United States Department of Labor
Employees' Compensation Appeals Board

N.G., Appellant	)	
and	)	**Docket No. 18-1340**
	)	**Issued: March 6, 2019**
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, Atlanta, GA, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On June 25, 2018 appellant filed a timely appeal from March 23 and May 3, 2018 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

ISSUES

The issues are: (1) whether OWCP abused its discretion by denying authorization for left knee surgery; and (2) whether OWCP has met its burden of proof to terminate appellant's wage-

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that, following the May 3, 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.*

loss compensation and medical benefits, effective May 4, 2018, as she no longer had residuals or disability causally related to her accepted May 16, 2017 left knee injury.

FACTUAL HISTORY

On June 6, 2017 appellant, then a 36-year-old transportation security officer, filed a traumatic injury claim (Form CA-1) alleging that on May 16, 2017 she experienced sharp pain in her left knee when she bent down to get a passenger's shoe that had dropped in the catch tray.[3]

OWCP accepted appellant's claim for left knee sprain. Appellant received continuation of pay beginning June 14, 2017, and OWCP paid wage-loss compensation beginning July 27, 2017. OWCP placed her on the periodic rolls, effective September 17, 2017.

On July 27, 2017 appellant underwent diagnostic testing. A left knee x-ray examination showed moderate tricompartment osteoarthritis of the left knee. A left knee magnetic resonance imaging (MRI) scan report showed markedly degenerated and diminutive appearance of the anterior horn of the lateral meniscus and diminutive appearance of the lateral meniscus, moderate lateral compartment osteoarthritis, two-millimeter full-thickness chondral defect of the medial trochlea, and a small cyst.

Appellant received medical treatment from Dr. Jon Hyman, a Board-certified orthopedic surgeon. In a November 3, 2017 examination report, Dr. Hyman related that she had failed to note significant improvement in her left knee pain with nonsurgical management. He indicated that updated diagnostic testing showed progressive changes in appellant's knee, including diseased lateral meniscus, further cartilage erosion to the lateral compartment, and marginal osteophytes. Examination of appellant's left knee revealed tenderness to palpation in the medial and lateral joint lines and trace effusion. Dr. Hyman noted range of motion was full. He diagnosed: status post left knee arthroscopy, May 7, 2014; status post right knee arthroscopy, chondroplasty, and synovectomy, June 2, 2016; reaggravation of left knee, May 16, 2017; left knee pain; and chondral defect. Dr. Hyman noted: "[that] there are appropriate indications for surgery." He discussed the risks and benefits of surgery with appellant. Dr. Hyman reported that they decided to proceed with surgery.

On November 29, 2017 OWCP referred appellant, along with a statement of accepted facts (SOAF) and a copy of the record, to Dr. Howard B. Krone, a Board-certified orthopedic surgeon, for a second-opinion evaluation regarding the status of her work-related May 16, 2017 employment injury and work capacity. In a December 19, 2017 report, Dr. Krone reviewed the SOAF and the medical evidence of record. He accurately described the May 16, 2017 employment incident and noted that appellant's claim had been accepted for a left knee sprain. Dr. Krone also noted that a July 27, 2017 left knee x-ray examination was indicative of mild degenerative osteoarthritic changes. Upon physical examination of appellant's bilateral knees, he observed no evidence of swelling, effusion, or crepitus. Range of motion of both knees was 0 to 145 degrees

[3] The record reveals that appellant was, at that time, working limited duty for a previously accepted claim under File No. xxxxxx964.

with no pain at the extreme of flexion or extension. Dr. Krone reported slight tenderness on palpation over the anterior lateral aspect of the left knee and positive McMurray's sign.

In response to OWCP's questions, Dr. Krone indicated that appellant's accepted left knee sprain had resolved. He explained that most sprains reach maximum medical improvement (MMI) four to six weeks postinjury and related that she was now seven months' post recurrent injury. Dr. Krone further reported that, according to appellant's medical records, she was still symptomatic with left knee pain following her left knee surgery in 2014. He concluded that she had recovered completely from her left knee sprain and that her current symptoms were secondary to her preexisting degenerative arthritis of the lateral compartment of her left knee. Dr. Krone opined that there was no further need for treatment and completed a work capacity evaluation form (OWCP-5c) which indicated that appellant could return to work at her usual job.

On February 14, 2018 OWCP received appellant's request for authorization for left knee arthroscopic surgery and revision of knee joint.

