United States Department of Labor
Employees' Compensation Appeals Board

B.R., Appellant	)	
and	)	**Docket No. 10-1551**
	)	**Issued: March 14, 2011**
DEPARTMENT OF HEALTH & HUMAN SERVICES, Tahlequah, OK, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On July 29, 2010[1] appellant filed a timely appeal from May 24 and June 8, 2010 merit decisions of the Office of Workers' Compensation Programs.[2] Pursuant to 5 U.S.C. § 8149 and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of these decisions.[3]

[1] The appeal was originally filed in March 2010 from a letter of the Office denying appellant's request for surgery. This letter did not contain appeal rights. The denial of the Office was reissued with appeal rights on March 24, 2010 and appellant reiterated his intention to appeal that decision on July 29, 2010. The June 8, 2010 decision was issued in the interim, also denying a surgical procedure, over which the Board has jurisdiction.

[2] In the June 8, 2010 decision, the Office granted appellant's request for an emergency angioplasty performed in March 2009. An appeal may only be filed with the Board from adverse decisions of the Office; thus the Board does not have jurisdiction over that part of the decision. 20 C.F.R. § 501.3(a).

[3] Additional evidence has been associated with the case record since the Office's June 8, 2010 decision; however, the Board cannot consider such evidence for the first time on appeal. The Board's review of a case shall be limited to the evidence in the case record before the Office at the time of its final decision. 20 C.F.R. § 10.501.2(c) (2007).

ISSUE

The issue is whether the Office properly denied appellant's requests for surgical procedures.

FACTUAL HISTORY

On September 1, 1978 appellant, then a 27-year-old janitor, was mixing bleach and cleansing powder while working. After inhaling the fumes, he lost consciousness. The Office accepted appellant's claim for temporary aggravation of chemical pneumonitis for a closed period. Appellant later filed various recurrence claims and the Office subsequently accepted bronchitis and pneumonitis due to fumes, bilateral cataracts and cataract surgery, diabetic polyneuropathy, meningococcoccal carditis and coxsacki carditis. He was terminated from the employing establishment during his probationary period on December 2, 1978. From 1978 to the present appellant, who currently resides in Acapulco, Mexico, has been on the periodic rolls and reimbursed for numerous medical procedures, prescriptions, surgeries and medical care found to be causally related to his accepted conditions.

By letter received on January 5, 2010, Dr. Alejandro Romero Medina, appellant's treating physician in Mexico, requested permission to perform a total right knee replacement. He based the need for surgery on pain in the right knee, limited in walking short distances and in moving the knee. Upon physical examination, Dr. Medina noted limited mobility, swelling and pain in the right knee and "crackle in every movement." He related that x-rays showed a "deep destruction of the joint of the right knee." The Office, by letter dated January 27, 2010, provided Dr. Medina an opportunity to submit a medical report addressing how this surgery would be related to appellant's accepted conditions. No response was received from Dr. Medina.

By decision dated May 24, 2010, the Office denied appellant's request for total right knee replacement finding that the medical evidence was insufficient to establish a causal connection between the proposed procedure and his accepted conditions.

Additionally, medical bills were received by the Office from another Mexican treating physician, Dr. Anton Meneses Bonilla, for an emergency percutaneous transluminal coronary angioplasty performed in March 2009 and for a sleeve gastrectomy performed in September 2009. The Office, by letter dated March 10, 2010, asked Dr. Bonilla for a medical report explaining how these procedures were causally related to appellant's accepted injuries.

A detailed letter was received by the Office from Dr. Bonilla on April 13, 2010. Dr. Bonilla explained that appellant presented to him in March 2009 with myocardial ischemia, a type of acute coronary syndrome, with unstable angina. He stated that the angioplasty was necessary to stabilize appellant's angina. Appellant had a significant obstruction of the microcirculation coronary vessels requiring the stent implants. After explaining the procedure in detail, he noted that it was successful.

As a result of this procedure, Dr. Bonilla noted that appellant's weight, 510 pounds, and his diabetes were not conducive to improvement after the angioplasty. Appellant was advised to strictly control his diabetes through exercise and weight loss. It was suggested that a sleeve

gastrectomy would be helpful in losing weight, which was performed in September 2009. Dr. Bonilla noted the procedure was successful and that appellant received excellent care. At the time of Dr. Bonilla's undated report, received by the Office on April 13, 2010, he noted that appellant had lost 200 pounds, approximately 1-pound a day. Dr. Bonilla submitted various medical journal articles and reports attesting to the positive effects of the gastric sleeve on obese individuals. In conclusion, he wrote:

> "With all the research I am sending you, including the objective findings that sustain and rationalize our medical opinions, supported with more than 200 scientific articles … you will find the justification of the procedures … done to [appellant] and the relation these procedures have with the accident with mortality risk due to the chemical pneumonitis he got after the accident he had in 1978, when he was an employee at the Department of [Health and Human Services]. I am certain that in your medical, ethical and professional judgment, you will now authorize the payment of a service and medical care given, with the highest human professional quality, to an American citizen living in Mexico."

