United States Department of Labor
Employees' Compensation Appeals Board

C.L., Appellant	)	
and	)	**Docket No. 17-0230**
	)	**Issued: April 24, 2018**
U.S. POSTAL SERVICE, POST OFFICE, Philadelphia, PA, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant[1]
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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 9, 2016 appellant, through counsel, filed a timely appeal from a July 8, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 claim.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.; see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether OWCP properly denied authorization for left knee replacement surgery.

FACTUAL HISTORY

On June 25, 2010 appellant, then a 47-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that, on June 15, 2010, she stumbled while descending steps and injured her left knee in the performance of duty. She stopped work on June 15, 2010. OWCP accepted the claim for tear of the left knee lateral meniscus. OWCP paid appellant wage-loss compensation benefits on the supplemental rolls as of September 13, 2011. It also authorized December 16, 2011 arthroscopic surgery of the left knee. Appellant returned to limited-duty work on February 25, 2012.

A magnetic resonance imaging (MRI) scan of the left knee, performed on May 23, 2012, revealed further degenerative changes of the left knee involving the femoral condyles medially and degeneration of the medial meniscus.[3] In an August 20, 2013 report, Dr. Gary W. Muller, an orthopedic surgeon, noted appellant's history of injury and the medical treatment she had received, including the approved arthroscopic surgery. He provided examination findings and indicated that current diagnostic studies showed significant degenerative changes in all three compartments. Dr. Muller explained that the constant standing and walking, and bending and twisting to retrieve mail and packages caused significant pain and stress to appellant's left knee. He noted that the recent MRI scan of May 23, 2012 revealed advanced tricompartmental changes in the joint spaces, especially prominently medial with slight subluxation of the medial femoral condyle, bone-on-bone configuration of the medial condyle with marrow edema, fragmentation and degeneration of the medial meniscus. Dr. Muller indicated that appellant failed all conservative treatment and recommended total knee arthroplasty. He explained that appellant had worked as a mail carrier for many years and had significant degenerative changes which were related to the demands of her job, as well as the meniscus tears that were documented at the time of arthroscopy. Dr. Muller explained that when someone has undergone meniscectomies degenerative changes progress, but the meniscus, which acts as the cushion, is lost. He opined that appellant's continued symptoms and need for total knee arthroplasty were related to her work-related injury, subsequent surgery and meniscectomies that were performed, as well as the preexisting degenerative disease of her left knee.

On September 16, 2013 OWCP accepted a recurrence of disability, effective June 21, 2013. It also expanded acceptance of appellant's claim to include the additional condition of derangement lateral meniscus, left.

In October 2013, OWCP referred appellant to Dr. Stanley R. Askin, a Board-certified orthopedic surgeon, for a second opinion examination to determine whether appellant continued

[3] The MRI scan showed advanced tricompartmental degenerative changes in the joint space especially prominent medially with slight subluxation of the femoral condyles medially. There was bone-on-bone configuration of the medial condyle with marrow edema and fragmentation and degeneration of the medial meniscus. Other changes were also noted.

to have residuals of the accepted conditions, whether she had any additional conditions that were causally related to the work injury, and whether she was disabled from work due to her work-related injury of June 15, 2010. In a November 8, 2013 report, Dr. Askin provided a history of the injury and his findings on examination. He related that the accepted work-related injuries had resolved and the current knee conditions of osteoarthritis of the left knee and need for knee replacement surgery were not due to the work injury. Dr. Askin noted that appellant's osteoarthritis of the knees were documented as troublesome prior to the June 15, 2010 work injury and opined that any disability was related to her preexisting conditions and not the accepted work injury.

On February 20, 2014 OWCP received Dr. Muller's request for total left knee arthroplasty.

By development letter dated February 21, 2014, OWCP advised appellant of the specific evidence needed to support her request for total left knee replacement surgery. It afforded her 30 days to submit such evidence.

In a March 17, 2014 report, Dr. Muller indicated that appellant's employment duties and the treatments she received, which included the arthroscopy and meniscectomies, hastened the progression of the degenerative joint disease to the point where knee replacement surgery was necessary.

