United States Department of Labor
Employees' Compensation Appeals Board

G.V., Appellant	)	
and	)	**Docket No. 18-0482**
	)	**Issued: May 21, 2019**
U.S. POSTAL SERVICE, POST OFFICE, Meridian, ID, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 3, 2018 appellant filed a timely appeal from a September 18, 2017 merit decision 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]

ISSUE

The issue is whether OWCP abused its discretion by denying authorization for left knee surgery.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that, following the September 18, 2017 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 December 27, 2016 appellant, then a 53-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that, on December 23, 2016, she injured her left knee and right hip in a work-related fall. On the reverse side of the claim form, the employing establishment indicated that she stopped work on December 27, 2016. On December 29, 2016 appellant returned to work in a limited-duty capacity.

A December 24, 2016 left knee x-ray examination report showed advanced degenerative osteoarthritis with no acute bony abnormality.

Appellant was treated by Dr. Stephen C. Martinez, a Board-certified family practitioner, who related in progress notes dated January 9 and 23, 2017, that on December 23, 2016 appellant injured her right hip and left knee when she fell down at work. Dr. Martinez provided examination findings and diagnosed left knee sprain and leg contusion. He completed a work status form indicating that appellant could perform limited-duty work.

A February 8, 2017 left knee magnetic resonance imaging (MRI) scan report revealed a complex macerated tear in the medial meniscus posterior horn and posterior root, with associated increased medial extrusion of its body into the medial gutter, interval development of a radial tear in the lateral meniscus posterior horn, and interval progression of moderate-to-severe tricompartmental degenerative joint disease.

Dr. Jared P. Tadje, a Board-certified orthopedic surgeon, began to treat appellant. In a March 6, 2017 progress note, he indicated that appellant had complained of left knee pain since a slip and fall injury at work on December 23, 2016. Examination of appellant's left knee showed lack of a few degrees of extension and flexion. Dr. Tadje reviewed appellant's history and diagnosed left knee arthritis. In an April 10, 2017 progress note, he again examined appellant's left knee and diagnosed arthritis and recommended a left total knee replacement. Dr. Tadje indicated that he informed appellant that she needed to wait for authorization to proceed with left total knee arthroplasty. He updated appellant's work restrictions.

On April 12, 2017 OWCP accepted appellant's claim for right hip contusion and left knee sprain.

On April 27, 2017 OWCP received an authorization request from Dr. Tadje for left total knee arthroplasty. By letter dated April 28, 2017, it advised appellant of the evidence needed to support her request for authorization for surgery.

Dr. Tadje continued to treat appellant and related in a May 8, 2017 progress note that she continued to experience left knee pain, which was affecting her ability to work and perform normal activities. Upon physical examination of appellant's left knee, he reported full extension and flexion to 120 degrees. Dr. Tadje diagnosed complex tear of the lateral meniscus and medial meniscus and left knee arthritis. He explained that he was waiting authorization to proceed with a left total knee arthroplasty and would write a letter to OWCP expressing his opinion regarding the necessity of the surgery. Dr. Tadje completed a duty status report (Form CA-17) with updated work restrictions.

In a May 17, 2017 letter, Dr. Tadje related that on December 23, 2016 appellant fell injuring her left knee. He indicated that after an examination and MRI scan, appellant was diagnosed with complex tear of the lateral meniscus and medial meniscus of the left knee and primary osteoarthritis of the left knee. Dr. Tadje opined that the December 23, 2016 injury, "on a more probable than not basis," caused appellant's left medial and lateral meniscus tears and exacerbated her preexisting osteoarthritis. He recommended a left total knee arthroplasty to improve appellant's symptoms and allow her to return to normal daily activities. Dr. Tadje reported: "based on her symptoms and her images, I believe this is a reasonable treatment plan."

