United States Department of Labor
Employees' Compensation Appeals Board

B.L., Appellant	)	
and	)	**Docket No. 14-894**
	)	**Issued: August 15, 2014**
U.S. POSTAL SERVICE, BULK MAIL 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:
PATRICIA HOWARD FITZGERALD, Acting Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 6, 2014 appellant, through his attorney, timely appealed the September 9, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP), which declined authorization for left knee surgery.[1] Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[3]

[1] The Board received the appeal on March 11, 2014. However, reliance on the date of receipt would render the appeal untimely by one day. Under the circumstances, the Board relied on the March 6, 2014 date of mailing as certified by appellant's counsel. Accordingly, the appeal is timely pursuant to 20 C.F.R. § 10.501.3(f)(1) (2012).

[2] 5 U.S.C. §§ 8101-8193 (2006).

[3] The record on appeal contains evidence received after OWCP issued its September 9, 2013 decision. The Board is precluded from considering evidence that was not in the case record at the time OWCP rendered its final decision. 20 C.F.R. § 501.2(c)(1).

ISSUE

The issue is whether OWCP abused its discretion by declining authorization for a left total knee arthroplasty.

FACTUAL HISTORY

Appellant, a 57-year-old maintenance mechanic, injured his left knee in the performance of duty on December 7, 2007.[4] OWCP accepted his traumatic injury claim for left medial meniscus tear and authorized a February 6, 2008 arthroscopic procedure.[5] Appellant received wage-loss compensation until he resumed work in October 2008.

In January 2011, Dr. Brislin requested authorization for a left total knee arthroplasty. In a February 15, 2011 report, he noted continued degeneration of appellant's left knee following surgery in February 2008. Dr. Brislin stated that removal of the shock absorbing meniscal cartilage can cause degeneration of the knee. He also indicated that recent x-rays demonstrated a bone-on-bone condition in the medial femorotibial compartment. Dr. Brislin further stated that the December 2007 employment injury and subsequent surgery aggravated appellant's underlying knee condition to the point where total knee arthroplasty was the only viable option.

OWCP referred the case to its district medical adviser (DMA), Dr. Arnold T. Berman, a Board-certified orthopedic surgeon, who reviewed the record on April 28, 2011. Dr. Berman noted that preinjury x-rays dated October 9, 2006 showed moderately advanced degenerative changes in both knees and a December 14, 2007 left knee magnetic resonance imaging (MRI) scan also demonstrated advanced osteoarthritis. He further noted that when appellant underwent left knee surgery in February 2008, the operative report specifically noted an advanced arthritic condition. Based on this information, Dr. Berman concluded that appellant's advanced osteoarthritis predated his accepted employment injury. He further explained that because of the already advanced nature of the condition, appellant would have required knee replacement surgery within a fairly short period of time regardless of the work-related injury. Dr. Berman did not find any evidence that indicated the work injury aggravated appellant's underlying osteoarthritis such that it would have caused the condition to progress over such a short period of time. While he concurred with the proposed surgical procedure, he did not believe that the need for surgery arose as a result of the accepted employment injury. Appellant's current condition and need for surgery was instead a consequence of the natural progression of his preexisting left knee osteoarthritis.

Relying on the Dr. Berman's findings, OWCP denied authorization on March 21, 2012. However, the Branch of Hearings & Review subsequently set aside OWCP's decision denying surgery. In an August 31, 2012 decision, the hearing representative determined that there was an unresolved conflict in medical opinion between Dr. Berman and appellant's physician, Dr. Brislin. Consequently, the case was remanded to OWCP with instructions to refer appellant

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[4] Appellant was walking down stairs and twisted his left leg while stepping over a beam at the bottom of the stairs.

[5] Dr. Brian T. Brislin, a Board-certified orthopedic surgeon, performed a left knee partial medial meniscectomy and abrasion chondroplasty of the left medial femoral condoyle for grade 4 chondral changes.

for an impartial medical evaluation to determine whether the work injury and/or surgery affected his preexisting osteoarthritis and thus, contributed to the need for a left total knee arthroplasty.

