United States Department of Labor
Employees' Compensation Appeals Board

J.W., Appellant	)	
and	)	**Docket No. 12-1452**
	)	**Issued: March 21, 2013**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Philadelphia, PA, Employer	)	

Appearances:
Jason S. Lomax, Esq., for the appellant
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 June 27, 2012 appellant, through his attorney, timely appealed the April 4, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) which denied authorization for left knee surgery. Pursuant to the Federal Employees' Compensation Act[1] (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 abused its discretion by denying to authorize a left total knee arthroplasty.

FACTUAL HISTORY

Appellant, a 50-year-old housekeeping aide, has an accepted occupational disease claim for left knee lateral collateral ligament sprain which arose on or about September 13, 2009. On

[1] 5 U.S.C. §§ 8101-8193.

the September 23, 2009 Form CA-2, he reported "two episodes of 'popping' in knee going from kneeling to standing." The two episodes reportedly occurred on September 13 and 19, 2009. Appellant stopped work on September 26, 2009. He received wage-loss compensation.

Appellant had x-ray evidence of preexisting bilateral knee osteoarthritis. A September 19, 2009 left knee x-ray revealed a small joint effusion and severe medial joint space degenerative joint disease.

Dr. Easwaran Balasubramanian, a Board-certified orthopedic surgeon, examined appellant on December 15, 2009. He reviewed a magnetic resonance imaging (MRI) scan that revealed severe degenerative arthritis of the medial joint. Dr. Balasubramanian noted that appellant had undergone physical therapy, but the pain was not much different. He recommended a corticosteroid injection. Dr. Balasubramanian noted that if the injection did not alleviate appellant's pain, then surgery was an option. He characterized appellant's injury as a work-related aggravation of left knee degenerative arthritis.

Dr. Balasubramanian performed a left total knee replacement on March 24, 2010. His pre- and postoperative diagnosis was left knee degenerative joint disease. In a May 13, 2010 report, Dr. Balasubramanian explained that appellant aggravated his preexisting left knee degenerative arthritis on September 13, 2009, which required total knee replacement.

In a July 8, 2010 report, Dr. Arnold T. Berman, a Board-certified orthopedic surgeon and district medical adviser, disagreed that the September 13, 2009 employment incident aggravated appellant's preexisting left knee osteoarthritis. He explained that because of the advanced nature of appellant's osteoarthritis, knee replacement was inevitable regardless of the September 13, 2009 employment injury. Dr. Berman did not recommend expanding appellant's claim to include osteoarthritis. He found that the March 24, 2010 left total knee replacement was not reasonable in regards to appellant's September 13, 2009 work-related injury.

After a brief return to limited duty, appellant sustained another work-related injury on September 28, 2010 when he fell off a stage. OWCP accepted the claim for multiple contusions involving the left knee, left shoulder and left upper arm (xxxxxx458).[2]

In October 2010, OWCP referred appellant for a second opinion evaluation to determine if his osteoarthritis and left total knee arthroplasty were causally related to the September 13, 2009 employment injury.

On November 19, 2010 Dr. Robert A. Smith, a Board-certified orthopedic surgeon and OWCP-referral physician, examined appellant. He noted a longstanding history of left knee osteoarthritis. Dr. Smith stated that there was no specific evidence of record that the September 2009 employment injury caused any aggravation or acceleration of appellant's left knee arthritis. He noted that the presurgical left knee MRI scan showed no evidence of acute meniscal tear or osteochondral injury. Further, the March 24, 2010 surgical report did not

[2] Under the current claim, OWCP paid wage-loss compensation for temporary total disability through September 12, 2010. Although the March 24, 2010 left total knee arthroplasty was unauthorized, it nonetheless compensated appellant during postsurgery recovery period until he resumed work on September 13, 2010.

mention anything suggestive of a traumatic aggravation of appellant's preexisting degenerative disease. Dr. Smith agreed with Dr. Berman that the total knee replacement was not medically related to the September 2009 injury either by direct cause, aggravation, precipitation or acceleration. He concluded that appellant's left knee sprain had resolved without residuals.

In a March 10, 2011 report, Dr. Balasubramanian stated his disagreement with Dr. Smith's opinion. He reiterated his opinion that the September 2009 employment injury aggravated appellant's preexisting degenerative osteoarthritis, necessitating the March 24, 2010 total knee replacement.

