United States Department of Labor
Employees' Compensation Appeals Board

P.L., Appellant	)	
and	)	**Docket No. 20-0392**
	)	**Issued: October 28, 2020**
DEPARTMENT OF THE NAVY, NAVAL AIR STATION, Pensacola, FL, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On December 9, 2019 appellant filed a timely appeal from a November 18, 2019 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]

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that OWCP received additional evidence following the November 18, 2019 decision. 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 has abused its discretion by denying appellant's request for authorization of carpal tunnel surgery.

FACTUAL HISTORY

On August 24, 1999 appellant, then a 49-year-old carpenter, filed a traumatic injury claim (Form CA-1) alleging that on August 20, 1999 he was lifting sheet rock and felt a sharp pain in his left elbow while in the performance of duty. He stopped work on August 20, 1999.

OWCP accepted the claim for lateral epicondylitis of the left arm and brachial neuritis or neuritis. Appellant underwent ulnar nerve transposition surgery on August 22, 2001. OWCP granted him a schedule award for 20 percent permanent impairment of the left arm. Appellant retired from federal employment effective September 30, 2002.

In a February 27, 2019 report, Dr. Michael Gilmore, a Board-certified orthopedic surgeon, noted that appellant was seen for a chief complaint of left elbow pain. He also noted that appellant had previously treated with another orthopedic specialist following his August 20, 1999 work injury. Dr. Gilmore reported appellant's history of injury and medical treatment. He diagnosed left carpal tunnel syndrome, with an associated diagnosis of postoperative elbow cubital tunnel release.

In an April 10, 2019 report, Dr. Gilmore noted appellant's physical examination findings and diagnosed carpal tunnel syndrome on the left with thenar atrophy. He opined that appellant's condition was "[m]ore likely than not related to overuse of digits from contributions of previous work-related cubital tunnel release" and "repetitious gripping over the years with mainly the first three fingers instead of full grip ulnar numbness since 1999, despite two cubital tunnel releases." Dr. Gilmore also diagnosed medial epicondylitis on the left. He requested authorization for surgery to include left endoscopic carpal tunnel release on the left wrist. Dr. Gilmore also requested authorization for carpal tunnel surgery on May 7, 2019.

In a May 6, 2019 development letter, OWCP advised appellant that the medical evidence of record was insufficient to authorize carpal tunnel surgery because the requested treatment did not appear to be medically necessary for and/or causally related to ahis accepted conditions. It requested a medical narrative from appellant's physician describing how the newly diagnosed condition was caused or aggravated by the accepted employment injury.

Appellant was seen again by Dr. Gilmore on May 15, 2019 due to pain from his left elbow up to his left shoulder. Dr. Gilmore noted that appellant was seen in follow up for medial epicondylitis of the left elbow, with flexor/pronator tendinosis partial tear. He treated appellant with a steroid injection for the medial epicondylitis.

An August 16, 2019 electromyography (EMG) scan read by Dr. Stephen Slobodian, a physiatrist, revealed severe left median neuropathy at the wrist and mild-to-moderate ulnar nerve compression across the left elbow.

In a September 11, 2019 report, Dr. Gilmore explained that appellant had carpal tunnel and cubital tunnel syndrome. He explained that carpal tunnel could occur with excess pressure on the nerve in the carpal tunnel in the wrist and that there were many factors that contributed to the development of carpal tunnel syndrome, such as heredity, overweight, overuse of the hand, and medical conditions such as diabetes and thyroid disease. Dr. Gilmore noted appellant's surgical options and that appellant decided to proceed with the previously ordered left wrist surgery.

On October 8, 2019 OWCP prepared a statement of accepted facts (SOAF) and referred it, together with the case record, to Dr. Todd Fellars, a Board-certified orthopedic surgeon serving as a district medical adviser (DMA), to determine the medical necessity of the requested surgery and whether the surgery was due to the accepted August 20, 1999 employment injury. The DMA, in an October 31, 2019 report, noted his review of the medical evidence of record. He noted that appellant underwent ulnar nerve transposition in August 2001, received a schedule award for 20 percent upper extremity impairment for his left arm, and retired on disability on September 30, 2002. The DMA explained that given appellant's EMG findings, surgical release of the carpal tunnel would be reasonable and necessary, but not due to the accepted employment injury claim. He noted that he had reviewed Dr. Gilmore's September 11, 2019 report and disagreed with a finding that the need for surgery was due to the accepted employment injury as it had not contributed to his current carpal tunnel symptoms. The DMA explained that the proposed left carpal tunnel release was not causally related to the accepted medical conditions and that development of carpal tunnel, which was "typically idiopathic," 17 years after appellant retired, would not be work related. He concluded that if the SOAF was correct and appellant actually retired in 2002 "there would be no relation between [appellant's] current carpal tunnel syndrome and his work activities."

By decision dated November 18, 2019, OWCP denied authorization for carpal tunnel surgery.

LEGAL PRECEDENT

Section 8103 of FECA 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 the amount of the monthly compensation.[3] In interpreting this section of FECA, the Board has recognized that OWCP has broad discretion in approving services provided under FECA.[4] OWCP has the general objective of ensuring that an employee recovers from his or her injury to the fullest extent possible in the shortest amount of time. It therefore has broad administrative discretion in choosing means to achieve this goal. The only limitation on OWCP's authority is that of reasonableness.[5]

[3] 5 U.S.C. § 8103.

[4] *See D.M.*, Docket No. 17-1563 (issued January 15, 2019); *J.B.*, Docket No. 11-1301 (issued March 22, 2012).

[5] *Id.*

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]

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.[7] 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.[8]

ANALYSIS

The Board finds that OWCP has not abused its discretion by denying appellant's request for authorization of carpal tunnel surgery.

Following appellant's request for authorization of carpal tunnel surgery, OWCP sent a copy of the case record, and a SOAF to a DMA for an opinion as to whether the requested surgery was medically necessary and resulting from the accepted August 20, 1999 employment injury. The DMA reviewed the medical evidence of record and concluded that the proposed carpal tunnel surgery was neither warranted nor necessitated by any of appellant's work-related conditions. He noted appellant's history of injury and treatment, including that appellant underwent ulnar nerve transposition in August 2001, received a 20 percent upper extremity impairment for his left arm, and retired on disability on September 30, 2002. The DMA explained that the development of carpal tunnel is "typically idiopathic" and that development of the condition 17 years after appellant retired would not be work related. He concluded, therefore, that the requested surgery was not work related and was not medically necessary.

As the requested surgery was not determined to be medically necessary and resulting from the accepted August 20, 1999 employment injury, OWCP did not abuse its discretion by denying appellant's requests for authorization for the 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.

[6] *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).

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

[8] *Id.*; *see also R.C.*, 58 ECAB 238 (2006).

CONCLUSION

The Board finds that OWCP has not abused its discretion by denying appellant's request for authorization for carpal tunnel surgery.

ORDER

IT IS HEREBY ORDERED THAT the November 18, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 28, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board