

ISSUES

The issues are: (1) whether OWCP abused its discretion by denying appellant's request for authorization of right knee viscosupplementation injections; and (2) whether it properly denied appellant's request for a review of the written record by an OWCP hearing representative as untimely filed, pursuant to 5 U.S.C. § 8124(b).

FACTUAL HISTORY

On September 12, 2013 appellant, then a 48-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on September 11, 2013 he hopped over a two-foot wide torrent of water during a thunderstorm and sustained a right knee injury and aggravated a left ankle injury while in the performance of duty. On February 1, 2014 he filed a notice of recurrence (Form CA-2a) alleging that on January 25, 2014 he aggravated his right knee when he stepped on a snow-covered newspaper and twisted his knee while in the performance of duty.⁴ OWCP accepted the claim for derangement of the posterior horn of the right medial meniscus.

On August 21, 2014 appellant underwent an OWCP authorized arthroscopic partial right medial meniscectomy, excision of medial synovial plica, and limited synovectomy. Following a period of recuperation, he returned to full-time limited-duty work on October 14, 2014. Appellant continued to receive medical treatment.

On October 12, 2015 OWCP obtained a second opinion report from Dr. Shaka Walker, a Board-certified orthopedic surgeon, who diagnosed status post right knee arthroscopy with medial meniscus debridement, and operative findings of medial and anterior compartment degenerative arthritis. He opined that the accepted injury caused osteoarthritis of the right knee, with mechanical symptoms of giving way and catching. Dr. Walker recommended a medial unloader brace and possible viscosupplementation injections with hyaluronic acid.

In a February 28, 2017 report, Dr. David P. Fowler, a Board-certified orthopedic surgeon, diagnosed significant arthritis of the right knee causally related to the accepted injury. He administered a series of hyaluronic acid viscosupplementation injections to the right knee in October and November 2017.⁵ Dr. Fowler administered a second series of viscosupplementation injections in September and October 2018 and a third series on July 12, 19, and 25, 2019.

On August 14, 2019 Dr. Fowler requested that OWCP authorize the right knee viscosupplementation injections administered on July 12, 19, and 25, 2019.

In a development letter dated August 20, 2019, OWCP explained the additional evidence needed to authorize the requested procedures, including a detailed narrative report from appellant's attending physician setting forth the objective findings necessitating treatment, a description of the treatment provided, the period and extent of disability, and medical rationale addressing whether

⁴ February 12, 2014 right knee x-rays showed small marginal osteophytes in the medial compartment with modest joint space narrowing, indicative of the development of mild medial compartment osteoarthritis since 2012 radiographs. A March 11, 2014 magnetic resonance imaging scan of the right knee demonstrated a longitudinal tear of the anterior horn and complex tear of the posterior horn of the medial meniscus.

⁵ April 12, 2018 right knee x-rays showed moderate medial and mild patellofemoral compartment degenerative changes, with a degree of medial compartment joint space narrowing similar to 2016 imaging studies.

the diagnosed condition had been caused or aggravated by the accepted right knee condition. It afforded him 30 days to submit the requested evidence.

In response, appellant submitted July 12 and 19, 2019 chart notes by Dr. Fowler diagnosing primary osteoarthritis of the right knee and noting viscosupplementation injections. In a July 25, 2019 progress note, Dr. Fowler indicated that appellant had completed a series of hyaluronic acid injections to the right knee. In a duty status report (Form CA-17) of even date, Dr. Fowler noted work restrictions.

By decision dated January 21, 2020, OWCP denied authorization for the July 12, 19, and 25, 2019 viscosupplementation injections, finding that appellant had not submitted medical evidence to establish that the requested treatment was medically necessary to address the effects of the accepted right knee injury.

In a March 6, 2020 letter received by OWCP on March 17, 2020,⁶ appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review. He submitted additional medical evidence and copies of medical evidence previously of record.

In a March 6, 2020 report, Dr. Fowler diagnosed post-traumatic, work-related right knee arthritis. In a duty status report (Form CA-17) of even date, he noted work restrictions.

