

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

_____)
A.S., Appellant)

and)

U.S. POSTAL SERVICE, NAMPA CARRIER)
ANNEX POST OFFICE, Nampa, ID, Employer)
_____)

**Docket No. 19-0745
Issued: October 10, 2019**

Appearances:

Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

JANICE B. ASKIN, Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 11, 2019 appellant, through counsel, filed a timely appeal from a January 24, 2019 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 January 24, 2019 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 a total left knee arthroplasty (replacement surgery).

FACTUAL HISTORY

On March 7, 2018 appellant, then a 54-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on March 6, 2018 she tripped on a plastic strap and fell forward onto a concrete floor sustaining a left knee contusion and right hip flexor sprain while in the performance of duty. She stopped work on March 7, 2018 and returned to light-duty work on March 12, 2018.

Appellant was treated by Daryn Barnes, a physician assistant, who provided reports previously of record as well as March 6 and 9, 2018 reports restricting appellant to light duty.⁴ Mr. Barnes renewed work restrictions in reports through June 1, 2018.

Appellant also provided a May 16, 2018 prescription for a left knee brace from Dr. Justin Danowski, an osteopathic physician.

In a report dated July 11, 2018, Dr. Andrew R. Curran, an osteopathic physician Board-certified in orthopedic surgery and sports medicine, noted a history of injury and treatment. He diagnosed osteoarthritis of the left knee and a left anterior cruciate ligament (ACL) tear. Dr. Curran recommended a total left knee arthroplasty. He restricted appellant to limited-duty pending surgery.

In an August 17, 2018 report, Dr. Curran noted that appellant underwent a left knee arthroscopy in 2005, but had been doing well prior to the March 6, 2018 employment injury. Conservative treatment following the March 6, 2018 employment injury, including a left knee brace, physical therapy, and medication, failed to improve stability or relieve her pain symptoms. On examination of the left knee, Dr. Curran observed varus alignment, pseudolaxity with valgus stress testing, medial joint line tenderness, and a positive Lachman test. He opined that the severity of appellant's left knee arthritis contraindicated a repeat arthroscopy and ACL reconstruction. Dr. Curran recommended a total left knee arthroplasty to improve stability in the knee and allow her to resume full-duty work.

On September 25, 2018 OWCP accepted that appellant sustained a left ACL tear in the performance of duty on March 6, 2018.⁵

OWCP referred the medical record and a statement of accepted facts (SOAF) to Dr. Kevin Kuhn, a Board-certified orthopedic surgeon serving as an OWCP district medical adviser (DMA),

⁴ March 6, 2018 left knee x-rays demonstrated severe medial and moderate lateral and patellofemoral joint space loss with associated degenerative spurring and a moderate suprapatellar joint effusion. An April 30, 2018 magnetic resonance imaging (MRI) scan of the left knee demonstrated severe tricompartmental osteoarthritis, most severe in the medial compartment, with multifocal areas of full-thickness cartilage loss, and a chronic complete anterior cruciate ligament (ACL) tear. Appellant participated in physical therapy treatments in April 2018.

⁵ OWCP initially denied the claim by decision dated June 27, 2018 as the medical evidence of record did not establish causal relationship. Pursuant to appellant's July 26, 2018 request for reconsideration, it vacated the June 27, 2018 decision on September 25, 2018 and accepted a left ACL tear.

to determine whether the proposed total left knee arthroplasty was medically necessary to treat appellant's accepted injury.

In a report dated October 4, 2018, Dr. Kuhn noted that he had reviewed the record, including the SOAF and medical reports. He noted Dr. Curran's findings of varus alignment, pseudolaxity, and medial joint line tenderness. Dr. Kuhn also noted that OWCP had accepted appellant's claim for a left knee ACL sprain. He commented appellant's physicians had not yet attempted a trial of corticosteroid injections as would be recommended prior to electing a total arthroplasty. Dr. Kuhn opined that the requested arthroplasty was not medically necessary as imaging studies did not document severe osteoarthritis of two or more compartments, and that corticosteroid injections had not yet been attempted.

In a development letter dated October 16, 2018, OWCP requested that appellant provide all treatment records related to her 2005 left knee arthroscopy and any subsequent treatment. It afforded 30 days to submit this information.

In response appellant submitted an October 23, 2018 note from a medical records clerk, noting that records from her 2006 left knee surgery had been destroyed as they were more than 10 years old.

In an October 25, 2018 report, Dr. Curran noted administering a cortisone injection to the left knee. He opined that, while a partial left knee arthroplasty would address unicompartmental osteoarthritis, the lack of an ACL contraindicated the procedure and necessitated a total left knee arthroplasty. Dr. Curran noted work restrictions in chart notes through December 4, 2018.

