

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

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G.S., Appellant )  
and ) Docket No. 13-57  
U.S. POSTAL SERVICE, POST OFFICE, ) Issued: August 26, 2013  
Colorado Springs, CO, Employer )  
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)

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

*Case Submitted on the Record*

**DECISION AND ORDER**

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

**JURISDICTION**

On October 10, 2012 appellant filed a timely appeal from a May 23, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) 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 OWCP properly denied authorization for appellant's right knee surgeries of August 9, 2010 and May 21, 2012.

**FACTUAL HISTORY**

On July 26, 2010 appellant, then a 51-year-old city carrier, was in a motor vehicle accident struck in the rear by another vehicle while he was making a left turn. He alleged injury to his neck, shoulders, lower back and knees. On August 9, 2010 OWCP accepted appellant's claim for sprain of neck and lumbar spine and contusions to face, scalp, neck and right knee. On

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

November 29, 2011 it accepted the claim for tear of medial meniscus of left knee. Appellant had the following preexisting conditions, a right knee meniscus tear, arthritis and degenerative joint disease at C4-7 and lumbar spine (VA service-connected disability); high blood pressure and high cholesterol; and preexisting shoulder and hip conditions.

On August 9, 2010 Dr. Joel B. Gonzales, a Board-certified orthopedic surgeon, performed surgery on the right knee for an arthroscopic partial lateral meniscectomy and chondroplasty of the medial femoral condyle and trochlea. On September 20, 2010 he completed a work capacity form limitating appellant's walking, standing, bending, stooping, lifting, squatting, kneeling and climbing. Dr. Gonzales indicated that appellant had a temporary permanent aggravation of the right knee lateral meniscus tear and degenerative joint disease.

Appellant was treated by Dr. Jack L. Rook, a Board-certified physiatrist, for the injuries sustained in the employment-related motor vehicle accident. In an August 20, 2010 report, Dr. Rook diagnosed cervical and thoracic strain, right-sided sacroiliac joint and gluteal strain and right knee contusion/status post lateral meniscectomy. He noted that appellant appeared to have sustained soft tissue injuries to his neck, trapezius and low back region in the accident. Appellant sustained an aggravation of right knee pain but had already been scheduled to receive treatment for a lateral meniscus tear when he was involved in the accident. In a March 1, 2011 note, he indicated that appellant would see Dr. Wallace Larson, a Board-certified orthopedic surgeon, with regard to his left knee. Dr. Rook noted that he treated appellant with Celebrex and Soma.

OWCP referred appellant to Dr. William Watson, a Board-certified orthopedic surgeon for a second opinion. In a November 2, 2010 report, Dr. Watson listed his impressions as sprain of neck, lumbar spine and contusions of the face, scalp and neck and right knee contusion. Prior to answering OWCP's questions, he requested a magnetic resonance imaging (MRI) scan of both the lumbar and cervical spine, so that he could compare these tests with the tests taken before the accident. In a December 27, 2010 follow-up report, Dr. Watson stated that the right knee contusion had resolved. In an April 25, 2011 report, he answered further questions from OWCP. In response to a question about the causal relationship of the injury to appellant's right knee, Dr. Watson stated that Dr. Gonzales, on September 20, 2010, opined that appellant's July 26, 2010 injury resulted in permanent aggravation of appellant's preexisting right lateral meniscus degenerative changes. He stated that, since the surgeon had first-hand knowledge of this, he concurred with Dr. Gonzales' opinion. Dr. Watson noted that he had no other evidence that appellant's employment injury aggravated or caused permanent changes except for the surgeon's opinion and appellant's medical history.

In a November 9, 2011 letter, OWCP asked Dr. Gonzales to address whether appellant's right knee surgery was related to his work injury of July 26, 2010 or due to a preexisting condition. It asked Dr. Gonzales to explain how appellant's work injury caused or aggravated his injuries. In a November 29, 2011 note received by OWCP, "Sharon" indicated that Dr. Gonzales would not complete the form. The record contains evidence that on January 24, 2012, Dr. Gonzales' office stated that it was not their responsibility.

In a February 22, 2012 report, Dr. Larson assessed appellant with bilateral medial meniscus tears with history of hypertension and diabetes. He opined that appellant should have

knee arthroscopies and noted that appellant wished to proceed first on the left side. On March 22, 2012 Dr. Larson performed a left knee arthroscopy, resection of the medial synovial plica and chondroplasty of the medial femoral condyle and trochlea.

On March 12, 2012 OWCP referred appellant to Dr. John D. Douthit, a Board-certified orthopedic surgeon, for a second opinion. In a report dated April 16, 2012, Dr. Douthit stated that the injury of July 26, 2010 caused a right knee contusion with temporary aggravation, resolved. He noted that appellant was having significant problems with both knees prior to his injury, as documented by notes from the Veterans Hospital. Appellant had MRI scans prior to the accident that showed meniscal damage and the operative report after the accident did not relate the surgery to any aggravation. Dr. Douthit concluded that the medical records did not support that the pathology for which surgery was performed on August 9, 2010 was caused by the automobile accident. He further opined that the procedure performed on August 9, 2010 was medically necessary but to treat a preexisting problem as demonstrated on the MRI scan obtained prior to the accident.

On May 11, 2012 OWCP authorized a right knee arthroscopic surgery to be performed between May 21 and June 21, 2012 by Dr. Larson. On the same date, OWCP approved the left knee surgery performed by Dr. Larson on March 22, 2012.

On May 21, 2012 Dr. Larson performed a right knee arthroscopy, lateral meniscectomy and chondroplasty of medial femoral condyle and trochlea.

Dr. Rook continued to monitor appellant's progress and treat appellant for his musculoskeletal ailments including bilateral knee pain, neck pain and low back pain. In a February 23, 2012 report, he indicated that he would see how appellant was after his knee surgeries.

