

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

M.M., Appellant)	
)	
and)	Docket No. 19-0491
)	Issued: August 14, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
West Chester, PA, Employer)	
)	

Appearances:
Thomas R. Uliase, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
JANICE B. ASKIN, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On January 3, 2019 appellant, through counsel, filed a timely appeal from a July 13, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this 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 Board notes that, following the July 13, 2018 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether OWCP abused its discretion by denying appellant's request for authorization of right knee surgery.

FACTUAL HISTORY

On January 2, 2008 appellant, then a 58-year-old city mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on December 31, 2008 he was talking to a customer on his route when another customer backed up a vehicle and pinned him between two vehicles while in the performance of duty. OWCP accepted the claim for neck and right knee sprain, medial collateral ligament, right hip contusion, face abrasions without infection, right knee medial meniscus tear, right knee lateral meniscus tear, and lumbar herniated disc.⁴ Appellant received continuation of pay beginning December 31, 2008 and OWCP paid wage-loss compensation on the periodic rolls, effective May 10, 2009. On February 12, 2009 appellant underwent OWCP authorized right knee arthroscopic partial meniscectomy and chondroplasty of the medial femoral condyle, patellar and trochlea surgery.

In a July 19, 2017 letter, Dr. James Zurbach, a Board-certified orthopedic surgeon, requested authorization for right knee replacement surgery. He noted appellant's December 31, 2008 injury and opined that, despite an extensive rehabilitation program, appellant had a progression of preexisting arthritis which was exacerbated by his traumatic injury. Dr. Zurbach explained that, in order to treat appellant's right knee pain, appellant would require a total knee arthroplasty. He noted that appellant had developed degenerative changes in the uninjured left knee, but the specific diagnosis for the right knee was post-traumatic arthritis.

On October 12, 2017 OWCP referred a statement of accepted facts (SOAF) and the medical record to an OWCP district medical adviser (DMA) to determine the medical necessity of the requested surgery.

In an October 21, 2017 report, Dr. Todd Fellars, a Board-certified orthopedic surgeon, acting as a DMA, explained that he had reviewed the SOAF and the medical record, including Dr. Zurbach's July 19, 2017 report. He agreed that the recommended right knee replacement knee surgery was medically indicated for the diagnosis of osteoarthritis of the medial compartment, right knee. However, the DMA explained that this diagnosis was not an accepted condition, and the medical evidence did not support causal relationship between the diagnosed condition and the accepted employment injury.

By decision dated November 20, 2017, OWCP denied authorization for right knee surgery finding that the weight of the medical evidence rested with the October 21, 2017 report of the DMA.

⁴ Appellant has a separate claim under OWCP File No. xxxxxx174 for a January 21, 1995 injury which was accepted for a right knee lateral or medial meniscus dislocation. OWCP File No. xxxxxx174 was retired effective June 2002 and has not been combined with the current claim.

On November 27, 2017 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review, which was held on April 30, 2018.

By decision dated July 13, 2018, OWCP's hearing representative affirmed the November 20, 2017 decision. The hearing representative explained that Dr. Zurbach had not explained how the employment injury resulted in an aggravation of the underlying accepted condition nor explained the necessity of the recommended knee replacement surgery.

LEGAL PRECEDENT

Section 8103(a) of FECA⁵ 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 in the amount of monthly compensation.⁶

While OWCP is obligated to pay for treatment of employment-related conditions, the employee has the burden of establishing that the expenditure is incurred for treatment of the effects of an employment-related injury or condition.⁷

In interpreting section 8103 of FECA, the Board has recognized that OWCP has broad discretion in approving services provided, with the only limitation on OWCP's authority being that of reasonableness.⁸ 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.⁹ 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.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

⁵ *Supra* note 2.

⁶ 5 U.S.C. § 8103; *see N.G.*, Docket No. 18-1340 (issued March 6, 2019); *see Thomas W. Stevens*, 50 ECAB 288 (1999).

⁷ *J.R.*, Docket No. 18-0603 (issued November 13, 2018).

⁸ *See C.L.*, Docket No. 17-0230 (issued April 24, 2018); *D.K.*, 59 ECAB 141 (2007).

⁹ *J.L.*, Docket No. 18-0503 (issued October 16, 2018).

¹⁰ *K.W.*, Docket No. 18-1523 (issued May 22, 2019).

¹¹ *Id.*

ANALYSIS

The Board finds that OWCP did not abuse its discretion by denying appellant's request for authorization of right knee surgery.

On July 19, 2017 Dr. Zurbach requested authorization for right knee replacement surgery and related that appellant's preexisting arthritis was exacerbated by the accepted December 31, 2008 employment injury.

While OWCP has accepted that appellant's December 31, 2008 employment injury caused right knee sprain of the medial collateral ligament, and right knee medial and lateral meniscus tears, the Board finds that Dr. Zurbach's report does not include clear rationale explaining the need for surgery in order to treat appellant's accepted right knee conditions.¹² The need for rationalized medical evidence is particularly important in this case because appellant's preexisting arthritis in the right knee was not an accepted condition.¹³ Dr. Zurbach concluded that appellant's preexisting arthritis was exacerbated by the accepted injury, but he did not provide medical rationale explaining how the proposed procedure was causally related to the accepted right knee injury.¹⁴ Medical evidence that states a conclusion, but does not offer a rationalized medical explanation regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁵ As Dr. Zurbach failed to provide medical rationale explaining how the requested surgery was necessary to treat appellant's employment-related right knee conditions, his report is of diminished probative value.¹⁶

In an October 21, 2017 report, the DMA reviewed appellant's medical records and a SOAF. He noted that, while he agreed the recommended surgery was medically indicated, he also explained that the surgery was for treatment of appellant's osteoarthritis, which was not an accepted condition.

The Board finds that OWCP properly relied on the report of the DMA in its decision denying appellant's request for authorization for right knee surgery. The DMA's opinion was well rationalized and based upon his review of the SOAF and the medical record. Accordingly, his opinion that the requested procedure was not medically warranted to treat appellant's accepted left knee conditions represents the weight of the evidence.¹⁷ OWCP, therefore, did not abuse its discretion in denying authorization for right knee surgery.

¹² See *V.S.*, Docket No. 17-0874 (issued December 6, 2017).

¹³ See *S.C.*, Docket No. 17-0490 (issued June 27, 2017); *R.R.*, Docket No. 16-1118 (issued November 7, 2016) (the need for rationale is particularly important where the evidence indicated that appellant had a preexisting condition).

¹⁴ *G.V.*, Docket No. 18-0482 (issued May 21, 2019).

¹⁵ *Id.*

¹⁶ See *J.R.*, Docket No. 18-0603 (issued November 13, 2018).

¹⁷ See *E.L.*, Docket No. 17-1445 (issued December 18, 2018).

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 by denying appellant's request for authorization of right knee surgery.

ORDER

IT IS HEREBY ORDERED THAT the July 13, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 14, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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