OWCP referred appellant's medical record and statement of accepted facts (SOAF) to Dr. Nathan Hammel, a Board-certified orthopedic surgeon and OWCP district medical adviser (DMA), for examination and an opinion as to whether left knee surgery was medically necessary to treat appellant's accepted employment injury. In a June 9, 2017 report, Dr. Hammel reviewed appellant's history, including the SOAF, and noted appellant's accepted conditions of right hip contusion and left knee sprain. He related that appellant's most recent clinical examination showed knee pain and popping and tenderness in the left knee. Dr. Hammel noted that MRI scans showed meniscal tears with osteoarthritis.

Dr. Hammel opined that the proposed left total knee arthroplasty was not causally related to the accepted conditions. He further explained that total knee replacement was not a treatment for knee sprain. Dr. Hammel also opined that the proposed left total knee arthroplasty was not medically necessary to treat appellant's accepted conditions. He found that there was insufficient evidence of historical elements to determine that the request was medically necessary and specifically noted the lack of night pain and overall functional limitations. Dr. Hammel also disagreed with Dr. Tadje's opinion that the December 23, 2016 employment injury caused an aggravation of appellant's preexisting left knee osteoarthritis. He noted that a post-injury left knee x-ray examination showed advanced osteoarthritis. Dr. Hammel opined that a clear causal link had not been established.

Dr. Tadje continued to treat appellant. In reports dated June 12 to August 7, 2017, he described the December 23, 2016 employment injury and noted that they were waiting authorization for left total knee arthroplasty. Upon examination of appellant's left knee, Dr. Tadje observed a lack of 3 degrees of extension and flexion to 120 degrees. Neurovascular examination was intact. Dr. Tadje diagnosed left knee arthritis and complex tears of the lateral and medial meniscuses. In the August 7, 2017 report, he related that appellant's symptoms continued to worsen and that she had failed conservative treatment options. Dr. Tadje recommended a total left knee arthroplasty and noted that authorization for surgery had been denied. He updated appellant's work restrictions and provided duty status reports (Form CA-17).

By decision dated September 18, 2017, OWCP denied appellant's request for authorization of left knee surgery. It found that the medical evidence of record was insufficient to establish that the requested left knee surgery was medically necessary to address the effects of her employment injuries.

LEGAL PRECEDENT

Section 8103(a) of FECA provides for the furnishing of 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.[3] 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.[4] OWCP has broad administrative discretion in choosing the means to achieve this goal and the only limitation on OWCP's authority is that of reasonableness.[5]

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.[6]

While OWCP is obligated to pay for treatment of employment-related conditions, appellant has the burden of proof to establish that the expenditure is incurred for treatment of the effects of an employment-related injury or condition.[7] Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.[8] Therefore, in order to prove that the surgical procedure is warranted, appellant must submit evidence to show that the procedure was for a condition causally related to the employment injury and that the surgery was medically warranted.[9] Both of these criteria must be met in order for OWCP to authorize payment.[10]

ANALYSIS

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

In support of her request for surgery, appellant provided a series of reports from Dr. Tadje dated March 6 to August 7, 2017. Dr. Tadje related appellant's complaints of left knee pain as a result of a slip and fall injury at work on December 23, 2016. Upon initial examination of appellant's left knee, he reported lack of a few degrees of extension and flexion. Dr. Tadje noted that a February 2017 left knee MRI scan showed tears in the medial and lateral meniscuses and

[3] 5 U.S.C. § 8103; *see Thomas W. Stevens*, 50 ECAB 288 (1999).

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

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

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

[7] *See Debra S. King*, 44 ECAB 203, 209 (1992).

[8] *Id.; see also Bertha L. Arnold*, 38 ECAB 282 (1986).

[9] *Zane H. Cassell*, 32 ECAB 1537, 1540-41 (1981); *John E. Benton*, 15 ECAB 48, 49 (1963).

