

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

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D.C., Appellant )

and )

DEPARTMENT OF HOMELAND SECURITY, )  
TRANSPORTATION SERVICES AGENCY, )  
Jamaica, NY, Employer )

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**Docket No. 20-0854  
Issued: July 19, 2021**

*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  
PATRICIA H. FITZGERALD, Alternate Judge

**JURISDICTION**

On March 6, 2020 appellant filed a timely appeal from a February 19, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether OWCP abused its discretion by denying appellant's request for authorization of right hip arthroplasty.

**FACTUAL HISTORY**

On August 29, 2018 appellant, then a 59-year-old training specialist, filed a notice of traumatic injury (Form CA-1) alleging that on August 28, 2018 he sustained a right hip contusion

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

when he was opening the door to leave his office and the door struck his right hip, leg, and foot. He stopped work on August 30, 2018 and was cleared to return to full-time work with restrictions on November 27, 2018. OWCP accepted the claim for right hip contusion and right hip sprain/strain. It paid appellant intermittent wage-loss compensation on the supplemental rolls from October 15, 2018 through June 7, 2019.

An August 31, 2018 magnetic resonance imaging (MRI) scan of appellant's right hip demonstrated the presence of joint fluid compatible with synovitis.

A July 23, 2019 right hip x-ray revealed no evidence of joint osteophytes, erosive changes, bony degenerative change or other arthropathy. A six millimeter calcification of the soft tissue superior to the greater trochanter consistent with calcific tendinopathy at the gluteal tendon insertion was noted.

In a July 29, 2019 report, Dr. Imran Ashraf, a Board-certified orthopedic surgeon, related that appellant was seen for his right hip pain from an employment injury. He noted that appellant had been treated with right hip cortisone injections, which provided temporary relief. Appellant described a recurrence of the right hip pain, which had progressively worsened. Physical examination and range of motion findings were provided. Dr. Ashraf diagnosed right hip synovitis and arthritis secondary to a work-related injury. He noted that appellant may have had a preexisting history of right hip arthritis which further exacerbated his condition. Since appellant had failed conservative management and had progressing symptoms, Dr. Ashraf recommended total hip replacement surgery.

On July 31, 2019 Dr. Ashraf requested authorization for total right hip replacement surgery. He diagnosed right hip synovitis and trochanteric bursitis. Dr. Ashraf explained that appellant's condition had not improved with physical therapy or cortisone injections, but that his symptoms had progressively worsened.

On August 9, 2019 OWCP referred a statement of accepted facts (SOAF), the medical record, and a series of questions to Dr. Nathan Hammell, a Board-certified orthopedic surgeon serving as an OWCP district medical adviser (DMA), to determine whether the requested surgery was medically necessary. In an August 27, 2019 report, the DMA explained that he had reviewed the SOAF and the medical record, including Dr. Ashraf's July 29 and 31, 2019 reports. He noted that the most recent clinical notes reported that appellant was seen for lateral right hip pain, had preserved range of motion (ROM), and there was radiographic evidence of arthritis. The DMA related that the requirements for optimal benefits for hip replacement included end-stage radiographic changes, less than 35 body mass index, failure of conservative treatment, and significant functional limitations. While the recommendation for appellant's right hip arthroplasty was for treatment of arthritis, arthritis was not an accepted condition. The DMA also found the surgery was not medically necessary as the record contained no evidence of radiographic arthritis.

In an August 30, 2019 report, Dr. Oleg Olshanetsky, an osteopath, related appellant's medical and injury histories and provided examination findings. He reviewed right hip x-ray interpretations, which he found negative, and a right hip MRI scan, which showed the presence of joint fluid compatible with synovitis. Diagnoses included right hip contusion and right hip strain/sprain.

In a development letter dated September 19, 2019, OWCP informed appellant that the evidence of record was insufficient to authorize the proposed surgery as it did not appear to be medically necessary for and/or causally related to the accepted conditions. A copy of the DMA's report was attached for appellant's review. OWCP requested that appellant provide a detailed narrative report from his physician explaining how the requested surgery was medically necessary for his accepted employment injury. It afforded him 30 days to submit the necessary evidence.

In response to OWCP's request, appellant submitted an August 30, 2019 computerized tomography scan of his right hip which showed moderate osteoarthritis at the symphysis pubilis and mild bilateral sacroiliac joint osteoarthritis, unchanged small five by two millimeters calcification at the right gluteus medius tendon, and no selective muscle atrophy or attenuation anomaly.

Follow-up reports dated September 20, November 22, and December 19, 2019 from Dr. Olshanetsky related unchanged findings from his August 30, 2019 report.

Dr. Ashraf, in reports dated November 25, 2019 and January 25, 2020, diagnosed right hip synovitis and arthritis, which he attributed to appellant's work injury. He noted that he had reviewed a weight-bearing right hip x-ray, which revealed advanced right hip osteoarthritis and no fracture or dislocation.

By decision dated February 19, 2020, OWCP denied appellant's request for authorization of right hip arthroplasty, finding that the evidence of record did not support that it was medically necessary to address the effects of the employment-related injury.