By decision dated June 8, 2010, the Office authorized the angioplasty surgery but denied the gastrectomy as the medical evidence did not establish that it was related to his accepted conditions. Although diabetic polyneuropathy was an accepted condition, it noted that diabetes was not an accepted condition.

LEGAL PRECEDENT

Section 8103(a) of the Federal Employees' Compensation Act provide 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.[4]

In interpreting section 8103, 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 or her injury to the fullest extent possible, in the shortest amount of time. It has broad administrative discretion in choosing means to achieve this goal. The only limitation on the Office's authority is that of reasonableness.[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 by submitting rationalized medical evidence that supports such a connection and demonstrates that the treatment is necessary and reasonable.[6] While the Office is obligated to pay for treatment of

[4] 5 U.S.C. § 8103(a).

[5] *Dr. Mira R. Adams*, 48 ECAB 504, 505 (1997).

[6] *See Debra S. King*, 44 ECAB 203, 209 (1992).

employment-related conditions, the employee has the burden of establishing that the expenditure is incurred for treatment of the effects of an employment-related injury or condition.[7]

In order to be entitled to reimbursement of medical expenses, a claimant must establish that the expenditures were incurred for treatment of the effects of an employment-related injury. Proof of causal relation in a case such as this must include supporting rationalized medical evidence.[8]

ANALYSIS

The only limitation on the Office's authority in approving or disapproving, services under the Act is that of reasonableness.[9] Appellant requested and was denied authorization for a total right knee replacement and a sleeve gastrectomy.

Dr. Medina's explanation for the knee surgery discussed clinical findings at the time he examined appellant but did not reference his accepted conditions or how the knee surgery was likely to cure, give relief, reduce the degree or the period of disability or aid in lessening the amount of monthly compensation for the employment injury. As Dr. Medina did not provide any medical opinion addressing whether the surgery was medically necessary to treat the accepted injuries, his reports are of diminished probative value.[10] The Office provided him the opportunity to provide a more detailed report justifying the surgery, but no response was received.

The Office also received a detailed letter from Dr. Bonilla regarding appellant's gastric surgery. Dr. Bonilla's report was very detailed and thorough in explaining the evaluation of appellant for the surgery, the surgery itself and the very careful follow-up care for appellant, as well as proof that such a procedure is indicated in morbidly obese individuals. What the report lacked, however, was a rationalized medical opinion on how that surgery was medically necessary to treat appellant's work-related conditions. Dr. Bonilla referenced the 1978 work incident but did not specifically address the accepted conditions and how the gastric procedure would benefit treatment of those conditions. His broad reference at the end of his letter to various medical journal articles is insufficient to explain how appellant's surgery was necessary and reasonable treatment for the employment-related conditions.[11]

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[7] *Kennett O. Collins, Jr.*, 55 ECAB 648, 654 (2004).

[8] *Zane H. Cassell*, 32 ECAB 1537, 1541 (1981); *John R. Benton*, 15 ECAB 48, 49 (1963).

[9] *Supra* note 3; *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).

[10] *See also Michael E. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[11] It is well established that excepts from publications are of little probative value unless the physician explains the applicability of the general medical principles discussed to the specific factual situation in the employee's case. *See Roger G. Payne*, 55 ECAB 535 (2004).

On appeal, appellant disputed the denial of his surgical procedures and the Office's classification of his conditions. He claimed "the wording has been changed and I do not agree with the way is worded" and he did not believe "temporary" was an appropriate categorization of his conditions since he has had these conditions since 1978. Appellant was concerned about some bills not being paid causing him to have a bad credit rating.

As to the payment for medical expenses, the Clerk of the Board advised appellant by letter dated August 5, 2010 that the Board does not authorize medical treatment or payment of medical bills. Any such matters are appropriately raised with the Office. As to the conditions accepted by the Office, if appellant believes a new condition should be accepted by the Office, an appropriate claim may be submitted with supporting medical evidence. As the Office has not issued any final decision on this issue within 180 days of the filing of this appeal, the Board has no jurisdiction to render a decision on the matter.[12]

After considering all of the medical evidence of record, the Office concluded that authorization for the requested surgeries should be denied. The Board finds that its refusal to authorize these procedures was reasonable and did not constitute an abuse of discretion.

CONCLUSION

The Board finds that the Office properly denied authorization of the right knee replacement surgery and the sleeve gastrectomy.

[12] The Board is limited to final adverse decisions of the Office issued within 180 days of the appeal. *See* 20 C.F.R. §§ 501.2(c) and 501.3.

ORDER

IT IS HEREBY ORDERED THAT the June 8 and May 24, 2010 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 14, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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