By decision dated April 6, 2020, OWCP denied appellant's request for a review of the written record, finding that the request was untimely filed. The request was dated March 6, 2020, more than 30 days following the January 21, 2020 decision. The hearing representative informed appellant that his case had been considered in relation to the issues involved, and that the issues could be equally addressed by requesting reconsideration and submitting evidence not previously considered.

LEGAL PRECEDENT -- ISSUE 1

Section 8103(a) of FECA⁷ 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.⁸ 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.⁹ The only limitation on OWCP's authority is that of reasonableness.¹⁰

While OWCP is obligated to pay for treatment of employment-related conditions, appellant has the burden of proof to establish that the expenditures were incurred for treatment of the effects

⁶ The postmark is not found in the record.

⁷ 5 U.S.C. § 8103(a).

⁸ *Id.*; see *Thomas W. Stevens*, 50 ECAB 288 (1999).

⁹ *R.C.*, Docket No. 18-0612 (issued October 19, 2018); *W.T.*, Docket No. 08-0812 (issued April 3, 2009).

¹⁰ *D.C.*, Docket No. 18-0080 (issued May 22, 2018); *Mira R. Adams*, 48 ECAB 504 (1997).

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, appellant must establish that the procedure was for a condition causally related to the employment injury and that the procedure was medically warranted.¹³ Both of these criteria must be met in order for OWCP to authorize payment.¹⁴

Abuse of discretion is 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.¹⁵

ANALYSIS -- ISSUE 1

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

OWCP accepted derangement of the posterior horn of the right medial meniscus and authorized arthroscopic partial right medial meniscectomy, excision of medial synovial plica, and limited synovectomy. Dr. Walker, an OWCP referral physician, indicated in his October 12, 2015 report that viscosupplementation injections could improve appellant's right knee symptoms. Dr. Fowler subsequently administered a series of viscosupplementation injections to the right knee in October and November 2017, a second series in September and October 2018, and a third series on July 12, 19, and 25, 2019.

As noted, the only restriction on OWCP's authority to authorize medical treatment is one of reasonableness.¹⁶ Although Dr. Fowler requested that OWCP authorize the third series of viscosupplementation injections, he did not explain how and why this treatment would cure, give relief, reduce the degree or period of disability, or aid in lessening the amount of any compensation paid.¹⁷ The Board notes that, while Dr. Walker noted that viscosupplementation injections could ameliorate appellant's symptoms, Dr. Fowler reported that appellant remained symptomatic after undergoing two series of hyaluronic acid injections, thus necessitating a third series. Dr. Fowler did not relate any specific objective findings, which noted that the accepted right knee condition

¹¹ *R.M.*, Docket No. 19-1319 (issued December 10, 2019); *J.T.*, Docket No. 18-0503 (issued October 16, 2018); *Debra S. King*, 44 ECAB 203, 209 (1992).

¹² *K.W.*, Docket No. 18-1523 (issued May 22, 2019); *C.L.*, Docket No. 17-0230 (issued April 24, 2018); *M.B.*, 58 ECAB 588 (2007); *Bertha L. Arnold*, 38 ECAB 282 (1986).

¹³ *T.A.*, Docket No 19-1030 (issued November 22, 2019); *Zane H. Cassell*, 32 ECAB 1537, 1540-41 (1981); *John E. Benton*, 15 ECAB 48, 49 (1963).

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

¹⁵ *D.S.*, Docket No. 18-0353 (issued February 18, 2020); *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).

¹⁶ 20 C.F.R. § 10.310(a); *see P.L.*, Docket No. 18-0260 (issued April 14, 2020).

¹⁷ *P.L.*, *id.*

had improved, or would improve in the future due to a third series of injections.¹⁸ The evidence of record does not substantiate that the previous two series of injections, which began in October 2017, had been curative or provided relief of appellant's accepted right knee conditions. The Board thus finds that OWCP did not abuse its discretion in denying his request for authorization.

