

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

R.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
East Islip, NY, Employer**

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**Docket No. 11-163
Issued: September 15, 2011**

Appearances:
Paul Kalker, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

On October 20, 2010 appellant filed a timely application for review of the Office of Workers' Compensation Programs' (OWCP) July 15, 2010 merit decision in File No. xxxxxx626 denying his request for authorization of total knee replacement surgery.¹ The Board finds this case is not in posture for a decision.

Appellant's August 17, 2005 traumatic injury claim was accepted for bilateral sprain/strain of the knee/leg, unspecified and sprain/strain of the lumbosacral spine. On January 20, 2009 he requested authorization for a total right knee replacement. In order to resolve a conflict in medical opinion as to the medical necessity of the requested surgery, OWCP referred appellant to an impartial medical specialist, Dr. David Benatar, a Board-certified orthopedic surgeon. On June 16, 2009 Dr. Benatar opined that the knee replacement surgery was reasonable, but that the current knee condition was not causally related to the 2005 injury, but rather to treatment for preexisting arthritis stemming from a June 29, 1995 injury. In a February 12, 2009 report, Dr. Frank R. De Maio, a Board-certified internist, diagnosed post-traumatic arthritis of the right knee, with varus alignment, flexion contracture and arthrofibrosis, which he opined was caused directly by appellant's June 29, 1995 right knee injury and was exacerbated by the accepted 2005 injury. By decision dated July 13, 2009, OWCP denied authorization for total knee replacement surgery, finding that it was not medically necessary for

¹ The record reflects that appellant filed a traumatic injury claim for right knee injuries sustained on June 29, 1995.

the accepted work injury. In a July 15, 2010 decision, OWCP denied modification of the July 13, 2009 decision.²

The record does not contain any evidence relating to the development of appellant's June 29, 1995 claim in File No. xxxxxx366. The Board notes that both the referee physician and appellant's treating physician in File No. xxxxxx626 opined that appellant's current right knee condition was causally related to the 1995 injury. As the subject of the requested surgery involves appellant's right knee, which sustained injury in both cases, evidence contained in File No. xxxxxx366 will necessarily bear directly on appellant's request for surgery authorization in File No. xxxxxx626.

Because it is essential for the Board to review the record in file number xxxxxx366 in order to render a full and fair adjudication of the present appeal, this case will be remanded for the Office to consolidate case files xxxxxx626 and xxxxxx366. Reconstruction of the record will be followed by a *de novo* decision on the merits of the claim, in order to protect appellant's appeal rights.

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' July 15, 2010 decision be set aside and the case is remanded for further development consistent with this order.

Issued: September 15, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

² The Board notes that, in a separate decision dated July 15, 2010, OWCP vacated a March 31, 2010 decision terminating appellant's compensation and medical benefits and expanded appellant's claim to include temporary aggravation of preexisting end-stage bilateral knee arthritis (which had since reached status quo) and lumbar radiculopathy.