On May 21, 2014 OWCP found a conflict of medical opinion existed between Dr. Muller and Dr. Askin as to whether the need for surgery was causally related to the work injury. Appellant was referred, along with a statement of accepted facts and the medical record, to Dr. Thomas O'Dowd, a Board-certified orthopedic surgeon, for an impartial medical evaluation. In a June 3, 2014 report, Dr. O'Dowd provided a history of the injury and his findings on examination. He noted that appellant had denied any previous injury to the left knee. Dr. O'Dowd indicated that the MRI scan studies were not readable, but he had copies of the MRI scan reports, which he reviewed along with the medical records. He advised that appellant developed significant three-compartment degenerative joint disease in both her knees which was not specifically due to any single episode of trauma, including the June 15, 2010 trauma. Dr. O'Dowd indicated that appellant was undergoing treatment for her left knee at least 10 months or longer prior to the reported June 15, 2010 work injury. He noted that appellant's treating physician had indicated that this was related to her employment duties over a period of time, but no specific prior injury was noted. Dr. O'Dowd opined that it was unlikely that appellant's arthritis in her left knee were directly related to a single episode of trauma, but it was debatable was to whether a lifetime of work activities contributed to this condition. He noted that she had advanced degenerative joint disease at the time of surgery and was being treated for degenerative joint disease with conservative care in August 2009, 10 months prior to the surgery. Dr. O'Dowd related that while the June 15, 2010 work injury may have slightly exacerbated the underlying problem, the main problem was her underlying degenerative joint disease for which she had been in treatment for close to a year prior. He indicated that unless she had clear-cut evidence of a significant trauma with significant edema and injury to the knee, the June 15, 2010 work injury was unlikely the cause of her ongoing persistent arthritis. Dr. O'Dowd concluded that while appellant probably would need bilateral knee replacements, the cause was the underlying degenerative arthritis and not the single episode of trauma to the left knee as reported from June 15, 2010. He also requested copies of all of

Dr. Muller's and Dr. Askin's office notes and diagnostic studies for review to see the progression of the arthritis.

By decision dated July 29, 2014, OWCP denied appellant's request for a left total knee arthroplasty because the medical evidence of record failed to support that the procedure was causally related to her June 15, 2010 work injury. The weight of the medical evidence was given to Dr. O'Dowd's June 3, 2014 report.

On August 5, 2014 appellant, through counsel, requested a hearing before an OWCP hearing representative. By decision dated October 24, 2014, the hearing representative vacated the July 29, 2014 OWCP decision and remanded the case for additional development. He found that Dr. O'Dowd provided an equivocal and inadequately rationalized medical report which was insufficient to resolve the conflict in medical opinion regarding the proposed total left knee arthroscopy. The hearing representative requested that OWCP obtain a clarification of Dr. O'Dowd's report.

On June 25, 2015 OWCP requested that Dr. O'Dowd review the medical evidence and provide a supplemental opinion on whether the total left knee arthroplasty was causally related to the accepted June 15, 2010 employment injury. In a July 10, 2015 response, Dr. O'Dowd related that he needed to review the MRI scan studies from June 2010 and May 2012 and compare them to see if there was a significant interval change in the studies, though the reports indicated that probably was the case. He additionally indicated that he would like to see the records from appellant's treating physician in 2009, a year prior to the accident, when she was being treating for both of her knees with significant degenerative joint disease, which was noted at that time.

On October 21, 2015 OWCP provided Dr. O'Dowd with MRI scans of the left knee dated June 22, 2010 and May 23, 2012 and medical reports from Dr. Adam Pasternack, a family practitioner, dated July 30, August 18, October 5, 12, and 19, and December 7, 2009.