By decision dated January 24, 2019, OWCP denied appellant's request for authorization of a total left knee arthroplasty. It found that Dr. Curran had not submitted sufficient medical rationale explaining how the accepted March 6, 2018 employment injury aggravated the underlying accepted condition such that the proposed left knee arthroplasty was medically necessary.

LEGAL PRECEDENT

Section 8103(a) of FECA⁶ 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 by 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 the amount of the monthly compensation.⁷ In interpreting this section of FECA, the Board has recognized that OWCP has broad discretion in determining whether a particular type of treatment is likely to cure or give relief.⁸ The only limitation on OWCP's authority is that of reasonableness.⁹

⁶ *Supra* note 2.

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

⁸ *R.C.*, Docket No. 18-0612 (issued October 19, 2018); *W.T.*, Docket No. 08-0812 (issued April 3, 2009).

⁹ *D.C.*, Docket No. 18-0080 (issued May 22, 2018); *Mira R. Adams*, 48 ECAB 504 (1997).

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.¹⁰

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.¹¹ Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.¹² In order for a surgical procedure to be authorized, a claimant must submit evidence to show that the procedure was for a condition related to the employment injury and that the surgery was medically warranted.¹³ Both of these criteria must be met in order for OWCP to authorize payment.¹⁴

ANALYSIS

The Board finds that OWCP has not abused its discretion by denying appellant's request for authorization of a total left knee arthroplasty.

Dr. Curran opined in his August 17, 2018 report that appellant's severe osteoarthritis of the medial compartment and ACL tear necessitated a total left knee arthroplasty.

In an October 4, 2018 report, Dr. Kuhn, a DMA for OWCP, reviewed appellant's history and reported that the most recent clinical examination of the left knee showed varus alignment, pseudolaxity, and medial joint line tenderness. He opined that as Dr. Curran had not yet administered corticosteroid injections, and appellant had severe osteoarthritis in only one compartment, that the requested total left knee arthroplasty was not medically necessary.

Dr. Curran asserted in an October 25, 2018 report that appellant's lack of an ACL contraindicated a partial left knee arthroplasty, necessitating a total left knee arthroplasty. He administered a corticosteroid injection.

The Board finds that Dr. Kuhn provided a well-reasoned opinion explaining that appellant did not meet the criteria for the proposed total left knee arthroplasty as her osteoarthritis had not progressed to two or more compartments, and corticosteroid injections had not yet been attempted. While Dr. Curran did administer one corticosteroid injection on October 25, 2018, he did not provide a subsequent opinion with clinical observations as to its effectiveness. Dr. Kuhn's opinion

¹⁰ *E.L.*, Docket No. 17-1445 (issued December 18, 2018); *L.W.*, 59 ECAB 471 (2008); *P.P.*, 58 ECAB 673 (2007); *Daniel J. Perea*, 42 ECAB 214 (1990).

¹¹ *M.M.*, Docket No. 19-0491 (issued August 14, 2019); *J.T.*, Docket No. 18-0503 (issued October 16, 2018); *Debra S. King*, 44 ECAB 203, 209 (1992).

¹² *M.M.*, *id.*; *C.L.*, Docket No. 17-0230 (issued April 24, 2018); *M.B.*, 58 ECAB 588 (2007); *Bertha L. Arnold*, 38 ECAB 282 (1986).

¹³ *J.R.*, Docket No. 18-0603 (issued November 13, 2018); *Zane H. Cassell*, 32 ECAB 1537, 1540-41 (1981); *John E. Benton*, 15 ECAB 48, 49 (1963).

¹⁴ *M.M.*, *supra* note 11; *J.L.*, Docket No. 18-0990 (issued March 5, 2019); *R.C.*, 58 ECAB 238 (2006); *Cathy B. Millin*, 51 ECAB 331, 333 (2000).

was based on a complete factual background, SOAF, and a review of the medical record. As such, his opinion represents the weight of the medical evidence.¹⁵

The only limitation on OWCP's authority in approving or disapproving services under FECA is one of reasonableness.¹⁶ In the instant case, OWCP obtained a well-rationalized report from Dr. Kuhn in which he opined that the requested surgery was not medically warranted to treat appellant's accepted March 6, 2018 employment injury. It, therefore, had sufficient evidence upon which it made its decision to deny surgery and did not abuse its discretion.¹⁷

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 a total left knee arthroplasty.

ORDER

IT IS HEREBY ORDERED THAT the January 24, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 10, 2019
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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

¹⁵ *M.M.*, *supra* note 11; *see N.M.*, Docket No. 18-1584 (issued March 15, 2019).

¹⁶ *Supra* note 9.

¹⁷ *M.M.*, *supra* note 11.