In a February 15, 2018 development letter, OWCP found that the medical evidence of record was insufficient to authorize the surgery because the requested treatment did not appear to be medically necessary for and/or causally related to appellant's accepted conditions. It requested a medical narrative from appellant's physician describing why the procedure was medically necessary and what future benefits he or she hoped to attain through the surgery. OWCP afforded appellant 30 days to submit additional evidence and respond to its inquiries.

In a February 23, 2018 report, Dr. Todd Fellars, a Board-certified orthopedic surgeon and OWCP district medical adviser (DMA), indicated that he reviewed the SOAF and the medical record, including Dr. Hyman's November 3, 2017 report. He noted his disagreement with Dr. Hyman's recommendation for left knee surgery and opined that there was no causal relationship between appellant's accepted condition of left knee sprain and the need for surgery. Dr. Fellars explained that Dr. Hyman recommended surgery to stage her osteoarthritis and determine whether osteochondral transfer was viable, but noted that her claim was not accepted for left knee osteochondral lesion or left knee osteoarthritis. Furthermore, he reported that, based on the documented information, appellant's underlying arthritis had progressed to the extent that the requested surgery would not be beneficial to treat her left knee pain.

By decision dated March 23, 2018, OWCP denied authorization for left knee surgery. It found that the weight of the medical evidence rested with the February 23, 2018 report of the DMA, who determined that left knee surgery was not medically necessary to treat appellant's accepted left knee sprain condition.

On March 26, 2018 OWCP proposed to terminate appellant's wage-loss compensation and medical benefits because her May 16, 2017 work-related injury had resolved. It found that the weight of medical evidence rested with the December 19, 2017 medical report of Dr. Krone, who found that she no longer had any residuals or disability causally related to her accepted left knee sprain. OWCP afforded appellant 30 days to submit additional evidence or argument, in writing, if she disagreed with the proposed termination.

OWCP received a January 31, 2018 report by Dr. Hyman, who treated appellant for follow-up of left knee injury. Examination of appellant's left knee showed tenderness to palpation over the medial joint and lateral joint lines and crepitance. Dr. Hyman diagnosed left knee pain and status post left knee arthroscopy. He indicated that appellant could work with restrictions.

By decision dated May 3, 2018, OWCP finalized the termination of appellant's wage-loss compensation and medical benefits, effective May 4, 2018. It found that the weight of medical evidence rested with Dr. Krone, OWCP's second-opinion examiner, who concluded in a December 19, 2017 report, that appellant had no residuals or disability due to her work-related left knee injury.

LEGAL PRECEDENT -- ISSUE 1

Section 8103(a) of FECA[4] 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.[5] In interpreting this section of FECA, 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] OWCP has broad administrative discretion in choosing the means to achieve this goal and the only limitation on the OWCP's authority is that of reasonableness.[7]

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.[8]

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.[9] 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

[4] *Supra* note 1.

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

[6] *W.T.*, Docket No. 08-0812 (issued April 3, 2009); *A.O.*, Docket No. 08-0580 (issued January 28, 2009).

[7] *D.C.*, 58 ECAB 629 (2007); *Mira R. Adams*, 48 ECAB 504 (1997).

[8] *L.W.*, 59 ECAB 471 (2008); *P.P.*, 58 ECAB 673 (2007); *Daniel J. Perea*, 42 ECAB 214 (1990).

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

employment injury and that it is medically warranted. Both of these criteria must be met in order for OWCP to authorize payment.[10]

ANALYSIS -- ISSUE 1

The Board finds that OWCP did not abuse its discretion by denying authorization for left knee surgery.

OWCP accepted appellant's traumatic injury claim for left knee sprain. In a November 3, 2017 examination report, Dr. Hyman related that her left knee condition had not improved with nonsurgical management. He indicated that updated diagnostic testing showed progressive changes in appellant's knee, including diseased lateral meniscus, further cartilage erosion to the lateral compartment, and marginal osteophytes. Examination of appellant's left knee demonstrated tenderness to palpation in the medial and lateral joint lines and trace effusion. Dr. Hyman recommended surgery in order to restore her "to as close to normal function as possible and reducing the symptoms as much as possible."

The Board finds that Dr. Hyman's report does not include a clear rationale explaining the need for surgery in order to treat appellant's accepted left knee condition.[11] The need for rationalized medical evidence is particularly important in this case since diagnostic testing showed progressive degenerative changes in her left knee. As Dr. Hyman failed to provide medical rationale explaining how the requested surgery was necessary to treat appellant's work-related left knee sprain, his report is of diminished probative value.[12]

In a February 23, 2018 report, Dr. Fellars, a DMA, reviewed appellant's medical records and a SOAF. He noted that she had previously undergone left knee arthroscopic surgery and that diagnostic examination showed progressive changes in her left knee. Dr. Fellars explained that Dr. Hyman recommended surgery in order to treat appellant's osteoarthritis and to determine whether osteochondral transfer was viable, even though her claim was not accepted for those conditions. Furthermore, he reported that, based on the documented information, her underlying arthritis had progressed to the extent that the requested surgery would not be beneficial to treat her continued left knee symptoms.

