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

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| **G.G., Appellant** | ) | |
| **and** | ) | **Docket No. 17-0504** |
| | ) | **Issued: August 8, 2017** |
| **U.S. POSTAL SERVICE, POST OFFICE, Great Falls, MT, Employer** | ) | |

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

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

### ***JURISDICTION***

On January 5, 2017 appellant filed a timely appeal from a November 22, 2016 merit decision of the Office of Workers' Compensation Programs. 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 in denying appellant's request for a total right knee replacement.

### ***FACTUAL HISTORY***

On March 1, 2015 appellant, then a 58-year-old letter carrier, filed a traumatic injury claim alleging that on February 28, 2015 he was walking down steps while delivering mail and a

[1] 5 U.S.C. § 8101 *et seq.*

step broke and he fell backwards, injuring his knees, back, elbows, neck, and shoulders. He stopped work on March 2, 2015.

In a March 2, 2015 report from Dr. Paul M. Johnson, appellant's treating Board-certified family practitioner, he noted that on February 28, 2015, while delivering mail, appellant fell through stairs and landed on his elbow, back, shoulder, and neck. He also noted that appellant injured both knees when going through the broken stairs. Dr. Johnson opined that, at that time, appellant had aggravated his left knee and injured his right knee. He diagnosed appellant with lumbar sprain or strain, work-related injury, contusion of knee, contusion of elbow, lumbar back pain, rotator cuff syndrome, and sprain of cervical neck. Appellant continued to receive regular treatment from Dr. Johnson for his multiple injuries.

On April 22, 2015 OWCP accepted appellant's claim for lumbar and cervical strains, and contusions of the left knee and left elbow.

In an April 23, 2015 report, Dr. Gregory S. Tierney, appellant's treating Board-certified orthopedic surgeon, diagnosed appellant with bilateral degenerative joint disease, left greater than right. He noted that appellant had elected to proceed with a total left knee replacement.

On May 12, 2015 OWCP expanded the claim to include bilateral rotator cuff tears as accepted conditions.

On May 5, 2015 appellant accepted a position as a modified-duty city carrier for the employing establishment. However, he stopped work again to undergo the left knee arthroplasty on July 27, 2015.

A June 22, 2015 magnetic resonance imaging (MRI) scan of appellant's right knee that was interpreted by Dr. Tyler L. Will, a radiologist, showed advanced degenerative changes to the medial compartment, including a tear of the meniscus and articular cartilage loss. Dr. Will also noted moderate chondromalacia patella, particularly medially.

In an October 14, 2015 report, Dr. Johnson listed diagnoses as: traumatic arthritis of the right knee, traumatic arthritis of the left knee, and right meniscal tear. He noted that appellant's diagnostic studies showed a meniscal tear and traumatic arthritis of the right knee and that he would need right knee surgery because of his employment injury. Dr. Johnson noted that appellant had continual knee pain and stiffness, and noted occasional swelling and decreased range of motion and activity tolerance.

In a February 3, 2016 report, Dr. Johnson noted that appellant had a prior workers' compensation injury for injuries to his neck, low back, left knee, and right shoulder. He also noted that appellant was beginning to improve and had been scheduled for left knee surgery when he had another workers' compensation injury on February 28, 2015, at which point he injured his shoulders, elbows, right knee, and low back, and reinjured his left knee. Dr. Johnson further noted that appellant underwent left knee surgery for a meniscal tear and was awaiting right knee surgery due to his traumatic arthritis.

Dr. Tierney, in a February 23, 2016 report, noted that appellant was seven months post left knee arthroplasty. He indicated that appellant was back to work with restrictions set by

Dr. Johnson. Dr. Tierney noted that appellant had an employment injury to his right knee, in addition to the left knee injury. He also noted that he reviewed the MRI scan of appellant's right knee taken in June 2015 and that it showed "a medial meniscus tear in addition to a degenerative medial compartment and probable loose body in the posterior intercondylar notch." Dr. Tierney indicated that appellant would like to schedule a right total knee arthroplasty as soon as it was approved by OWCP, and that he believed that this surgery would be beneficial to appellant.

On March 30, 2016 OWCP expanded acceptance of appellant's claim to include tear of medial meniscus right knee and traumatic arthritis right knee.

OWCP referred appellant's record to Dr. Richard Steinfeld, a Board-certified orthopedic surgeon and OWCP medical adviser, on April 4, 2016 to evaluate whether the evidence supported that a right knee replacement was medically necessary and causally related to appellant's employment injury.

