

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

M.R., Appellant)
and) Docket No. 12-1968
U.S. POSTAL SERVICE, POST OFFICE,) Issued: March 18, 2013
San Antonio, TX, Employer)

)

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On September 27, 2012 appellant filed a timely appeal from a May 29, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether OWCP properly denied authorization for right total knee arthroplasty; and (2) whether appellant met his burden of proof to establish that he was disabled from work from March 31 to April 7, 2012 as a result of his August 8, 2006 employment injury.

FACTUAL HISTORY

On August 8, 2006 appellant, then a 51-year-old letter carrier, filed a traumatic injury claim alleging that he felt a popping sensation in his right knee that day when he stepped onto a

¹ 5 U.S.C. § 8101 *et seq.*

patio where boxes were located. He stopped work and returned to light duty on August 10, 2006. OWCP accepted appellant's claim for right knee sprain.

In a September 26, 2006 magnetic resonance imaging (MRI) scan report, Dr. Peter V. Berardo, a Board-certified diagnostic radiologist, noted appellant's history of knee sprain. The MRI scan revealed no acute fractures or subluxations and no medial and lateral ligament tears. Dr. Berardo reported mild tricompartmental degenerative changes within the thinning of the articular cartilage. He diagnosed mild tricompartmental degenerative changes, joint effusion and prepatellar bursitis.

On December 14, 2006 appellant was released to full duty. OWCP accepted that on January 7, 2012 he sustained a recurrence of his August 8, 2006 employment injury. On January 12, 2012 appellant underwent total right knee arthroplasty. He stopped work.

In a January 6, 2012 Family and Medical Leave Act (FMLA) form, Dr. Tad L. Gerlinger, a Board-certified orthopedic surgeon, noted that appellant's condition commenced on January 12, 2012 and had a probable duration of six months. Appellant was admitted in the hospital from January 12 to 14, 2012. Dr. Gerlinger checked "yes" that appellant would be incapacitated due to his medical condition and estimated that the period of incapacity would be from January 12 to April 12, 2012.

In a January 6, 2012 radiograph report, an unknown provider stated that views of the hips, knees and ankles demonstrated bilateral osteoarthritis of the hip joints with joint space narrowing and marginal osteophyte formation. The provider reported that bilateral tricompartmental osteoarthritis was most advanced in the left knee joint with complete joint space loss and bone-on-bone articulation of the medial compartment.

In a January 14, 2012 discharge record, Dr. Alan C. Puddy, a Board-certified orthopedic surgeon, related appellant's history of bilateral knee pain for the past five to six years. Appellant had been treated by Dr. Gerlinger for osteoarthritis of both knees and had received multiple injections over the last several years. Dr. Puddy reported that appellant was a postal service worker whose job was to deliver mail by ambulation and he did not use any vehicle for delivery. Examination of the right knee revealed full extension and 125 degrees of flexion. Lachman and anterior drawer tests were negative. Dr. Puddy reported that standing radiographs revealed bilateral knee tricompartmental osteoarthritis. He diagnosed bilateral tricompartmental knee osteoarthritis and stated that appellant was scheduled for total right knee arthroplasty on January 12, 2012.

In a March 12, 2012 statement, appellant noted that his original right knee injury occurred on August 8, 2006. After his return to work, he was treated by Dr. Gerlinger and received medical injections, but it was just a temporary fix. Appellant related that Dr. Gerlinger informed him that 17 years of walking four to five miles a day to deliver mail would damage both knees over a period of time and advised him that both his knees needed to be replaced. He informed his employer that he was scheduled for a right knee replacement on January 12, 2012. Appellant requested the documents necessary to claim this as a work issue but he did not receive any documents until a week before he was scheduled for surgery.

On April 20, 2012 appellant filed a claim for disability compensation for the period March 31 to April 7, 2012. He indicated that the reason for his leave was surgery recovery. On April 30, 2012 OWCP advised appellant that the evidence submitted was insufficient to establish his claim. It requested additional evidence to establish that his disability for work for the period March 31 through April 7, 2012 was causally related to the 2006 injury.

In a January 6, 2012 handwritten medical form, Dr. Gerlinger checked a box indicating that appellant had a serious injury or illness that may render him medically unfit to perform the duties of his office, grade, rank or rating. He stated that the approximate date of appellant's condition was five years prior. In a handwritten April 4, 2012 return to work note, Dr. Gerlinger stated that appellant could return to work six-hour days from April 9 to 13, 2012 and then resume full-time work. In an April 4, 2012 duty status report, he noted that appellant had a total right knee replacement on January 12, 2012. Dr. Gerlinger authorized appellant to return to work.

In an April 30, 2012 report, Dr. Gerlinger authorized appellant to return to work without limitations.

