied authorization of the requested left knee arthroplasty, based on Dr. Moore's opinion that the requested surgery was unrelated to the September 13, 2005 injury. It found that Dr. Moore's report was sufficiently rationalized to represent the weight of the medical evidence.

LEGAL PRECEDENT

Section 8103 of the 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 section 8103, the Board has recognized that the Office has broad discretion in approving services provided under the Act. The only limitation on the Office's authority is that of reasonableness.[5] 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.[6]

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.[7]

[3] 5 U.S.C. §§ 8101-8193.

[4] 5 U.S.C. § 8103; *see Thomas W. Stevens*, 50 ECAB 288 (1999).

[5] *Mira R. Adams*, 48 ECAB 504 (1997).

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

[7] *Cathy B. Mullin*, 51 ECAB 331 (2000).

This burden of proof includes providing supporting rationalized medical evidence. Thus, in order for surgery to be authorized, appellant must submit evidence to show that these are for a condition causally related to the employment injury and that these were medically warranted. Both of these criteria must be met in order for the Office to authorize payment.[8]

Section 8123 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.[9] In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[10] However, in a situation where the Office secures an opinion from an impartial medical examiner for the purpose of resolving a conflict in the medical evidence and the opinion from such examiner requires clarification or elaboration, the Office has the responsibility to secure a supplemental report from the examiner for the purpose of correcting the defect in the original opinion.[11]

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained a left knee contusion on September 13, 2005 when a metal toolbox containing a power saw fell on his knee. On February 1, 2008 Dr. Wardell, an attending Board-certified orthopedic surgeon, requested authorization for a total left knee arthroplasty due to degenerative osteoarthritis caused by the accepted injury. The Office denied authorization on June 4, 2009 based on a second opinion from Dr. Blasdell, a Board-certified orthopedic surgeon, who opined that appellant's degenerative arthritis, and therefore the proposed surgery, were unrelated to the accepted injury. The Office found a conflict of opinion and appointed Dr. Moore, a Board-certified orthopedic surgeon, to resolve it. Dr. Moore opined that appellant's degenerative arthritis was likely aggravated but not entirely due to the accepted injury. Based on his opinion, the Office issued a May 21, 2010 decision denying authorization for left knee arthroplasty. The Board finds, however, that Dr. Moore's opinion requires clarification regarding the causal relationship between the accepted contusion and the diagnosed degenerative arthritis of the left knee.

Dr. Moore found that appellant required a left knee arthroplasty due to degenerative arthritis, a condition not accepted by the Office. However, he explained that it was "certainly possible" that the accepted September 13, 2005 contusion "aggravated or precipitated" this degeneration. The Board has held that where a preexisting condition becomes disabling because of aggravation causally related to the employment, the resulting disability is compensable.[12]

[8] *Id*.

[9] 5 U.S.C. § 8123; *see Charles S. Hamilton*, 52 ECAB 110 (2000).

[10] *Jacqueline Brasch (Ronald Brasch)*, 52 ECAB 252 (2001).

[11] *Margaret M. Gilmore*, 47 ECAB 718 (1996).

[12] *Henry Klaus*, 9 ECAB 222 (1957).

Therefore, Dr. Moore's opinion tends to support a causal relationship between the accepted injury and the requested surgery.

Dr. Moore went on to state that he agreed more with Dr. Blasdell than Dr. Wardell regarding the causal relationship between the need for left knee arthroplasty and work factors, because it was unlikely that the September 13, 2005 contusion caused "all" of appellant's problems. However, this is an incorrect standard. A claimant need not show that a condition was entirely or predominately due to work factors.[13] There is no apportionment under the Act. Any degree of contribution from work factors renders the condition and resulting disability compensable.[14] As Dr. Moore relied on an improper standard of causation his opinion requires clarification.

The Board finds that, since the Office undertook to obtain an impartial medical specialist's opinion, it is obligated to obtain a sufficiently reasoned report as to whether the requested left knee arthroplasty was necessitated by the accepted September 13, 2005 contusion.[15] The Board will remand the case the Office to request a supplemental report from Dr. Moore on this issue. Dr. Moore should explain whether or not the accepted injury in any way aggravated or precipitated the degenerative arthritis in appellant's left knee. Following this and such other development deemed necessary, the Office shall issue an appropriate decision in the case.

CONCLUSION

The Board finds that the case is not in posture for decision as to appellant's request for a left knee replacement.

[13] *Arnold Gustafson*, 41 ECAB 131 (1989).

[14] *Beth P. Chaput*, 37 ECAB 158 (1985).

[15] *See, e.g., Elmer K. Kroggel*, 47 ECAB 557 (1996) (the Board remanded the case for the Office to obtain a supplemental report from the impartial medical specialist).

ORDER

IT IS HEREBY ORDERED THAT the May 21, 2010 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to the Office for further development consistent with this decision.

Issued: April 6, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

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