On appeal, appellant contends that the medical evidence of record, including reports submitted following OWCP's January 21, 2020 decision, establishes that OWCP should approve the requested viscosupplementation injections as work related. As explained above, the medical evidence submitted prior to January 21, 2020 was insufficient to establish that the requested injections were necessitated by the accepted injury.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this decision, pursuant to 5 U.S.C. § 8128 and 20 C.F.R. §§ 10.605 through 10.607.¹⁹

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b)(1) of FECA provides that "a claimant for compensation not satisfied with a decision of the Secretary is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his [or her] claim before a representative of the Secretary."²⁰ Sections 10.617 and 10.618 of the federal regulations implementing this section of FECA provide that a claimant shall be afforded a choice of an oral hearing or a review of the written record by a representative of the Secretary.²¹ A claimant is entitled to a hearing or review of the written record as a matter of right only if the request is filed within the requisite 30 days as determined by postmark or other carrier's date marking and before the claimant has requested reconsideration.²² Although there is no right to a review of the written record or an oral hearing, if not requested within the 30-day time period, OWCP may within its discretionary powers grant or deny appellant's request and must exercise its discretion.²³

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's request for a review of the written record before an OWCP hearing representative as untimely filed, pursuant to 5 U.S.C. § 8124(b).

Appellant had 30 days following OWCP's January 21, 2020 merit decision to request a review of the written record before a representative of OWCP's Branch of Hearings and Review. As his request for a review of the written record was dated March 6, 2020, more than 30 days after

¹⁸ *Id.*

¹⁹ 20 C.F.R. § 501.2(c).

²⁰ *Supra* note 1 at § 8124(b)(1).

²¹ 20 C.F.R. §§ 10.616, 10.617.

²² *Id.* at § 10.616(a).

²³ *W.H.*, Docket No. 20-0562 (issued August 6, 2020); *P.C.*, Docket No. 19-1003 (issued December 4, 2019); *M.G.*, Docket No. 17-1831 (issued February 6, 2018); *Eddie Franklin*, 51 ECAB 223 (1999); *Delmont L. Thompson*, 51 ECAB 155 (1999).

OWCP's January 21, 2020 decision, it was untimely filed and he was, therefore, not entitled to a review of the written record as a matter of right.²⁴ Section 8124(b)(1) is unequivocal on the time limitation for requesting a hearing.²⁵

OWCP also has the discretionary power to grant an oral hearing or review of the written record even if the claimant is not entitled to a review as a matter of right. The Board finds that OWCP, in its April 6, 2020 decision, properly exercised its discretion noting that it had considered the matter in relation to the issue of authorization of the requested viscosupplementation injections and determined that the issue could be equally well addressed through a reconsideration application. The Board has held that as the only limitation on OWCP's authority is reasonableness, 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 deduction from established facts.²⁶ The Board finds that the evidence of record does not indicate that OWCP abused its discretion in connection with its denial of appellant's request for a review of the written record.

Accordingly, the Board finds that OWCP properly denied appellant's request for a review of the written record as untimely filed, pursuant to 5 U.S.C. § 8124(b)(1).

CONCLUSION

The Board finds that OWCP did not abuse its discretion in denying appellant's request for authorization of right knee viscosupplementation injections. The Board further finds that OWCP properly denied appellant's request for a review of the written record by an OWCP hearing representative as untimely filed, pursuant to 5 U.S.C. § 8124(b).

²⁴ Under OWCP's regulations and procedures, the timeliness of a request for a hearing is determined on the basis of the postmark of the envelope containing the request. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4(a) (October 2011); *see also* *G.S.*, Docket No. 18-0388 (issued July 19, 2018). As the case record does not include the date of the postmark, OWCP utilized the date of the request for a review of the written record.

²⁵ 5 U.S.C. § 8124(b)(1); *see M.K.*, Docket No. 19-0428 (issued July 15, 2019); *R.H.*, Docket No. 18-1602 (issued February 22, 2019); *William F. Osborne*, 46 ECAB 198 (1994).

²⁶ *See T.G.*, Docket No. 19-0904 (issued November 25, 2019); *Daniel J. Perea*, 42 ECAB 214 (1990).

ORDER

IT IS HEREBY ORDERED THAT the April 6 and January 21, 2020 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 6, 2021
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