OWCP found a conflict in medical opinion between Dr. Balasubramanian and Dr. Smith. It referred appellant to Dr. Joseph A. Jelen, Jr., a Board-certified orthopedic surgeon, for an impartial medical examination. Dr. Jelen examined appellant on August 9, 2011 and found he had recovered from his accepted left knee strain and there was no work-related abnormality restricting his function. He noted that appellant's degenerative arthritis predated the left knee "pop" incident, which he characterized as neither violent nor disruptive of the integrity of the knee. Dr. Jelen explained that the "pop" in all likelihood was secondary to the degenerative changes within the knee. There was no evidence of any dislocation, severe ligament tears or injuries based on diagnostic studies, and no acute findings on x-ray or MRI scan of the left knee. Dr. Jelen found that the work-related injury did not aggravate appellant's preexisting arthritic condition and the knee replacement was not the result of the injury. The total knee replacement was not medically caused by factors of employment and, therefore, not medically necessary as a result of the September 2009 injury. Dr. Jelen stated that appellant's knee replacement surgery was not causally related to factors of his employment.

By decision dated October 28, 2011, OWCP declined authorization for appellant's March 24, 2010 left total knee replacement based on Dr. Jelen's August 9, 2011 opinion.

In an April 4, 2012 decision, the Branch of Hearings and Review affirmed the October 28, 2011 decision.

LEGAL PRECEDENT

An injured employee is entitled to receive all medical services, appliances or supplies which a qualified physician prescribes or recommends and which OWCP considers necessary to treat the work-related injury.[3] OWCP has broad discretion in reviewing requests for medical services under 5 U.S.C. § 8103(a), with the only limitation on its authority being that of reasonableness.[4] Abuse of discretion 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.[5]

[3] 5 U.S.C. § 8103(a); 20 C.F.R. § 10.310(a).

[4] *Joseph E. Hofmann*, 57 ECAB 456, 460 (2006).

[5] *Id.*; *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

While OWCP is obligated to pay for treatment of work-related conditions, appellant has the burden of establishing that the medical expenditure was incurred for treatment of the effects of a work-related injury or condition.[6] Proof of causal relationship must include rationalized medical evidence.[7] In addition to demonstrating causal relationship, the injured employee must show that the requested services, appliances or supplies are medically warranted.[8]

FECA provides that if there is disagreement between an OWCP-designated physician and an employee's physician, OWCP shall appoint a third physician who shall make an examination.[9] For a conflict to arise, the opposing physicians' viewpoints must be of "virtually equal weight and rationale."[10] Where OWCP has referred the case to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[11]

ANALYSIS

OWCP accepted appellant's claim for left knee lateral collateral ligament sprain which arose on or about September 13, 2009. Appellant had a history of preexisting left knee degenerative osteoarthritis and on March 24, 2010 underwent a left total knee arthroplasty. His surgeon, Dr. Balasubramanian, stated that the September 2009 employment injury aggravated the preexisting degenerative osteoarthritis and necessitated the March 24, 2010 surgery. Dr. Berman and Dr. Smith disagreed, stating that the accepted injury had not contributed to appellant's arthritis or need for surgery. Accordingly, OWCP properly referred appellant to an impartial medical examiner to resolve this conflict in medical opinion. Dr. Jelen provided an accurate history of injury, reviewed the medical records and diagnostic studies. He found that the accepted the left knee sprain had resolved. Dr. Jelen also found that the left knee "pop" incident did not aggravate appellant's underlying osteoarthritis or necessitate the left knee replacement surgery. As such, appellant's left knee surgery was not medically necessary as a result of his accepted employment injury.

The opinion of an impartial specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[12] In this instance, Dr. Jelen provided a well-rationalized report based on a proper factual and medical history. He accurately summarized the relevant medical evidence, and relied on the latest statement of accepted facts. Dr. Jelen provided detailed examination findings, a review of the diagnostic studies and medical

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

[7] *Supra* note 4.

[8] *Id.* at 460-61.

[9] 5 U.S.C. § 8123(a); *see* 20 C.F.R. § 10.321; *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

[10] *Darlene R. Kennedy*, 57 ECAB 414, 416 (2006).

[11] *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

[12] *Id.*

rationale supporting his opinion. As such, his opinion is entitled to determinative weight. The Board finds that OWCP properly denied authorization of appellant's surgery.

CONCLUSION

The Board finds that OWCP did not abuse its discretion when it declined authorization for appellant's March 24, 2010 left total knee arthroplasty.

ORDER

IT IS HEREBY ORDERED THAT the April 4, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 21, 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