OWCP referred appellant's case, together with a statement of accepted facts, to a district medical adviser to determine whether his January 12, 2012 total knee replacement surgery was a result of his August 8, 2006 employment injury. In a May 8, 2012 report, Dr. Ronald Blum, a Board-certified orthopedic surgeon and an OWCP medical adviser, reviewed appellant's records, including the statement of accepted facts. He related that, on August 8, 2006, appellant sprained his right knee in the performance of duty. Appellant received treatment for bilateral knee pain and arthritis. Dr. Blum reported that a September 26, 2006 MRI scan revealed evidence for mild tricompartmental degenerative changes, joint effusion and prepatellar bursitis; but there were no more medical treatment records until January 12, 2012. Appellant had been treated conservatively, including injections, for bilateral knee pain for the past five to six years. He was diagnosed with bilateral osteoarthritis of the knees and underwent right total knee arthroplasty on January 12, 2012. Dr. Blum stated that appellant had received adequate conservative treatment for his right knee osteoarthritis and that the surgical procedure was within the realm of accepted medical practice. He concluded, however, that the surgery was not related to the accepted August 8, 2006 employment injury. Dr. Blum explained that appellant had preexisting arthritis in both knees as established in the medical record prior to August 8, 2006. He stated that appellant's right knee sprain only caused temporary pain and there was no information of record to support any ongoing aggravation of arthritis in the right knee.

In a decision dated May 29, 2012, OWCP denied authorization for appellant's January 12, 2012 right total knee arthroplasty finding that it was not medically necessary to treat his accepted employment injury. It relied on the May 8, 2012 district medical adviser's report, which determined that appellant's current right knee condition resulted from a preexisting osteoarthritis condition and was not related to his accepted employment injury. OWCP further found that appellant's claim for disability compensation for the period March 31 to April 7, 2012 was also denied because he was disabled from work due to a surgery that was not related to his accepted August 8, 2006 employment injury.

LEGAL PRECEDENT -- ISSUE 1

Section 8103(a) of FECA provides for the furnishing of services, appliances and supplies prescribed or recommended by a qualified physician which OWCP, under authority delegated by the Secretary, considers likely to cure, give relief, reduce the degree or the period of disability or aid in lessening in the amount of monthly compensation.² In interpreting the section 8103(a), the Board has recognized that OWCP has broad discretion in approving services provided under FECA to ensure that an employee recovers from his or her injury to the fullest extent possible in the shortest amount of time.³ OWCP has administrative discretion in choosing the means to achieve this goal and the only limitation on the OWCP's authority is that of reasonableness.⁴ 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.⁵

While OWCP is obligated to pay for treatment of employment-related conditions, appellant has the burden of establishing that the expenditure is incurred for treatment of the effects of an employment-related injury or condition.⁶ Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.⁷ Therefore, in order to prove that the surgical procedure is warranted, appellant must submit evidence to show that the procedure was for a condition causally related to the employment injury and that the surgery was medically warranted. Both of these criteria must be met in order for OWCP to authorize payment.⁸

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained a right knee sprain as a result of an August 8, 2006 employment injury. Appellant stopped work and returned to full duty on December 14, 2006. On January 12, 2012 he underwent total right knee arthroplasty. In a March 12, 2012 statement, appellant requested that his surgery be accepted as related to his injury in 2006. OWCP denied authorization of his right knee surgery based on the opinion of Dr. Blum, an OWCP medical adviser. The Board finds that OWCP did not abuse its discretion in denying appellant's request for right knee surgery.

Following his August 8, 2006 employment injury, appellant was treated by Drs. Gerlinger and Puddy. As noted by Dr. Blum, there is a gap in medical treatment records

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

³ *W.T.*, Docket No. 08-812 (issued April 3, 2009); *A.O.*, Docket No. 08-580 (issued January 28, 2009).

⁴ *D.C.*, 58 ECAB 629 (2007); *Mira R. Adams*, 48 ECAB 504 (1997).

⁵ *L.W.*, 59 ECAB 471 (2008); *P.P.*, 58 ECAB 673 (2007); *Daniel J. Perea*, 42 ECAB 214 (1990).

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

⁷ *Id.*; *see also Bertha L. Arnold*, 38 ECAB 282 (1986).

⁸ *See Cathy B. Millin*, 51 ECAB 331, 333 (2000).

from 2006 to 2012. In January 14, 2012 hospital discharge record, Dr. Puddy related appellant's history of bilateral knee pain for the past five to six years and treatment for osteoarthritis of the bilateral knees. He conducted an examination and noted that appellant was scheduled for total right knee arthroplasty. Dr. Puddy did not, however, explain how appellant's bilateral knee condition was causally related to his August 8, 2006 employment injury or how the total right knee replacement surgery was medically necessary to treat appellant's accepted conditions. He did not address whether the 2006 sprain was competent to aggravate the preexisting arthritis and if so, whether such aggravation was temporary or permanent. The Board has found that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.⁹ Dr. Gerlinger's April 30, 2012 report stated that appellant underwent a right total knee arthroplasty on January 12, 2012, but provided no opinion on whether the surgery was medically necessary to treat a condition causally related to his accepted injury. There is no well-rationaled opinion explaining how appellant's current knee pain is related to his 2006 injury. The medical reports noted that he was diagnosed with osteoarthritis before the August 8, 2006 employment injury. The Board finds that the medical evidence is insufficient to establish that appellant's current right knee condition and need for right knee surgery were causally related to the accepted 2006 employment injury.