The Board finds that OWCP properly relied on the report of Dr. Fellars in its decision denying appellant's request for authorization for left knee surgery. Dr. Fellars' opinion was well-rationalized and based upon a complete background, 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 condition represents the weight of the evidence.[13] OWCP, therefore, did not abuse its discretion in denying authorization for left knee surgery.

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

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

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

[13] *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.

LEGAL PRECEDENT -- ISSUE 2

According to FECA, once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of an employee's benefits.[14] OWCP may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.[15] Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[16] The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.[17] To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment.[18]

ANALYSIS -- ISSUE 2

OWCP accepted that appellant sustained left knee sprain as a result of a May 16, 2017 employment injury. By decision dated May 3, 2018, it terminated her wage-loss compensation and medical benefits based on the opinion of Dr. Krone, the second-opinion examiner, who concluded in a December 19, 2017 report that she no longer suffered residuals of her May 16, 2017 employment injury and was capable of returning to work at her usual job. The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective May 4, 2018, as the medical evidence established that she did not have any residuals or disability causally related to the May 16, 2017 employment injury.

In his December 19, 2017 report, Dr. Krone described the May 16, 2017 employment incident and noted that appellant's claim was accepted for a left knee sprain. He also noted that she had undergone left knee surgery and that a July 27, 2017 left knee x-ray examination was indicative of mild degenerative osteoarthritic changes. Dr. Krone conducted a physical examination of appellant's left knee and noted no evidence of swelling, effusion, or crepitus. He also observed slight tenderness on palpation over the anterior lateral aspect of the left knee and positive McMurray's sign. Dr. Krone opined that appellant's accepted left knee sprain injury had resolved. He explained that most sprains reach MMI four to six weeks postinjury and related that she was then seven months post recurrent injury. Dr. Krone further indicated that appellant's left

[14] *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

[15] *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

[16] *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

[17] *A.P.*, Docket No. 08-1822 (issued August 5, 2009); *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

[18] *A.P., id.*; *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002).

knee was still symptomatic following her left knee surgery. He concluded that she had recovered completely from her left knee sprain and that her current symptoms were secondary to her preexisting left knee degenerative arthritis.

The Board finds that OWCP properly accorded the weight of medical opinion with Dr. Krone who reported that appellant no longer had residuals or disability as a result of the May 16, 2017 employment injury. Dr. Krone based his opinion on a proper factual and medical history and physical examination findings and provided medical rationale for his opinion that she did not have a current residual injury or work limitations. He opined that appellant's current symptoms were a result of her preexisting degenerative left knee arthritis. The Board finds that Dr. Krone provided a well-rationalized opinion based on medical evidence regarding her May 16, 2017 employment injury. Accordingly, OWCP properly relied on his December 19, 2017 second-opinion report in terminating appellant's wage-loss compensation and medical benefits for the May 16, 2017 employment injury.[19]

Following its March 26, 2018 notice of proposed termination, OWCP received a January 31, 2018 report by Dr. Hyman. Dr. Hyman reported examination findings of tenderness to palpation over appellant's left knee medial joint and lateral joint lines and crepitance. He diagnosed left knee pain. Dr. Hyman did not, however, provide an opinion that appellant continued to have residuals or disability due to her accepted left knee sprain. The Board finds, therefore, that the remaining contemporaneous medical evidence is insufficient to overcome the weight of medical evidence given to his December 19, 2017 second-opinion report in terminating her wage-loss compensation and medical benefits for the May 16, 2017 employment injury.[20]

CONCLUSION

The Board finds that OWCP did not abuse its discretion by denying authorization for left knee surgery. The Board also finds that OWCP properly terminated appellant's wage-loss

[19] *See A.F.*, Docket No. 16-0393 (issued June 24, 2016).

[20] *See J.P.*, Docket No. 16-1103 (issued November 25, 2016).

compensation and medical benefits, effective May 4, 2018, as she no longer had residuals or disability causally related to her accepted May 16, 2017 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the May 3 and March 23, 2018 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 6, 2019
Washington, DC

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

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

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