

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

H.L., Appellant)	
)	
and)	Docket No. 16-0920
)	Issued: January 9, 2017
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Dallas, TX, 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
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 1, 2016 appellant filed a timely appeal from a February 17, 2016 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.

ISSUE

The issue is whether OWCP abused its discretion in denying appellant's request for a total left knee arthroplasty.

FACTUAL HISTORY

On February 10, 1997 appellant, then a 42-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging severe left knee strain as a result of pushing a metal case of magazines.

¹ 5 U.S.C. § 8101 *et seq.*

OWCP accepted his claim for left knee strain on August 7, 1997. The record does not reflect that appellant received wage-loss compensation on either the supplemental or periodic rolls.

On June 19, 2009 OWCP received a request for left knee arthroscopy.

In a report dated July 6, 2009, Dr. James J. Pollifrone, a Board-certified osteopath, noted that appellant had been treated for osteoarthritis of his knees since before 2001.

A statement of accepted facts (SOAF) dated August 11, 2009 reflected that appellant had undergone bilateral knee arthroscopies in March 1989. This SOAF also reflected that OWCP had accepted a tear of the medial meniscus of the left knee as causally related to the accepted February 10, 1997 injury. OWCP requested that a district medical adviser review the claim to determine the diagnosis of appellant's current condition, whether the diagnosed condition warranted surgical intervention, and whether the surgical procedure was required due to the accepted injury.

In a report dated August 12, 2009, the district medical adviser reviewed the record and concluded that the diagnosis for appellant's work-related condition should be upgraded to include post-traumatic osteoarthritis of the left knee. He also opined that as appellant had undergone an adequate trial of conservative treatment, the recommended surgical procedure was warranted and was related to the accepted work injury.

On August 19, 2009 OWCP authorized a left knee arthroplasty.

In a medical report dated May 2, 2010, Dr. Pollifrone noted that appellant was ready to go ahead with a total left knee arthroplasty.² He further noted that appellant was retired and not working. OWCP reissued authorization for this procedure on June 18, 2010.

On May 18, 2012 Dr. Pollifrone reported that appellant was ready to proceed with bilateral total knee arthroplasties. He also noted that appellant did not wish to have both knees surgically treated at the same time, and that appellant wanted to proceed with the right knee replacement. The record reflects that appellant underwent a right knee replacement on August 31, 2012. Continued treatment for appellant's left knee is not reflected in the record.

In a progress note dated October 10, 2015, Dr. Pollifrone examined an x-ray of appellant's left knee and noted tricompartmental arthritis with periarticular osteophytes and a large, calcified loose body. He noted that appellant had now chosen to undergo a total left knee arthroplasty.

By letter dated November 2, 2015, appellant stated that he believed his case had been "retired" due to lack of medical records, and asked that it be reopened due to the fact that he required surgery.

On November 2, 2015 appellant filed a recurrence claim (Form CA-2a) for medical treatment. He did not provide a date of recurrence.

² The Board notes that, according to the case record, appellant has not yet undergone this authorized procedure.

By letter dated December 24, 2015, OWCP responded to a congressional inquiry. The inquiry noted that a review of appellant's case file indicated that it had been "closed and/or retired as of April 1999." OWCP reported that it had received a telephone call on December 11, 2015 regarding appellant's case status and had been advised that the case had been requested from storage. The inquiry noted that OWCP was currently awaiting receipt of the case file in order to take further action on the claim.

By letter dated January 6, 2016, OWCP noted that appellant had failed to submit sufficient evidence to establish a recurrence of his medical condition for medical treatment. It noted that he had last received medical care on October 12, 2015.

In a report dated January 27, 2016, Dr. Pollifrone noted that he and appellant had been discussing a total left knee arthroplasty since 2007. He further noted that appellant had a separate work-related injury to his right knee and had already undergone total right knee arthroplasty. Dr. Pollifrone noted that appellant's current diagnosis was traumatic osteoarthritis of the left knee and that he was a candidate for a total left knee arthroplasty. It was his continued recommendation that appellant undergo this procedure.

By decision dated February 17, 2016, OWCP denied appellant's claim for recurrence of a medical condition. It noted that Dr. Pollifrone's January 27, 2016 report was insufficient to establish a spontaneous change in appellant's accepted medical condition that resulted from a previous injury without any intervening injury or new exposure to factors that caused the additional injury.

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, considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of monthly compensation.³ In interpreting 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.⁴

OWCP has administrative discretion in choosing the means to achieve the goal of recovery from a work-related injury and the only limitation on OWCP's authority is that of reasonableness.⁵

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

³ 5 U.S.C. § 8103(a).

⁴ See *Dale E. Jones*, 48 ECAB 648, 649 (1997).

⁵ See *Daniel J. Perea*, 42 ECAB 214, 221 (1990) (holding that abuse of discretion by OWCP 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).

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.⁶

ANALYSIS

The Board finds that OWCP abused its discretion in denying a total left knee arthroplasty, because it had already approved the procedure and because the medical evidence supports that the procedure was necessary for treatment of appellant's work-related condition.

In his report dated January 27, 2016, Dr. Pollifrone noted that he and appellant had been discussing a total left knee arthroplasty since 2007. He indicated that appellant had a separate work-related injury to his right knee and had already undergone total right knee arthroplasty. Dr. Pollifrone noted that appellant was a candidate for a total left knee arthroplasty and that it was his recommendation that appellant undergo this procedure.

The only limitation on OWCP's approving or disapproving service under FECA is one of reasonableness.⁷ In the instant case, OWCP had already authorized appellant's total left knee arthroplasty, on two separate occasions but which had not at that time been performed. The left knee replacement was authorized following review of appellant's medical records by the district medical adviser on August 12, 2009. On August 19, 2009 OWCP authorized a left knee arthroplasty. It reissued authorization for this procedure on June 18, 2010. As such, OWCP has already determined that appellant had met his burden of proof that the treatment was for his continuing employment-related condition. While this case was adjudicated on February 17, 2016 by OWCP as a recurrence, the central issue in the case is authorization for surgery.

The Board finds that these prior authorizations for surgery, taken together with Dr. Pollifrone's January 27, 2016 report, which articulated a rationalized opinion that his current condition and requested surgery were causally related to the employment injury, and the lack of any rationalized medical opinion finding the surgery no longer reasonable, are sufficient to demonstrate that OWCP abused its discretion in denying authorization for the left knee surgery.⁸

Therefore, the decision of OWCP dated February 17, 2016 is vacated, and the case remanded to OWCP for action consistent with this decision.

CONCLUSION

The Board finds that OWCP abused its discretion in denying appellant's request for a total left knee arthroplasty.

⁶ See *Minnie B. Lewis*, 53 ECAB 606 (2002).

⁷ *Supra* note 5.

⁸ *D.K.*, Docket No. 13-230 (issued June 17, 2013).

ORDER

IT IS HEREBY ORDERED THAT the February 17, 2016 decision of the Office of Workers' Compensation Programs is set aside, and the case remanded for additional action consistent with the Board's decision.

Issued: January 9, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board