[10] *See Cathy B. Millin*, 51 ECAB 331, 333 (2000).

degenerative joint disease. He diagnosed left knee arthritis and complex tear of the lateral and medial meniscuses. In a May 17, 2017 letter, Dr. Tadje opined that the December 23, 2016 injury, "on a more probable than not basis," caused appellant's left knee tears and exacerbated her preexisting osteoarthritis. He explained that he recommended left total knee arthroplasty to improve appellant's symptoms and allow her to return to normal daily activities. Dr. Tadje reported that it was a "reasonable treatment plan" based on her symptoms and MRI and x-ray images.

Although Dr. Tadje opined that the proposed left knee surgery was necessary to treat appellant's left knee condition, his reports failed to provide a rationalized medical opinion explaining how the proposed procedure was causally related to the accepted left knee injury and why it was medically warranted.[11] Medical evidence that states a conclusion but does not offer any rationalized medical explanation regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[12] The need for rationale is particularly important where the record contains a December 24, 2016 left knee x-ray examination which showed advanced degenerative osteoarthritis.[13]

Moreover, the Board notes that OWCP had only accepted a right hip contusion and left knee sprain as causally related to appellant's December 23, 2016 employment injury. The medical evidence of record does not contain any rationalized evidence to establish that other diagnosed conditions, such as complex left knee tears of the lateral and medial meniscuses, were causally related to the accepted injury. The Board finds that Dr. Tadje's opinion that the December 23, 2016 employment injury was, "on a more probable than not basis," the cause of appellant's left knee tears and exacerbated appellant's preexisting left knee arthritis is speculative and equivocal and, accordingly, is of diminished probative value.[14] An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is causal relationship between his claimed condition and his employment.[15] OWCP has not accepted that appellant sustained complex tears of the left knee medial and lateral meniscuses or aggravation of left knee osteoarthritis as a result of her December 23, 2016 employment injury, and there is no medical rationalized evidence to support such a conclusion.[16]

[11] *See P.M.*, Docket No. 17-0607 (issued November 6, 2017).

[12] *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

[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] *D.D.*, 57 ECAB 734, 738 (2006); *Kathy A. Kelley*, 55 ECAB 206 (2004).

[15] *Robert A. Boyle*, 54 ECAB 381 (2003); *Patricia J. Glenn*, 53 ECAB 159 (2001).

[16] Where an employee claims that a condition not accepted by OWCP was due to an employment injury, she bears the burden of proof to establish that the condition is causally related to the employment injury. *See L.S.*, Docket No. 18-1494 (issued April 12, 2019); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

The other reports by Dr. Martinez and diagnostic reports dated December 24, 2016 and February 8, 2017 are likewise of limited probative value as they do not specifically address whether the requested left total knee arthroplasty procedure is medically necessary and warranted.

In his June 9, 2017 report, Dr. Hammel, an OWCP DMA, opined that the proposed left knee surgery was not medically necessary to treat appellant's accepted left knee sprain. He further opined that there was insufficient evidence of historical elements to determine that the request was medically necessary and specifically noted the lack of night pain and overall functional limitations. Dr. Hammel also disagreed with Dr. Tadje's opinion that the December 23, 2016 employment injury caused an aggravation of appellant's preexisting left knee osteoarthritis. He noted that a post-injury left knee x-ray examination showed advanced osteoarthritis.

As noted above, the only limitation on OWCP's authority in approving or disapproving service under FECA is one of reasonableness.[17] Because appellant did not submit a reasoned medical opinion explaining how the December 23, 2016 work injury caused or contributed to her need for the requested surgical procedure, and because the DMA found that the surgery was not medically necessary, OWCP properly acted within its discretionary authority to deny authorization. Therefore, the Board finds that OWCP did not abuse its discretion under section 8103 in denying approval of total left knee arthroplasty in order to treat appellant's accepted left knee injury.

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 authorization for left knee surgery.

[17] *Supra* note 5.

ORDER

IT IS HEREBY ORDERED THAT the September 18, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 21, 2019
Washington, DC

Patricia H. Fitzgerald, Deputy 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