Dr. O'Dowd reviewed the evidence provided on October 21, 2015. In an October 26, 2015 report, he indicated that the medical reports from 2009 documented appellant's ongoing problem with the left and right knee related to chronic arthritis. Dr. O'Dowd related that this clearly indicated that appellant had an underlying and preexisting problem in her left knee. The June 2010 MRI scan showed a preexisting arthritic condition without any acute injury to the knee. It showed some fluid in the knee, a complete loss of cartilage on the medial femoral and tibial cartilage, and also complete loss of cartilage in the patellofemoral joint. There was a lesser degree of arthritis in the lateral knee joint. Therefore, at the time of injury, Dr. O'Dowd found there were no acute changes in the knee. There was also no evidence of edema in the bone, soft tissue injury, *etc.* Dr. O'Dowd found that this MRI scan documented chronic degenerative joint disease which could not be from a single episode of trauma, particularly as there were no acute changes on the MRI scan. He advised that the subsequent MRI scan, done two years later, showed progression of the arthritis. The medial degenerative joint disease had progressed significantly as had the lateral and the patellofemoral joint disease. Dr. O'Dowd opined that, based on this information as well as his June 3, 2014 examination, appellant's June 15, 2010 work injury did not result in the need for a left total knee replacement. Rather, her underlying knee arthritis was responsible for the need for the requested arthroplasty. Dr. O'Dowd explained that the June 15, 2010 work injury did not show any acute changes except the preexistent chronic and significant cartilage loss on the medial joint

and the patellofemoral joint and, to a lesser degree, the lateral joint. The progression of the arthritis evident on the May 2012 MRI scan was a natural progression of this underlying significant degenerative joint disease. Dr. O'Dowd concluded that the work-related injury was not the ultimate cause of the need for her total knee replacements in both the left and right knee.

By decision dated December 18, 2015, OWCP denied authorization for the total left knee arthroplasty, finding that Dr. O'Dowd's opinion represented the special weight of the medical evidence.

On December 29, 2015 appellant, through counsel, requested an oral hearing before an OWCP hearing representative, which was held by video on April 25, 2016. Both appellant and counsel indicated that the request for total left knee replacement should be authorized as it was due to the effects of the work injury.

Subsequent to the hearing, OWCP received medical records and treatment notes from Dr. Muller, dated from November 5, 2015 to April 20, 2016. In his April 27, 2016 report, Dr. Muller disagreed with Dr. O'Dowd's opinion that the accepted work injury did not accelerate or contribute to the need for a left knee replacement. He indicated that the June 22, 2010 MRI scan showed a horizontal tear of the posterior horn of the medial meniscus and an anterior horn lateral meniscus tear and a grade 1 sprain of the medial collateral. Dr. Muller noted that appellant had subsequent arthroscopic surgery and two years later, the May 23, 2012 MRI scan showed advanced degenerative changes in the medial compartment with associated loss of the cartilage on the condyle and the plateau and osteochondral lesion on the lateral femoral condyle. He advised that this indicated advanced tricompartmental changes in the joint space which was secondary to appellant's meniscectomy and, because she lost some of her cushion "cartilage," resulted in the progression of the degenerative disease. Dr. Muller opined that this was secondary to the fact appellant required a meniscectomy after the work injury and it was common to see advancement of arthritic changes in the joint after a patient had a meniscectomy. He indicated that appellant had significant advancement of the degenerative changes in the joint since the arthroscopy and meniscectomy, which was supported by numerous clinical studies that document the progressive degenerative changes that occur in a meniscus deficient knee. Dr. Muller concluded that appellant's work injury caused or contributed to the need for left knee replacement surgery.

By decision dated July 8, 2016, an OWCP hearing representative affirmed OWCP's December 18, 2015 decision. Special weight was accorded to Dr. O'Dowd's reports, which opined that the requested surgery was not due to the June 15, 2010 work injury, but was rather due to appellant's preexisting degenerative joint disease condition.

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 monthly compensation.[4] While OWCP is obligated to pay for treatment of employment-related conditions, the employee

[4] 5 U.S.C. § 8103; *see Thomas W. Stevens*, 50 ECAB 288 (1999).

has the burden of proof to establish that the expenditure is incurred for treatment of the effects of an employment-related injury or condition.[5]

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.[6] 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.[7] 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 must include supporting rationalized medical evidence.[8] 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.[9]

Section 8123(a) provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.[10] The implementing regulations provide that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an OWCP medical adviser, OWCP shall appoint a third physician to make an examination. This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.[11] In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[12]

ANALYSIS

The Board finds that OWCP properly denied authorization for the total left knee replacement surgery.