### **LEGAL PRECEDENT**

Section 8103 of FECA<sup>2</sup> provides for the furnishing of services, appliances, and supplies prescribed or recommended by a qualified physician which OWCP, under authority delegated by the Secretary, considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of monthly compensation.<sup>3</sup> In interpreting this section of FECA, the Board has recognized that OWCP has broad discretion in approving services provided under section 8103, and the only limitation on OWCP's authority is that of reasonableness.<sup>4</sup>

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.<sup>5</sup> Proof of causal relationship in a case such as this

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<sup>2</sup> *Supra* note 1.

<sup>3</sup> 5 U.S.C. § 8103(a); *see L.K.*, Docket No. 18-1183 (issued May 12, 2020); *M.P.*, Docket No. 19-1557 (issued February 24, 2020); *M.B.*, 58 ECAB 588 (2007).

<sup>4</sup> *B.I.*, Docket No. 18-0988 (issued March 13, 2020); *see also Daniel J. Perea*, 42 ECAB 214, 221 (1990) (holding that abuse of discretion by OWCP is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or administrative actions which are contrary to both logic, and probable deductions from established facts).

<sup>5</sup> *See R.M.*, Docket No. 19-1319 (issued December 10, 2019) *Debra S. King*, 44 ECAB 209 (1992).

must include supporting rationalized medical evidence.<sup>6</sup> In order to prove that the procedure is warranted, appellant must establish that the procedure was for a condition causally related to the employment injury and that the procedure was medically warranted. Both of these criteria must be met in order for OWCP to authorize payment.<sup>7</sup>

### ANALYSIS

The Board finds that OWCP did not abuse its discretion in denying appellant's request for authorization of right hip arthroplasty.

The claim was accepted for right hip contusion and right hip sprain/strain. In a July 29, 2019 report, Dr. Ashraf noted that appellant was seen for complaints of right hip pain due to an employment injury. In reports dated November 25, 2019 and January 20, 2020, Dr. Ashraf reported that a right hip weight-bearing x-ray interpretation revealed advanced right hip osteoarthritis. He diagnosed right hip synovitis and arthritis due to a work injury. However, Dr. Ashraf did not explain how and/or why the accepted August 28, 2018 employment injury resulted in the additional condition of right hip synovitis and arthritis, which he diagnosed in 2019. As Dr. Ashraf failed to provide medical rationale explaining how the requested surgery was necessary to treat appellant's accepted right hip contusion and sprain/strain or how the additional condition of right hip synovitis and arthritis was causally related to the accepted August 28, 2018 employment injury, his reports are of diminished probative value.<sup>8</sup> These reports therefore lack probative value regarding the issue of whether the requested procedure was medically necessary due to the accepted employment injury.<sup>9</sup>

Following appellant's request for authorization of right hip 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 resulted from the accepted August 28, 2018 employment injury. The DMA reviewed the medical evidence of record and concluded that the proposed right hip arthroplasty was neither warranted nor necessitated by appellant's accepted conditions. He explained that the surgery was not medically necessary as there was no radiographic arthritis. The DMA concluded, therefore, that the requested surgery was not work related and was not medically necessary.

The remaining medical evidence of record did not address the relevant medical issues. The March 31, 2019 MRI scan, July 23, 2019 x-ray interpretation, and Dr. Olshanetsky's reports dated August 30, September 20, November 22, and December 19, 2019 did not address whether the requested right hip arthroplasty was medically necessary and causally related to the accepted

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<sup>6</sup> *B.I.*, *supra* note 4; *see also K.W.*, Docket No. 18-1523 (issued May 22, 2019); *Bertha L. Arnold*, 38 ECAB 282 (1986).

<sup>7</sup> *See T.A.*, Docket No. 19-1030 (issued November 22, 2019); *Cathy B. Millin*, 51 ECAB 331, 333 (2000).

<sup>8</sup> *M.P.*, Docket No. 19-1557 (issued February 24, 2020); *M.M.*, Docket No. 19-0563 (issued August 1, 2019); *N.G.*, Docket No. 18-1340 (issued March 6, 2019).

<sup>9</sup> *See M.M.*, *id.*; *G.V.*, Docket No. 18-0482 (issued May 21, 2019); *N.G.*, *id.*

employment injury.<sup>10</sup> Therefore, these reports were insufficient to establish that the requested surgical procedure should be authorized.

The Board finds that OWCP did not abuse its discretion in denying authorization for the proposed right hip arthroplasty. As noted above, the only restriction on OWCP's authority to authorize medical treatment is one of reasonableness.<sup>11</sup> As none of the medical evidence explained how the proposed surgery was medically necessary or causally related to the accepted right hip contusion and sprain/strain, the Board finds that OWCP acted reasonably in denying appellant's request for authorization for right hip arthroplasty.

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 in denying appellant's request for authorization of right hip arthroplasty.

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<sup>10</sup> *Supra* note 7.

<sup>11</sup> *Supra* note 4.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 19, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 19, 2021  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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