

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

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**M.M., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Lynchburg, VA, Employer**

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**Docket No. 19-0563  
Issued: August 1, 2019**

*Appearances:*  
*Appellant, pro se*  
*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 16, 2019 appellant filed a timely appeal from a November 15, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUE**

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

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the November 15, 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.*

## **FACTUAL HISTORY**

On January 23, 2018 appellant, then a 24-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on January 20, 2018 she slipped and fell down a hill injuring her right ankle and knee while in the performance of duty.

In a report dated January 23, 2018, Dr. David Engel, an osteopath Board-certified in family medicine, described appellant's history of injury as slipping and falling down a hill with pain in her right knee and ankle. He diagnosed a strain of the right knee medial collateral ligament versus possible medial meniscus injury as well as right ankle strain. On January 30, 2018 Dr. Engel diagnosed knee and ankle strain.

On March 6, 2018 OWCP accepted appellant's claim for sprain of the medial collateral ligament of the right knee and right ankle sprain.

On March 20, 2018 appellant underwent a right knee magnetic resonance imaging (MRI) scan which demonstrated a tear of the medial meniscus. In a note dated May 17, 2018, Dr. Eric Carson, a Board-certified orthopedic surgeon, described appellant's history of injury on January 20, 2018 and listed her physical findings of constant medial right knee pain, as well as mechanical symptoms of locking and giving way. He reviewed appellant's March 20, 2018 right knee MRI scan and diagnosed tear of the medial meniscus of the right knee. Dr. Carson recommended a partial medial meniscectomy as she had failed conservative treatments including steroid injection and physical therapy.

In a May 30, 2018 development letter, OWCP advised appellant that her claim was accepted for sprain of the medial collateral ligament and surgery did not appear medically necessary for the accepted condition. It requested rationalized medical opinion evidence establishing a causal relationship between appellant's currently diagnosed medial meniscus tear and her accepted January 20, 2018 employment injury.

On October 3, 2018 Dr. Carson opined that appellant was in need of a partial medial meniscectomy for a meniscal tear of the right knee which occurred at work.

By decision dated November 15, 2018, OWCP denied authorization for right knee arthroscopy. It found that there was no rationalized medical opinion evidence explaining how the diagnosis of medial meniscus tear was caused by her accepted January 20, 2018 employment injury.

## **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.”<sup>3</sup>

The Board has found that OWCP has great discretion in determining whether a particular type of treatment is likely to cure or give relief.<sup>4</sup> The only limitation on OWCP’s authority is that of reasonableness.<sup>5</sup> 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.<sup>6</sup> In order to be entitled to reimbursement of medical expenses, it must be shown that the expenditures were incurred for treatment of the effects of an employment-related injury or condition.<sup>7</sup> Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.<sup>8</sup>

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.<sup>9</sup>

### ANALYSIS

The Board finds that OWCP has not abused its discretion by denying authorization for right knee surgery.

OWCP accepted appellant’s traumatic injury claim for right knee sprain of the medial collateral ligament. In a May 1, 2018 examination report, Dr. Carson described appellant’s history of injury on January 20, 2018 and reported her symptoms of constant medial right knee pain, as well as mechanical locking and giving way. He reviewed appellant’s March 20, 2018 right knee MRI scan and diagnosed a tear of the medial meniscus of the right knee. Dr. Carson recommended a partial medial meniscectomy as she had failed conservative treatments. The Board finds that Dr. Carson’s reports do not include clear rationale, which explains the need for surgery in order to treat appellant’s right knee condition due to the accepted condition of right knee strain.<sup>10</sup> Furthermore, he did not explain how and why the January 20, 2018 employment incident had resulted in the additional diagnosed condition of right medial meniscal tear and the subsequent need for knee surgery. As Dr. Carson failed to provide medical rationale explaining how the

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<sup>3</sup> 5 U.S.C. § 8103.

<sup>4</sup> *R.C.*, Docket No. 18-0612 (issued October 19, 2018).

<sup>5</sup> *Id.*; *J.C.*, Docket No. 19-0182 (issued May 13, 2019).

<sup>6</sup> *G.B.*, Docket No. 18-1478 (issued October 18, 2018).

<sup>7</sup> *J.R.*, Docket No. 17-1523 (issued April 3, 2018); *Bertha L. Arnold*, 38 ECAB 282, 284 (1986).

<sup>8</sup> *S.W.*, Docket No. 17-1319 (issued December 7, 2017); *John E. Benton*, 15 ECAB 49 (1963).

<sup>9</sup> *See C.L.*, Docket No. 17-0230 (issued April 24, 2018); *D.K.*, 59 ECAB 141 (2007).

<sup>10</sup> *N.G.*, Docket No. 18-1340 (issued March 6, 2019); *V.S.*, Docket No. 17-0874 (issued December 6, 2017).

requested surgery was necessary to treat appellant's work-related right knee sprain or how the additional condition of medial meniscal tear is causally related to her accepted January 20, 2018 employment incident, his reports is of diminished probative value.<sup>11</sup> OWCP, therefore, did not abuse its discretion in denying authorization for 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 has not abused its discretion by denying authorization for right knee surgery.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the November 15, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 1, 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

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<sup>11</sup> *N.G., id.; J.R.*, Docket No. 18-0603 (issued November 13, 2018).