

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

H.R., Appellant)	
)	
and)	Docket No. 19-0759
)	Issued: September 18, 2020
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Charleston, WV, Employer)	
)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On February 22, 2019 appellant filed a timely appeal from a January 10, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ 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 Appellant timely requested an oral argument before the Board pursuant to 20 C.F.R. § 501.5(b). By order dated July 17, 2020, the Board exercised its discretion and denied the request for oral argument as the matter could be adequately addressed based on a review of the evidence of record. *Order Denying Request for Oral Argument*, Docket No. 19-0759 (issued July 17, 2020).

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the January 10, 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 left total knee arthroplasty (TKA).

FACTUAL HISTORY

On September 2, 2017 appellant, then a 53-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on that date he injured his left hip, calf, knee, shoulder, and head when he was hit by a tow motor while in the performance of duty. He stopped work on September 2, 2017. OWCP accepted the claim for internal derangements of the left knee. It subsequently expanded acceptance of the claim to include a tear of the medial meniscus of the left knee. OWCP paid appellant wage-loss compensation for total disability beginning October 18, 2017.

A September 2, 2017 computerized tomography (CT) scan of appellant's left knee revealed joint effusion and degenerative changes more pronounced medially. A November 14, 2017 magnetic resonance imaging (MRI) scan of the left knee demonstrated severe medial tibiofemoral compartment osteoarthritis, moderate patellofemoral, and mild lateral tibiofemoral compartment osteoarthritis, and a high-grade radial tear near the posterior junction of the medial meniscus.

In a report dated December 7, 2017, Dr. Benjamin Craig Taylor, a Board-certified orthopedic surgeon, noted effusion, tenderness, and mild swelling of the left knee. He diagnosed a left knee meniscal tear and recommended a partial meniscectomy.

On January 12, 2018 Dr. Taylor performed an arthroscopic partial left medial and lateral meniscectomy. In a May 9, 2018 progress report, Dr. Taylor noted that appellant had completed a course of physical therapy. He observed severe left knee osteoarthritis as demonstrated on x-ray and visualized during surgery. Dr. Taylor indicated that appellant would "likely be a TKA candidate in the future."

In a progress report dated August 8, 2018, Dr. Taylor provided examination findings of moderate left knee effusion with crepitus and reduced motion. He diagnosed status post left knee arthroscopy with degenerative joint disease. Dr. Taylor advised that "the injury has unfortunately led to degenerative changes that are not responding to conservative means...." He referred appellant to Dr. Sanjay Mehta, an orthopedic surgeon, to discuss the possibility of a TKA.

On August 27, 2018 OWCP referred appellant along with an accepted statement of accepted facts to Dr. Ralph G. Rohner, Jr., a Board-certified orthopedic surgeon, for a second opinion examination. It requested that Dr. Rohner address whether the accepted conditions had resolved and whether appellant could resume his usual employment. Dr. Rohner was also asked to "[d]iscuss the prognosis and whether there is a need for any further treatment. Please provide the basis for your opinion and outline any treatment recommendations."

In a report dated September 18, 2018, Dr. Mehta discussed appellant's history of injuring his left leg at work a year prior and his current complaints of severe left knee pain. He obtained x-rays which he interpreted as "severe arthritis in his left knee [with] complete loss of cartilage in

the medial joint line with bone-on-bone and a severe varus deformity.” Dr. Mehta recommended a knee arthroplasty, noting that appellant had failed conservative treatment.

On September 24, 2018 Dr. Mehta requested surgical authorization for a TKA.

In a report dated September 24, 2018, Dr. Rohner discussed appellant’s history of an employment injury and January 12, 2018 partial lateral and medial meniscectomy.⁴ He reviewed progress reports from Dr. Taylor dated March through August 2018, noting that he had found that appellant had “significant arthritis changes in his knee to a degree that total joint arthroplasty would likely become necessary.” Dr. Rohner diagnosed internal derangement and a medial meniscal tear of the left knee. He related that appellant “had a preexisting asymptomatic condition of his knee which was significantly aggravated by his work injury. The preexisting condition was osteoarthritis, and the current symptomatology, due to the aggravation of that issue, is permanent.” Dr. Rohner opined that appellant had continued residuals of his condition as demonstrated by objective findings on examination and was disabled from his usual employment. He provided work restrictions. Dr. Rohner noted that a “substantial aggravation of preexisting osteoarthritis” was “an accurate diagnosis of the allowed nebulous diagnosis ‘other internal derangement of the left knee.’”

