United States Department of Labor
Employees' Compensation Appeals Board

P.M., Appellant	)	
and	)	**Docket No. 18-0543**
	)	**Issued: November 7, 2018**
U.S. POSTAL SERVICE, POST OFFICE, Egg Harbor Township, NJ, 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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 19, 2018 appellant, through counsel, filed a timely appeal from an August 21, 2017 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 the case.[3]

[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.*

[3] The record provided the Board includes evidence received after OWCP issued its August 21, 2017 decision. The Board's jurisdiction is limited to the evidence in the case record that was before OWCP at the time of its final decision. Therefore, the Board is precluded from reviewing this additional evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

ISSUE

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

FACTUAL HISTORY

On February 26, 2015 appellant, a 47-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on that date she injured her right hip and left knee when she slipped out of her mail truck due to snow and icy conditions. She stopped work on that day and returned to work in a full-time limited-duty capacity on April 6, 2015. On April 24, 2015 OWCP accepted the claim for sprains of the right hip, left knee, and right shoulder.

Appellant stopped work on April 14, 2016 due to authorized left knee athroscopy with partial medial meniscectomy. OWCP paid her wage-loss compensation and medical benefits on the supplemental rolls as of April 14, 2016. On May 17, 2016 it accepted a left medial meniscus tear. Appellant returned to work in a part-time basis on June 21, 2016 and full-time, limited duty on September 7, 2016.

On September 6, 2016 OWCP received a request for authorization of a left knee total arthroplasty.

In a June 14, 2015 report, Dr. Robert Holtzin, Board-certified in emergency medicine, noted appellant's medical history and made the assessment of ankle sprain and that of rheumatoid arthritis, currently in remission.

In an August 17, 2015 report, Dr. Matthew D. Pepe, a Board-certified orthopedic surgeon, indicated that left knee arthroscopic surgery was needed to correct appellant's varus malalignment and mechanical symptoms. He indicated that an arthroplasty might be necessary 12 to 15 years in the future following arthroscopy.

A May 22, 2015magnetic resonance imaging (MRI) scan of appellant's left knee noted an impression of tear of the posterior horn of the medial meniscus.

In a February 19, 2016 report, Dr. Pepe reported that appellant's left knee MRI scan revealed a meniscus tear and left knee x-rays demonstrated medial joint space narrowing. He provided examination findings and diagnosed left medial meniscus tear and medial compartment arthritis. Dr. Pepe recommended left knee arthroscopic surgery.

In a July 27, 2016 report, Dr. Zachary D. Post, a Board-certified orthopedic surgeon, diagnosed left knee arthritis. He opined that appellant developed left knee degenerative joint disease after acute exacerbation by the February 26, 2015 work injury. Dr. Post indicated that if conservative treatment failed then appellant may be a good candidate for a total knee replacement. In an August 17, 2016 report, he reported examination findings and noted that x-rays of the left knee demonstrated degenerative arthritis with loss of joint space and subchondral sclerosis. Dr. Post provided an assessment of unilateral primary osteoarthritis, left knee and left knee degenerative joint arthritis, failed conservative measures. He recommended left knee arthroplasty.

By development letter dated September 6, 2016, OWCP advised appellant that it could not authorize a total left knee arthroplasty as the evidence on file did not explain why the proposed procedure was medically necessary for appellant's accepted left knee condition. Appellant was advised of the medical evidence needed to support authorization for left knee replacement/ arthroplasty, including a rationalized opinion by a treating physician as to the medical necessity for such surgery to treat an employment-related condition. OWCP afforded appellant 30 days to submit such evidence.

In a September 16, 2016 letter, Dr. Post noted appellant's examination findings and diagnosed left knee degenerative osteoarthritis, failed conservative measures. He indicated that the need for left knee replacement was medically necessary on account of such condition. Dr. Post indicated that appellant had preexisting damage to her left knee from the February 26, 2015 work injury when she slipped out of the back of a mail truck. He opined that the employment injury exacerbated her left knee arthritic condition. Dr. Post further indicated that appellant had some collapse in the cartilage, which was noted at her arthroscopy, she had a recurrence of pain and symptoms, and now had failed arthroscopy, failed physical therapy, failed activity modifications and failed injection. He noted that x-rays of the left knee demonstrated degenerative arthritis with loss of joint space and subchondral sclerosis.

OWCP referred the authorization request to its district medical adviser (DMA) for review. In an October 31, 2016 report, Dr. William Tontz, a Board-certified orthopedic surgeon and DMA, reviewed the medical record and a statement of accepted facts (SOAF). He opined that the proposed left total knee arthroplasty was causally related to the accepted medical conditions as appellant has had persistent symptoms since the employment injury and there was a lack of evidence of preexistent symptoms leading up to the employment injury. The DMA, however, found that the proposed left total knee arthroplasty was not medically necessary. He explained that knee replacement was warranted only if two of the three medial compartments were affected by arthritis and that the x-rays of record did not establish such a degree of knee arthritis.