In treatment notes dated September 5, 2012, Dr. Brislin reiterated that a total knee replacement would be in appellant's best interest. He further stated that the proposed surgery was required due to the arthritic change that was exacerbated and aggravated by the meniscectomy.

OWCP selected Dr. Barry J. Snyder, a Board-certified orthopedic surgeon, to serve as an impartial medical examiner (IME). Dr. Snyder examined appellant on November 28, 2012 and issued a report dated February 22, 2013. He noted that appellant twisted his left knee while coming down steps during work. However, Dr. Snyder mistakenly identified the date of injury as December 27, 2007 rather than December 7, 2007. He also noted that appellant underwent arthroscopic surgery for a meniscal tear in February 2008. Dr. Snyder conducted a physical examination of the lower extremities and personally read several knee x-rays from January 2008 through December 2011. Additionally, he reviewed various medical records, including an October 9, 2006 left knee x-ray report, a December 14, 2007 left knee MRI scan, Dr. Brislin's treatment notes, the February 6, 2008 operative report and Dr. Berman's April 28, 2011 opinion. Dr. Snyder noted that OWCP requested his opinion on whether the recommended "left knee arthroplasty is a direct result of the [December 7, 2007] injury." There was no dispute as to the need for total knee replacement.

While acknowledging that OWCP accepted the claim for left medial meniscus tear, Dr. Snyder explained that Dr. Brislin's February 6, 2008 operative findings were consistent with the type of meniscal tear associated with degenerative joint disease, rather than a recent injury. The reported findings were not representative of an acute tear, but one that had been present for years. Dr. Snyder further explained that the reported horizontal cleavage tear was, by definition, a degenerative meniscal tear. When combined with the reported radial and vertical components, it was all the more obvious that the operative findings related to appellant's preexisting degenerative joint disease, independent of the December 2007 employment incident. Although Dr. Snyder believed that appellant's left knee complex meniscal derangement was not of recent onset, he acknowledged the issue was moot given OWCP's acceptance of left medial meniscus tear as employment related.

On the question of whether the recommended total knee replacement was related to the accepted injury, Dr. Snyder acknowledged that a meniscectomy can lead to accelerated degenerative arthrosis. However, in appellant's case he had already demonstrated end-stage degenerative arthrosis of his left knee independent of the arthroscopic meniscectomy. Dr. Snyder explained that it was impossible for bone-on-bone joint space narrowing to have occurred just a week after the subject incident. He further noted that appellant had a documented history of knee pain and was a candidate for total knee replacement long before the December 2007 incident. Dr. Snyder opined that given the advanced state of appellant's degenerative arthrosis, the February 2008 arthroscopic surgery was not likely to relieve his complaints. For the same reasons, subsequent treatment modalities provided limited relief, if any. Total knee replacement was the only reasonable treatment with the potential of relieving appellant's knee pain, but this recommended treatment was related to his primary degenerative joint disease and was independent of the accepted work injury.

Dr. Snyder stated to a reasonable degree of medical certainty that the proposed total joint replacement related to appellant's preexisting degenerative arthrosis, which was a natural disease disorder, rather than a condition of traumatic or work-related origin. While conceding that OWCP accepted meniscal tear as employment related, Dr. Snyder reiterated that the prognosis for relief of knee pain from arthroscopic surgery was poor because of the preexisting left knee degenerative joint disease, which had already advance to bone-on-bone arthrosis. He stated that it was "'end stage'" before the subject incident, regardless of whether appellant incurred aggravation of meniscal derangement. Dr. Snyder concluded that appellant's ongoing left knee symptoms were related to his preexisting, bone-on-bone degenerative arthritic condition, independent of the subject incident. Appellant's condition could not have been much worse after the accepted meniscal tear than objectively noted before it.