On April 14, 2016 Dr. Steinfeld replied that the proposed right knee replacement was not causally related to the accepted medical condition. He noted that the MRI scan of June 22, 2015, only four months after the employment injury, already noted severe degenerative changes of the medial compartment. Dr. Steinfeld further that degenerative changes occurred over long periods of time and, therefore, the proposed right knee replacement was not causally related to the accepted medical condition. He opined that the proposed right knee replacement was not medically necessary. Dr. Steinfeld noted that appellant had severe arthritic changes involving his medial compartment and that there was no documentation that he had tried and failed other conservative measures. He, therefore, concluded that the proposed right knee replacement was not medically necessary.

In an April 12, 2016 office note, Dr. Tierney indicated that appellant's claim had been accepted for the right knee injury and that he was now ready to schedule the right total knee replacement. When examining the right knee, he noted varus malalignment to the right knee along with significant crepitus. Dr. Tierney noted that he discussed surgery with appellant and that appellant wished to go forward with a right total knee replacement.

On April 18, 2016 OWCP received Dr. Tierney's request for a total right knee arthroplasty.

By decision dated April 19, 2016, OWCP denied authorization for right total knee arthroplasty. It determined that the evidence of record did not support that the proposed right knee replacement was medically necessary to address the effects of appellant's work-related injury.

On April 29, 2016 OWCP received a report of the same date from Dr. Johnson. Dr. Johnson noted that appellant injured his right knee on February 28, 2015 and that the pain was persistent and became quite severe after three hours of activities of daily living. He further noted that appellant had significant difficulty walking up and down steps. In listing appellant's multiple diagnoses, Dr. Johnson indicated that there was a tear of meniscus of right knee and that this was an exacerbation of a preexisting finding of the knee. He noted that appellant did not have right knee symptoms before the injury and that he had an underlying condition that was

mostly related to work over many years at the employing establishment. Dr. Johnson administered a right knee injection.

On May 9, 2016 OWCP received a radiology report wherein Dr. Tierney determined that an April 12, 2016 radiology report of right knee showed end stage medial and patellofemoral compartment degenerative changes. In a May 9, 2016 report, Dr. Tierney diagnosed traumatic arthritis of right knee and right knee degenerative joint disease. He again noted that appellant needed a total right knee replacement.

A May 16, 2016 report by Dr. Johnson noted that appellant was having persistent right knee pain, that the intra-articular steroid injection only gave relief for three days, and appellant stated that he was back to persistent knee pain and weakness with decreased range of motion. Dr. Johnson observed that appellant experienced painful crepitations and difficulty with ambulation. He also discussed appellant's injuries to his neck, left knee, and shoulder.

On June 17, 2016 OWCP requested reconsideration of the April 19, 2016 decision.

In a June 20, 2016 report, Dr. Johnson indicated that appellant currently could not work. He discussed appellant's two work injuries. Dr. Johnson noted that, in reviewing appellant's medical records, it was obvious that this was an occupational disease since appellant was performing his required job duties without difficulty up until his first injury which was then followed by a second significant injury in February 2015. He noted that the MRI scans to the knee had proven the traumatic arthritis followed meniscal tears in the knee secondary to his injury. Dr. Johnson opined that there was a direct relationship between appellant's injuries and his required work.

An August 24, 2016 radiology report of Dr. Tierney diagnosed right knee degenerative joint disease and left knee status post total knee replacement.

On August 27, 2016 appellant retired from federal service.

In a September 19, 2016 2016 report, Dr. Johnson noted musculoskeletal pain in the right knee with an onset date of August 24, 2016. He noted that the pain was sharp, occurred constantly, and was aggravated by climbing and descending stairs, movement, and walking. In a September 6, 2016 report, Dr. Tierney diagnosed bilateral knee effusions. He discussed appellant's recovery from his left knee surgery and noted that at some point appellant would require a right total knee replacement sooner rather than later. Dr. Tierney explained that if appellant had a normal gait pattern it would help him get back to work.

By decision dated November 22, 2016, OWCP denied modification of its April 19, 2016 decision. It determined that, while the evidence of record established that appellant experienced a work injury on February 28, 2015, and that he did sustain an injury to his right knee, it had not received medical evidence establishing a valid causal relationship between that traumatic injury and the need for right knee replacement surgery.

## ***LEGAL PRECEDENT***

Section 8103 of FECA provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances, and supplies prescribed or recommended by a qualified physician, which OWCP considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation.[2] While OWCP is obligated to pay for treatment of employment-related conditions, the employee has the burden of proof to establish that the expenditure is incurred for treatment of the effects of an employment-related injury or condition.[3]

In interpreting this section of FECA, the Board has recognized that OWCP has broad discretion in approving services provided under section 8103, with the only limitation on OWCP's authority being 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] To be entitled to reimbursement of medical expenses, a claimant has the burden of proof to establish 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.[6] 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.[7]

## ***ANALYSIS***

The Board finds that OWCP did not abuse its discretion by denying authorization for a total right knee replacement.