In November 9, 2016 and February 8, 2017 reports, Dr. Post continued to indicate a limited range of movement and failure of conservative measures.

On February 7, 2017 appellant filed a recurrence claim (Form CA-2a) alleging that her employing establishment reduced her work hours effective January 23, 2017.[4]

OWCP referred appellant to Dr. Stanley Askin, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine whether appellant's requested left knee arthroplasty was medically necessary and causally related to the accepted injury of February 26, 2015. In a report dated March 3, 2018, Dr. Askin reviewed the medical record and an updated SOAF. He related that appellant's left knee examination revealed diminished range of motion, no ligamentous laxity, no patellofemoral tracking abnormality, and no synovitis. Dr. Askin noted that left knee x-rays taken August 17, 2015 disclosed medial compartment arthritis, and additional x-rays of October 2, 2015 and July 17, 2016 showed joint space narrowing. He also reported that appellant had a history of nonoccupational rheumatoid arthritis and noted that her December 2014 MRI scan

[4] Following appropriate development, OWCP accepted appellant's claim for recurrence of disability effective January 21, 2017.

showed left knee arthritis which preexisted the February 26, 2015 employment injury. Dr. Askin concluded that appellant's left knee arthritis was a preexisting condition unrelated to the February 26, 2015 work injury. He explained she has rheumatoid arthritis and that the preincident MRI scan established that her left knee condition was a disease, rather than an injury. Dr. Askin opined that, while the left knee arthroplasty was appropriate for knee arthritis, appellant's arthritic condition was not employment related as her condition was a disease which predated the February 26, 2015 employment injury. He further stated that her rheumatoid arthritis could be an "independent factor predisposing to the need for the total knee arthroplasty" and explained that, based on his review of the medical records and his physical examination, medical necessity was not shown for the requested procedure.

By decision dated April 3, 2017, OWCP denied appellant's request for authorization of a left knee arthroplasty. It found that Dr. Post had not established the medical necessity for the requested procedure and both the DMA and Dr. Askin, the second opinion physician, had opined that the requested procedure was not medically necessary to treat her accepted employment injury.

On April 11, 2017 appellant, through counsel, requested an oral hearing before an OWCP hearing representative. A hearing was held on July 12, 2017. Counsel argued that a conflict existed between the opinions of appellant's treating physicians and OWCP physicians as to whether the proposed surgery was medically necessary to treat an employment-related condition, therefore a referee medical examination was required to resolve the conflict in medical opinion.

By decision dated August 21, 2017, OWCP's hearing representative affirmed the denial of authorization of a left knee arthroplasty. He found that Dr. Askin's opinion constituted the weight of the medical evidence.

LEGAL PRECEDENT

Section 8103(a) of FECA states in pertinent part: "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 the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation."[5] 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.[6] It therefore has broad administrative discretion in choosing means to achieve this goal. The only limitation on OWCP's authority is that of reasonableness.[7]

In order to be entitled to reimbursement for medical expenses, a claimant must establish that the expenditures were incurred for treatment of the effects of an employment-related injury by submitting rationalized medical evidence that supports such a connection and demonstrates that

[5] 5 U.S.C. § 8103.

[6] *See Dale E. Jones*, 48 ECAB 648, 649 (1997).

[7] Dr. *Mira R. Adams*, 48 ECAB 504 (1997).

the treatment is necessary and reasonable.[8] 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.[9] Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.[10] 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.[11]

ANALYSIS

The Board finds that OWCP did not abuse its discretion in denying appellant's request for authorization of left knee arthroplasty.

The Board finds that the weight of the medical evidence rests with Dr. Askin's well-rationalized medical opinion. Dr. Askin examined appellant, reviewed the medical evidence of record, as well as an updated SOAF, and found that her requested left knee arthroplasty was not causally related to the accepted conditions or medically warranted. As previously noted, a surgical procedure can be authorized if the procedure is recommended for a condition causally related to the accepted employment injury and it is medically warranted.[12]

In a March 3, 2017 report, Dr. Askin accurately described appellant's history of injury and medical history. He noted that she had a history of nonoccupational rheumatoid arthritis and that her December 2014 MRI scan showed left knee arthritis which preexisted the February 26, 2015 employment injury. Dr. Askin concluded that appellant's left knee arthritis was a preexisting condition unrelated to the February 26, 2015 employment injury. He opined that the arthritic condition was not employment related as her condition was a disease which predated the February 26, 2015 employment injury. Dr. Askin further noted that appellant's rheumatoid arthritis could be an "independent factor predisposing to the need for the total knee arthroplasty" and explained that, based on his review of the medical records and his physical examination, medical necessity was not shown for the requested procedure.