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

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

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

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

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

[10] 5 U.S.C. § 8123(a); *Guiseppe Aversa*, 55 ECAB 164 (2003).

[11] 20 C.F.R. § 10.321.

[12] *Gloria J. Godfrey*, 52 ECAB 486 (2001); *Jacqueline Brasch (Ronald Brasch)*, 52 ECAB 252 (2001).

OWCP accepted that appellant sustained a traumatic injury on June 15, 2010 causing tear of the left knee lateral meniscus and derangement of left lateral meniscus.

Arthroscopic surgery was authorized on December 16, 2011. On February 20, 2014 OWCP received Dr. Muller's request for total left knee arthroplasty. It determined that a conflict in medical opinion existed between appellant's attending physician, Dr. Muller, who indicated that appellant's employment injury and the treatments she received, including the arthroscopy and meniscectomies, had hastened the progression of the preexisting degenerative joint disease to the point that the knee replacement surgery was necessary; and Dr. Askin, an OWCP referral physician, who opined that the accepted work-related injury had resolved and the current knee conditions of osteoarthritis of the left knee and need for knee replacement surgery were not due to the work injury. Consequently, it referred appellant to Dr. O'Dowd to resolve the conflict in medical opinion evidence, pursuant to 5 U.S.C. § 8123(a).

The Board finds that the special weight of the medical evidence rests with the opinion of Dr. O'Dowd, the impartial medical specialist, who examined appellant, reviewed the medical evidence, and found that the total left knee arthroplasty was not medically warranted. As noted, for a surgical procedure to be authorized, a claimant must show that the surgery is for a condition causally related to the accepted work injury and that it is medically warranted.[13]

In a June 3, 2014 report, Dr. O'Dowd provided a history of the injury and his findings on examination. He related that it was unlikely that appellant's problems in her left knee were directly related to a single episode of trauma. Dr. O'Dowd indicated that while the June 15, 2010 work injury may have slightly exacerbated the underlying problem, the main problem was her underlying degenerative joint disease for which she had been in treatment for close to a year prior. He indicated that while appellant would need knee replacements in both knees, unless there was clear-cut evidence of a significant trauma with significant edema and injury to the knee, the June 15, 2010 work injury was unlikely the cause of her ongoing persistent arthritis. Dr. O'Dowd thus requested copies of all of Dr. Muller and Dr. Askin's office notes and diagnostic studies for review to determine the progression of the arthritis.

On October 21, 2015 OWCP provided Dr. O'Dowd with MRI scans of the left knee dated June 22, 2010 and May 23, 2012 and medical reports from Dr. Pasternack dated July 30, August 18, October 5, 12, and 19, and December 7, 2009. Dr. O'Dowd reviewed the evidence provided on October 21, 2015 and opined, in an October 26, 2015 report, that the work-related injury was not the ultimate cause of the need for her bilateral total knee replacements. He indicated that the June 2010 MRI scan showed a preexisting arthritic condition without any acute injury to the knee. The MRI scan showed some fluid in the knee, a complete loss of cartilage on the medial femoral and tibial cartilage, a complete loss of cartilage in the patellofemoral joint, and a lesser degree of arthritis in the lateral knee joint. Therefore, at the time of injury, Dr. O'Dowd found that there were no acute changes in the knee. There was also no evidence of edema in the bone, soft tissue injury, *etc*. Dr. O'Dowd explained that this MRI scan documented chronic degenerative joint disease which could not form a single episode of trauma, as there were no acute changes on the MRI scan. He advised that the subsequent MRI scan, performed two years later, showed

[13] *See P.F.*, Docket No. 16-0693 (issued October 24, 2016).

progression of the arthritis. The medial degenerative joint disease had progressed significantly as had the lateral and the patellofemoral joint disease. Dr. O'Dowd opined that, based on this information as well as his June 3, 2014 examination, appellant's June 15, 2010 work injury did not result in the need for a left total knee replacement. Rather, appellant's underlying knee arthritis was responsible for the need for the arthroplasty. Dr. O'Dowd explained that the June 15, 2010 work injury did not show any acute changes except the preexistent chronic and significant cartilage loss on the medial joint and the patellofemoral joint and, to a lesser degree, the lateral joint. The progression of the arthritis evident on the May 2012 MRI scan was a natural progression of this underlying significant degenerative joint disease. Dr. O'Dowd concluded that the work-related injury was not the ultimate cause of the need for her total knee replacements in both the left and right knee.