By decision dated January 10, 2019, OWCP denied authorization for a TKA. It found that the evidence established that the requested procedure was not medically necessary.

LEGAL PRECEDENT

Section 8103(a) of FECA⁵ 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.⁶

In interpreting section 8103 of FECA, the Board has recognized that OWCP has broad discretion in approving services provided, with the only limitation on OWCP’s authority being 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

⁴ D. Rohner listed the date of appellant’s employment injury as August 27, 2018.

⁵ *Supra* note 2.

⁶ 5 U.S.C. § 8103; *see N.G.*, Docket No. 18-1340 (issued March 6, 2019).

⁷ *See C.L.*, Docket No. 17-0230 (issued April 24, 2018); *D.K.*, 59 ECAB 141 (2007).

⁸ *M.G.*, Docket No. 19-1791 (issued August 13, 2020); *J.L.*, Docket No. 18-0503 (issued October 16, 2018).

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

Section 8124(a) of FECA provides that OWCP shall determine and make a finding of fact and make an award for or against payment of compensation.¹¹ Section 10.126 of Title 20 of the Code of Federal Regulations provides that a decision shall contain findings of fact and a statement of reasons.¹² The Board has held that the reasoning behind OWCP's evaluation should be clear enough for the reader to understand the precise defect of the claim and the kind of evidence which would overcome it.¹³

ANALYSIS

The Board finds that the case is not in posture for decision.

In a report dated August 8, 2018, Dr. Taylor diagnosed status post left knee arthroscopy with degenerative joint disease. He opined that appellant's injury had caused degenerative changes and that conservative treatment had been unsuccessful. Dr. Taylor indicated that he was referring him to Dr. Mehta for an opinion regarding a left TKA.

On September 18, 2018 Dr. Mehta discussed appellant's history of an employment injury to his left leg a year earlier and diagnosed severe left knee arthritis with a complete loss of cartilage. He recommended a TKA.

OWCP denied appellant's request for authorization for a left TKA without discussing the medical evidence from either Dr. Taylor or Dr. Mehta. Dr. Rohner provided an opinion on appellant's current condition and disability due to his employment injury. Appellant was referred to Dr. Rohner before authorization for the TKA was requested. Dr. Rohner was not asked to specifically address whether appellant required a TKA.

⁹ *R.M.*, Docket No. 19-1319 (issued December 10, 2019); *K.W.*, Docket No. 18-1523 (issued May 22, 2019).

¹⁰ *Id.*

¹¹ 5 U.S.C. § 8124(a).

¹² 20 C.F.R. § 10.126.

¹³ *J.R.*, Docket No. 19-0746 (issued June 9, 2020); *L.M.*, Docket No. 13-2017 (issued February 21, 2014); Federal (FECA) Procedure Manual Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5 (February 2013) (all decisions should contain findings of fact sufficient to identify the benefit being denied and the reason for the disallowance).

Section 8124(a) of FECA¹⁴ and section 10.126 of the implementing regulations¹⁵ require that final decisions of OWCP contain findings of fact and a statement of reasons. A decision denying a claim should contain a correct description of the basis for the denial in order that the parties of interest have a clear understanding of the precise defect of the claim and the kind of evidence which would overcome it.¹⁶ The Board finds that OWCP's January 10, 2019 decision was incomplete as it failed to make findings regarding whether the medical evidence established that the requested left TKA was causally related to appellant's accepted employment injury and medically warranted. As such, appellant was unable to understand the precise defect of the claim and the kind of evidence which would overcome it.¹⁷

OWCP, consequently, has not fulfilled its responsibility under section 8124 of FECA and section 10.126 of its implementing regulations.¹⁸ The case will therefore be remanded to OWCP for a proper decision, to include findings of fact and a statement of reasons, regarding whether the medical evidence is sufficient to establish that a left TKA is medically necessary and causally related to the accepted employment injury.¹⁹ Following this and any further development as OWCP deems necessary, it shall issue a *de novo* decision.

CONCLUSION

The Board finds that the case is not in posture for decision.

¹⁴ *Supra* note 11.

¹⁵ *Supra* note 12.

¹⁶ *O.M.*, Docket No. 19-0342 (issued November 15, 2019); *Patrick Michael Duffy*, 43 ECAB 280 (1991).

¹⁷ *R.M.*, Docket No. 19-0163 (issued July 17, 2019).

¹⁸ *See L.D.*, Docket No. 19-0350 (issued October 22, 2019).

¹⁹ *R.M.*, *supra* note 17.

ORDER

IT IS HEREBY ORDERED THAT the January 10, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: September 18, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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