OWCP referred appellant's claim to Dr. Blum, who concluded that the right knee surgery in 2012 was not related to appellant's work-related injury and recommended that his right knee surgery not be authorized. The medical adviser agreed that appellant suffered from right knee pain and diagnosed bilateral knee osteoarthritis. He stated that the medical records did not address how appellant's current knee conditions were related to his employment injury in 2006. The medical adviser noted that medical reports prior to August 8, 2006 revealed that appellant had preexisting arthritis in both knees and that a September 26, 2006 MRI scan report revealed mild tricompartmental degenerative changes. He concluded that appellant's right knee surgery was not medically necessary to treat his August 8, 2006 employment injury.

The Board finds that the medical adviser's report represents the weight of the medical evidence. It was well rationalized and based on an accurate factual and medical history. The medical adviser reviewed appellant's medical treatment records and determined that diagnostic studies revealed that appellant had bilateral knee osteoarthritis prior to the August 8, 2006 employment injury and continued to suffer from that condition. He concluded that the medical evidence did not establish that appellant's right knee condition was aggravated or contributed to by accepted the 2006 employment injury.

On appeal, appellant contends that his right knee condition worsened after the 2006 employment injury and requested that the Board consider his medical treatment records. The Board finds that the medical evidence of record does not provide a rationalized medical opinion explaining how his current right knee condition for which surgery was performed are causally related to the August 8, 2006 right knee sprain. Appellant has not met his burden of proof to establish his claim.

⁹ R.E., Docket No. 10-679 (issued November 16, 2010); K.W., 59 ECAB 271 (2007).

LEGAL PRECEDENT -- ISSUE 2

The term disability as used in FECA means the inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition, which resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.¹⁰

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.¹¹ The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.¹²

ANALYSIS -- ISSUE 2

As noted, OWCP accepted that appellant sustained a right knee sprain as a result of an August 8, 2006 employment injury. Appellant stopped work and returned to full duty on December 14, 2006. OWCP also accepted that he sustained a recurrence on January 7, 2012. Thereafter on January 12, 2012 appellant underwent total right knee arthroplasty and stopped work. He submitted a claim for disability compensation for the period March 31 to April 7, 2012. The issue is whether appellant sustained a recurrence of disability from March 31 to April 7, 2012 as a result of the August 8, 2006 employment injury.

Appellant attributed his recurrence of disability to a change in the nature and extent of his employment-related conditions; specifically that he was recovering from right knee surgery. The Board affirms finds that his right knee surgery was not related to his accepted knee strain, sustained on August 8, 2006.

Appellant submitted medical reports from Dr. Gerlinger dated January 6 to April 12, 2012. In a January 6, 2012 FMLA form, Dr. Gerlinger indicated that appellant's condition commenced on January 12, 2012. He checked "yes" that appellant would be incapacitated due to his medical condition and estimated that the period of incapacity would be from January 12 to April 12, 2012. Although Dr. Gerlinger excused appellant from work until April 12, 2012, he did not provide any explanation for the cause of appellant's disability during the claimed period. He did not address how the injury in 2006 contributed to appellant's disability in 2012. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹³ Dr. Gerlinger failed to provide an explanation as to how appellant's inability to work resulted from the accepted August 8, 2006 work injury.

¹⁰ 20 C.F.R. § 10.5(x).

¹¹ *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *D.I.*, 59 ECAB 158 (2007).

¹² *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

¹³ *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *A.D.*, 58 ECAB 149 (2006).

The diagnostic reports and Dr. Puddy's hospital records do not address the issue of reference appellant's inability to work during the claimed period. They report that appellant was treated for osteoarthritis of both knees and underwent right knee surgery. This evidence does not establish that his current knee condition was related to his accepted August 8, 2006 right knee sprain; only his treatment for osteoarthritis. Monetary compensation benefits are payable to an employee who has sustained wage loss due to disability for employment resulting from the employment injury.¹⁴ As the reports do not address appellant's disability from work or explain how his inability to work was causally related to the August 8, 2006 employment injury, they are insufficient to establish his claim.

On appeal, appellant described the worsening of his right knee condition and that it took over three months to process his claim and he used two and one-half months of sick and regular leave. As noted, however, his burden of proof includes the necessity of furnishing evidence from a qualified physician who addresses, on the basis of a complete and accurate factual and medical history, how the disabling condition is causally related to the employment injury.¹⁵ Appellant has not submitted sufficient medical evidence in this case. The Board finds that he did not meet his burden of proof in this case.

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 did not abuse its discretion in denying appellant's request for surgical authorization. The Board also finds that he did not meet his burden of proof to establish that he was disabled from March 31 through April 7, 2012 as a result of his August 8, 2006 employment injury.

¹⁴ *Laurie S. Swanson*, 53 ECAB 517, 520 (2002); *see also Debra A. Kirk-Littleton*, 41 ECAB 703 (1990).

¹⁵ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the May 29, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 18, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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