On May 23, 2012 OWCP issued a decision denying authorization for appellant's August 9, 2010 right knee surgery by Dr. Gonzales and the May 21, 2012 right knee surgery by Dr. Larson.

### **LEGAL PRECEDENT**

Section 8103(a) of FECA provides for the furnishing of services, appliances and supplies prescribed or recommended by a qualified physician who OWCP, under authority delegated by the Secretary of Labor, considers likely to cure, give relief, reduce the degree or the period of disability or aid in lessening the amount of monthly compensation.<sup>2</sup> While OWCP is obligated to pay for treatment of 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.<sup>3</sup>

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<sup>2</sup> *Id.* at § 8103; *see L.D.*, 59 ECAB 648 (2008).

<sup>3</sup> *Kennett O. Collins, Jr.*, 55 ECAB 648 (2004).

In interpreting section 8103(a), the Board has recognized that OWCP has broad discretion in approving services provided under section 8103(a), with the only limitation on OWCP's authority being that of reasonableness.<sup>4</sup> 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.<sup>5</sup> To be entitled to reimbursement of medical expenses, a claimant has the burden of establishing that the expenditures were incurred for treatment of the effects of an employment-related injury or condition. Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.<sup>6</sup> In order for a surgical procedure to be authorized, a claimant must submit evidence to show that the surgery is for a condition causally related to an employment injury and that it is medically warranted. Both of these criteria must be met in order for OWCP to authorize payment.<sup>7</sup>

Authorization by OWCP for medical examination and/or treatment constitutes a contractual agreement to pay for the services if the services are rendered, regardless of whether a compensable injury or condition exists. Moreover, any medical condition resulting from authorized examination or treatment (such as residuals from surgery) may form the basis for a compensation claim for impairment or disability, regardless of the compensability of the original injury.<sup>8</sup>

### ANALYSIS

OWCP accepted appellant's claim for contusion to the right knee as a result of appellant's employment-related motor vehicle accident of July 26, 2010. The Board notes that appellant had an extensive history prior to his employment injury of pathology to his right knee. On August 9, 2010 appellant underwent an arthroscopic partial lateral meniscectomy and chondroplasty of medial femoral condyle and trochlea, right knee by Dr. Gonzales. On May 21, 2012 appellant underwent a right knee arthroscopy, lateral meniscetomy and chondroplasty of medial femoral condyle and trochlea by Dr. Larson.

The Board finds that OWCP improperly denied medical expenses with regard to appellant's May 21, 2012 surgery by Dr. Larson. The Board notes that on May 11, 2012, OWCP specifically authorized the upcoming right knee arthroscopic surgery scheduled to be performed by Dr. Larson. OWCP had a contractual obligation to pay for surgery.<sup>9</sup> Accordingly, its denial of the surgery on May 21, 2012 for a right knee arthroscopy is reversed.

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<sup>4</sup> See D.K., 59 ECAB 141 (2007).

<sup>5</sup> Minnie B. Lewis, 53 ECAB 606 (2002).

<sup>6</sup> M.B., 58 ECAB 588 (2007).

<sup>7</sup> R.C., 58 ECAB 238 (2006); see also J.H., Docket No. 12-1950 (issued February 13, 2013).

<sup>8</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Authorizing Examination and Treatment; Request for Authorization; Contractual Obligation*, Chapter 3.300(2)(b).

<sup>9</sup> Id.

The Board will affirm OWCP's denial of the August 9, 2010 arthroscopic surgery by Dr. Gonzales. Appellant had a preexisting history of right knee pathology. Dr. Gonzales, appellant's treating surgeon, listed on a September 20, 2010 work capacity evaluation form that appellant sustained a permanent aggravation of the right knee lateral meniscus tear and degenerative joint disease. Dr. Gonzales did not provide a rationalized medical opinion addressing how this aggravation of appellant's knee condition was causally related to the accepted motor vehicle accident. The Board notes that the physician specifically declined to provide further explanation despite OWCP's request on November 9, 2011. The January 24, 2012 response of his office was that it was not their responsibility.

Dr. Watson opined that appellant's July 26, 2010 employment injury resulted in permanent aggravation of appellant's preexisting right lateral meniscus degenerative changes. He based his conclusion entirely on Dr. Gonzales' comment on the work capacity evaluation; he acknowledged that he had no other evidence that the work injury had aggravated or caused these changes.

On April 16, 2012 Dr. Douthit concluded that the medical records did not support that the August 9, 2010 surgery was due to the July 26, 2010 employment injury. He explained that appellant was having significant problems with both knees prior to the August 9, 2010 surgery, as documented in notes from the Veterans' Hospital. Dr. Douthit noted that appellant had MRI scans prior to the accident that showed meniscal damage and that the August 9, 2010 operative report did not relate the surgery to the accident. The only rationalized medical opinion addressing the issue of whether the August 9, 2010 right knee arthroscopy was related to appellant's employment injury is the report of Dr. Douthit. OWCP did not abuse its discretion in denying the medical expenses associated with this surgery.

In an August 20, 2010 report, Dr. Rook noted that appellant was already scheduled to have surgery on his right knee at the time of his accident. Accordingly, the Board finds that the medical evidence as to the August 9, 2010 surgery is of reduced probative value on the issue of whether the right knee surgery of August 9, 2010 was related to his employment-related accident.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that OWCP properly denied authorization for appellant's right knee surgery of August 9, 2010. The Board finds that OWCP improperly denied medical expenses associated with the May 21, 2012 right knee surgery.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated May 23, 2012 is affirmed in part and reversed in part, consistent with this decision.

Issued: August 26, 2013  
Washington, DC

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

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

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