The Board finds that Dr. Askin's report represents the weight of the medical evidence and that OWCP properly relied on his report in denying the requested surgery.[13] Dr. Askin had full

[8] *See Debra S. King*, 44 ECAB 203 (1992).

[9] *Kennett O. Collins, Jr.*, 55 ECAB 648, 654 (2004).

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

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

[12] *Id*.

[13] *T.M.*, Docket No. 17-0915 (issued August 29, 2017); *Michael S. Mina*, 57 ECAB 379 (2006) (the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion are facts, which determine the weight to be given to each individual report).

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. He 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 February 26, 2015 work injury, was responsible for the need for the arthroplasty.

At the hearing and on appeal counsel asserted that a conflict in medical evidence existed between Dr. Pepe and Dr. Post for appellant and the DMA and Dr. Askin for OWCP. Section 8123(a) of FECA provides that when there is a disagreement between the physician making the examination for the United States and the physician of the employee, a third physician shall be appointed to make an examination to resolve the conflict.[14] When there are opposing medical reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a), to resolve the conflict in the medical evidence.[15] The Board finds, however, that there are no opposing medical reports of virtually equal weight and rationale which would establish a conflict of medical opinion. Thus, a referee medical examination is not required.

Dr. Pepe indicated in his August 17, 2015 report that an arthroplasty might be necessary 12 to 15 years in the future following arthroscopy. Furthermore, he did not offer an opinion in either his August 17, 2015 or February 19, 2016 report as to the cause of appellant's arthritic condition. 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.[16]

In his September 16, 2016 letter of medical necessity, Dr. Post indicated that appellant's proposed left knee replacement was medically necessary because her left knee degenerative osteoarthritis had failed conservative measures. While he opined that the employment injury exacerbated her left knee arthritic condition, such a generalized statement does not establish causal relationship because it is unsupported by adequate medical rationale.[17] Medical opinions which contain no supporting rationale are of little probative value.[18] Dr. Post's opinion is of limited probative value as it does not contain any medical rationale explaining how the employment incident would have physiologically caused or aggravated the diagnosed degenerative

[14] 5 U.S.C. § 8123(a); *Robert W. Blaine*, 42 ECAB 474 (1991).

[15] *Delphia Y. Jackson*, 55 ECAB 373 (2004).

[16] *Willie M. Miller*, 53 ECAB 697 (2002).

[17] *See G.O.*, Docket No. 16-0311 (issued June 14, 2016); *K.W.*, Docket No. 10-0098 (issued September 10, 2010).

[18] *F.T.*, Docket No. 09-0919 (issued December 7, 2009) (medical opinions not fortified by rationale are of diminished probative value); *Sedi L. Graham*, 57 ECAB 494 (2006) (medical form reports and narrative statements merely asserting causal relationship generally do not discharge a claimant's burden of proof).

osteoarthritis.[19] Furthermore, a well-rationalized opinion is particularly warranted when there is a history of a preexisting condition, which Dr. Post noted.[20]

While the DMA opined that appellant had injury-related left knee arthritis, he further found that the proposed left total knee arthroplasty was not medically necessary. The Board notes, however, that the DMA's opinion on causal relationship was not based on a complete and accurate factual and medical background. The DMA indicated that appellant had persistent symptoms since the employment injury and the lack of evidence of preexistent symptoms leading up to the employment injury. He failed to discuss either the 2014 left knee MRI scan which showed a preexisting degenerative condition or appellant's history of nonoccupational rheumatoid arthritis. Medical opinions based on an incomplete or inaccurate history are of limited probative value.[21]

The only limitation on OWCP's authority in authorizing medical treatment under FECA is one of reasonableness.[22] OWCP obtained a second opinion evaluation which was well rationalized and supported a finding that the requested surgical procedure was not medically warranted as appellant's underlying left knee arthritis, not the February 26, 2015 work injury, was responsible for the need for the arthroplasty. It therefore did not abuse its discretion.

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 authorization for requested left knee arthroplasty.

[19] *See A.D.*, Docket No. 17-1136 (issued November 9, 2017).

[20] *T.M.*, Docket No. 08-0975 (issued February 6, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

[21] *C.L.*, Docket No. 14-1585 (issued December 16, 2014); *J.R.*, Docket No. 12-1099 (issued November 7, 2012); *Douglas M. McQuaid*, 52 ECAB 382 (2001).

[22] *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 August 21, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 7, 2018
Washington, DC

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

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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