The Board finds that Dr. O'Dowd's reports represent the special weight of the medical evidence and that OWCP properly relied on his reports in denying the requested surgery. The Board finds that he had full knowledge of the relevant facts and evaluated the course of her condition, he is a specialist in the appropriate field, his opinion is based on proper factual and medical history, and his report contained a detailed summary of this history. Dr. O'Dowd addressed the medical records and made his own examination findings to reach a reasoned conclusion regarding appellant's condition and to support that the total left knee arthroplasty was not medically warranted as the underlying knee arthritis, not the June 15, 2010 work injury, was responsible for the need for the arthroplasty.[14]

In his April 27, 2016 report, Dr. Muller opined that appellant's accepted injury and the resulting meniscectomy caused and contributed to the need for left knee replacement surgery, along with some of the preexisting disease. He discussed the June 22, 2010 and May 23, 2012 MRI scan results and advised that the advanced tricompartment changes in the joint space were secondary to appellant's meniscectomy because she lost some of her cushion "cartilage," which resulted in the progression of the degenerative disease. Dr. Muller explained appellant required a meniscectomy after the work injury and it was common to see advancement of arthritic changes in the joint after a patient has an arthroscopy and a meniscectomy. He indicated that appellant had significant advancement of the degenerative changes in the joint since the arthroscopy and meniscectomy. Reports from a physician who was on one side of a medical conflict that an impartial medical examiner resolved are generally insufficient to overcome the special weight of the impartial medical examiner, or to create a new conflict.[15] While Dr. Muller asserted that the need for a left total knee replacement was related to the June 15, 2010 work injury, he failed to differentiate between appellant's preexisting degenerative joint disease, which deteriorates over time, and the accepted work-related injury. Absent a well-rationalized explanation regarding the effect of appellant's preexisting degenerative joint disease and the accepted work injury, Dr. Muller's opinion is of limited probative value.[16]

[14] *Guiseppe Aversa, supra* note 10.

[15] *D.C.*, Docket No. 16-0430 (issued August 29, 2016).

[16] *See A.C.*, Docket No. 11-1339 (issued March 9, 2012).

The Board concludes that Dr. O'Dowd's opinion that the total left knee arthroplasty was not medically warranted as it was not causally related to the June 15, 2010 work injury is entitled to special weight and represents the weight of the evidence.[17]

The only limitation on OWCP's authority is approving or disapproving service under FECA is one of reasonableness.[18] In the instant case, appellant requested surgery. OWCP obtained an impartial medical examination through Dr. O'Dowd who clearly found the surgery not warranted. It therefore had sufficient evidence upon which it made its decision to deny surgery and did not abuse its discretion.

On appeal counsel argues that Dr. O'Dowd failed to consider the effects of OWCP's approved arthroscopic surgery performed on December 16, 2011. Dr. Muller opined in an April 27, 2016 report that as a result of that surgery, appellant had cartilage loss in her left knee which contributed in part to the advancement of her degenerative joint disease in her left knee. As explained above, Dr. Muller's opinion is of limited probative value as he failed to provide a well-rationalized explanation regarding the effect of appellant's preexisting degenerative joint disease and the accepted work injury. Based on the evidence presented, OWCP acted properly within its discretionary authority to deny authorization for the requested surgery. Therefore, the Board finds that OWCP did not abuse its discretion under section 8103 in denying approval of the left knee surgery.

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 properly denied authorization for left knee replacement surgery.

[17] *Guiseppe Aversa, supra* note 10.

[18] *See P.F.*, Docket No. 16-0693 (issued October 24, 2016); *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 8, 2016 is affirmed.

Issued: April 24, 2018
Washington, DC

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

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

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