In a decision dated February 25, 2013, OWCP denied the requested surgery based on the IME's findings.

On September 9, 2013 the Branch of Hearings & Review issued a decision affirming OWCP's February 25, 2013 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.[6] 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.[7] 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.[8]

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.[9] Proof of causal relationship must include rationalized medical evidence.[10] In addition to demonstrating causal relationship, the injured employee must show that the requested services, appliances or supplies are medically warranted.[11]

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.[12] For a conflict to arise the opposing physicians' viewpoints must be of "virtually

[6] 5 U.S.C. § 8103(a); 20 C.F.R. § 10.310(a) (2011).

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

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

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

[10] *Joseph E. Hofmann*, *supra* note 7.

[11] *Id.,* at 460-61.

[12] 5 U.S.C. § 8123(a); *see* 20 C.F.R. § 10.321; *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

equal weight and rationale."[13] 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.[14]

ANALYSIS

OWCP accepted appellant's claim for left medial meniscus tear, which arose on December 7, 2007. Appellant had a history of preexisting left knee degenerative joint disease, which OWCP has not accepted as having been aggravated by the December 7, 2007 incident. OWCP also authorized a February 6, 2008 arthroscopic procedure. At the time, Dr. Brislin performed a left knee partial medial meniscectomy and an abrasion chondroplasty of the left medial femoral condoyle. Appellant's left knee symptoms persisted and Dr. Brislin ultimately recommended a left knee total arthroplasty. He believed that the December 2007 employment injury and subsequent surgery aggravated appellant's underlying knee condition to the point where a total knee arthroplasty was the only viable option. The DMA did not question the need for surgery, but disagreed with Dr. Brislin regarding the relationship between the December 7, 2007 employment incident and the current need for surgery. He indicated that appellant's current condition and need for surgery was a consequence of the natural progression of his preexisting left knee osteoarthritis.[15]

Based on the disagreement between Dr. Brislin and Dr. Berman, OWCP properly referred appellant to Dr. Snyder an impartial medical examiner to resolve the conflict in medical opinion. Dr. Snyder, agreed with Dr. Berman. He essentially found that, given the advanced nature of appellant's preexisting degenerative joint disease, a left knee arthroplasty was inevitable regardless of the accepted December 7, 2007 employment incident. Moreover, Dr. Snyder found that appellant's prognosis following the February 6, 2008 OWCP-approved surgery was poor given the preexisting left knee degenerative joint disease had already advance to bone-on-bone arthrosis.

An IME's opinion, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[16] In this instance, Dr. Snyder provided a well-rationalized report based on a proper factual and medical history.[17] He accurately summarized the relevant medical evidence and relied on the latest statement of accepted facts. Dr. Snyder also provided detailed examination findings and medical rationale supporting his opinion. As such, his opinion as the IME was entitled to determinative weight.

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

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

[15] The DMA did not specifically comment on whether the February 6, 2008 OWCP-approved surgery either caused or contributed to appellant's current left knee complaints.

[16] *Gary R. Sieber*, *supra* note 14.

[17] Appellant's counsel challenges the reliability of Dr. Snyder's report given his repeated reference to December 27, 2007 as the date of injury. The Board considers the error merely typographical. Elsewhere in his report, the IME clearly noted that the purpose of his examination was to determine whether the recommended "left knee arthroplasty is a direct result of the [December 7, 2007] injury."

The evidence establishes that neither the December 7, 2007 accepted employment injury or the February 6, 2008 OWCP-approved surgery precipitated appellant's current need for a left total knee arthroplasty. Accordingly, OWCP did not abuse its discretion by denying his request for surgery.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision.[18]

CONCLUSION

OWCP did not abuse its discretion by declining to authorize the recommended left total knee arthroplasty.

ORDER

IT IS HEREBY ORDERED THAT the September 9, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 15, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[18] *See* 5 U.S.C. § 8128(a); 20 C.F.R. §§ 10.605-10.607.