OWCP accepted that the employment incident of February 28, 2015 occurred as alleged. It accepted appellant's claim for traumatic arthritis of the right knee and tear of medial meniscus in the right knee. OWCP also accepted his claim for sprain of back, lumbar region; contusion of knee, left; contusion of elbow, left; sprain of neck; sprain of shoulder; and sprain of the upper arm, rotator cuff, bilateral. The record contains numerous medical reports concerning appellant's multiple injuries. However, the Board will limit its discussion of the evidence to the medical reports addressing appellant's right knee, and specifically, to those reports concerning

[2] 5 U.S.C. § 8103, *see L.D.*, 59 ECAB 648 (2008).

[3] *Kennett O. Collins, Jr.*, 55 ECAB 648 (2004).

[4] *See D.K.*, 59 ECAB 141 (2007).

[5] *Minnie B. Lewis*, 53 ECAB 606 (2002).

[6] *M.B.*, 58 ECAB 588 (2007).

[7] *R.C.*, 58 ECAB 238 (2006).

whether the proposed right knee arthroplasty was medically necessary and causally related to his accepted injury.

OWCP denied authorization for the surgery based on the opinion of OWCP's medical adviser. In an April 14, 2016 report, OWCP's medical adviser opined that the proposed right knee replacement was not causally related to the accepted traumatic injury and that it was not medically necessary. He noted that the MRI scan of June 22, 2015, taken only four months after the employment injury, already noted severe degenerative changes of the medial compartment. OWCP's medical adviser noted that, degenerative changes occur over long periods of time, and therefore, the proposed right knee replacement was not causally related to the accepted incident of February 28, 2015. He further opined that the proposed right knee replacement was not medically necessary, noting that there was no documentation that appellant had tried and failed more conservative measures.

Appellant's physicians' reports are insufficient to establish that the proposed right knee replacement was causally related to the accepted February 28, 2015 injury. Dr. Tierney diagnosed appellant with right knee degenerative joint disease, a right medial meniscus tear, and traumatic arthritis to the right knee. It is unnecessary that the employment injury be the sole or significant contributor to the need for surgery.[8] However, a medical opinion which lacks any explanation as to how or why the employment injury contributed to the need for total knee replacement surgery, is of limited probative value.[9] Although Dr. Tierney opined that appellant needed a right knee replacement, he failed to provide a well-rationalized medical opinion explaining how or why this right knee arthroplasty was causally related to his accepted right knee conditions from the February 28, 2015 employment incident.

Similarly, Dr. Johnson noted that appellant needed surgery to his right knee for his traumatic arthritis causally related to his employment accident of February 28, 2015. However, he did not provide a rationalized opinion explaining his conclusion.[10] Dr. Johnson also noted that appellant's right knee pain was aggravated by climbing and descending stairs, and noted that his right knee was mostly related to his years of work at the employing establishment. However, this claim is not for an occupational disease that allegedly occurred over years of work. Rather, this claim is solely for injuries arising out of a specific employment incident that occurred on February 28, 2015.

Although the opinions of Dr. Tierney and Dr. Johnson are generally supportive of appellant's need for a right knee total knee arthroplasty, and opine that this surgery was causally related to his employment, they fail to provide adequate medical rationale explaining the basis of their opinions. Neither physician explained the process by which appellant's particular work

[8] There is no apportionment under FECA. *See J.C.*, Docket No. 15-1295 (issued November 24, 2015); *Beth C. Chaput*, 37 ECAB 158 (1985) (it is not necessary to show a significant contribution of employment factors to a diagnosed condition to establish causal relationship). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(d) (February 2013) (schedule awards may include preexisting impairments as there is no apportionment under FECA).

[9] *L.B.*, Docket No. 16-0092 (issued March 26, 2016).

[10] *Id.*

incident of February 28, 2015 caused or contributed to need for this surgery. Accordingly, their reports are insufficient to meet appellant's burden of proof as they did not provide adequate medical rationale explaining the basis of their conclusions.[11]

The only limitation on OWCP's authority in approving, or disapproving, services under FECA is that of reasonableness.[12] It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.[13] While OWCP is obligated to pay for treatment of employment-related conditions, appellant has the burden of proof to establish that the expenditure is incurred for treatment of the effects of an employment-related injury or condition.[14]

The Board finds that OWCP properly evaluated the medical evidence. Accordingly, OWCP acted within its discretion in denying appellant's request for a right total knee arthroplasty.

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 a total right knee replacement.

[11] *See J.S.*, Docket No. 14-0818 (issued August 7, 2014).

[12] S*upra* note 5.

[13] *J.B.*, Docket No. 16-1173 (issued February 16, 2017); *see also Daniel J. Perea*, 42 ECAB 214 (1990).

[14] *Supra* note 3; *see also Debra S. King*, 44 ECAB 203, 209 (1992).

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated November 22, 2016 is affirmed.

Issued: August 8, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board