

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

K.D., Appellant	)	
	)	
and	)	Docket No. 23-0799
	)	Issued: December 19, 2023
DEPARTMENT OF THE NAVY, MARINE	)	
CORPS AIR STATION, Cherry Point, NC,	)	
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  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On May 10, 2023 appellant filed a timely appeal from a February 2, 2023 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.<sup>2</sup>

**ISSUE**

The issue is whether OWCP properly denied authorization for right knee arthroscopy.

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

<sup>2</sup> The Board notes that, following the February 2, 2023 decision, appellant submitted additional evidence to OWCP. 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.*

## **FACTUAL HISTORY**

On October 15, 2010 appellant, then a 58-year-old transportation assistant, filed a traumatic injury claim (Form CA-1) alleging that on October 13, 2010 she heard a pop in her right knee, experienced immediate and severe pain when descending stairs while in the performance of duty. By decision dated November 17, 2020, OWCP accepted the claim for tear of medial meniscus of right knee, tear of lateral meniscus of right knee, and chondromalacia patellae of the right knee. Appellant stopped work on the date of injury and returned to work on November 17, 2010. On December 17, 2010 she underwent OWCP-approved right knee arthroscopy.<sup>3</sup> On October 31, 2011 OWCP expanded the acceptance of the claim to include and localized primary osteoarthritis, lower leg, right.

On January 19, 2023 OWCP referred the case record and a statement of accepted facts (SOAF) to Dr. Arthur S. Harris, a Board-certified orthopedic surgeon serving as OWCP's district medical adviser (DMA), for review and an opinion on whether the right knee arthroplasty proposed by Dr. Brian B. Battersby, an orthopedic surgeon, was medically warranted and causally related to the accepted, work-related medical conditions.

In a memorandum dated January 23, 2023, Dr. Harris reviewed the medical record and SOAF. He noted the medical records document appellant's treatment for a work-related injury including right knee arthroscopic synovectomy, cartilaginous drilling of the trochlear groove, abrasion arthroplasty, and partial lateral meniscectomy on December 17, 2010. Dr. Harris noted that appellant developed right knee osteoarthritis, which has remained symptomatic, and on October 7, 2021 had a right knee intra-articular injection. He further explained that there were no reports documenting appellant's response to this injection or the need for any additional treatment, documenting appellant's conservative care before proceeding with surgery or results of diagnostic studies demonstrating the extent of osteoarthritis or joint space narrowing. Dr. Harris advised that the case file did not contain any reports documenting the need for right total knee arthroplasty. He concluded that there was insufficient information in the reviewed medical records as there were no reports documenting appellant's response to the intra-articular injection, diagnostic studies demonstrating the extent of osteoarthritis and joint space narrowing, or recommendations with request for authorization for right total knee arthroplasty.

By decision dated February 2, 2023, OWCP denied appellant's request for authorization for right knee arthroplasty. It found that the medical evidence of record was insufficient to establish that the procedure was medically necessary to treat the effects of her accepted work-related conditions.

## **LEGAL PRECEDENT**

Section 8103(a) of FECA provides for the furnishing of services, appliances and supplies prescribed or recommended by a qualified physician who OWCP, under authority delegated by the Secretary, considers likely to cure, give relief, reduce the degree or the period of disability or

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<sup>3</sup> Appellant voluntarily retired on December 31, 2010.

aid in lessening the amount of monthly compensation.<sup>4</sup> In interpreting section 8103(a), the Board has recognized that OWCP has broad discretion in approving services provided under FECA to ensure that an employee recovers from his or her injury to the fullest extent possible in the shortest amount of time.<sup>5</sup> It therefore has broad administrative discretion in choosing means to achieve this goal. The only limitation on OWCP's authority is that of reasonableness.<sup>6</sup>

In order to be entitled to reimbursement for medical expenses, a claimant must establish that the expenditures were incurred for treatment of the effects of an employment-related injury by submitting rationalized medical evidence that supports such a connection and demonstrates that the treatment is necessary and reasonable.<sup>7</sup> While OWCP is obligated to pay for treatment of employment-related conditions, the employee 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>8</sup> Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.<sup>9</sup> 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.<sup>10</sup>

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.<sup>11</sup>

### ANALYSIS

The Board finds that OWCP properly denied authorization for right knee arthroplasty.

The Board finds that appellant failed to provide a medical report from her physician indicating the medical necessity for the surgery as it relates to her accepted work-related conditions. The record reflects that appellant underwent a prior right knee arthroscopy in 2010. However, the record is void of information from a qualified physician indicating why a total right knee arthroplasty is needed for treatment of her accepted work-related conditions.

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<sup>4</sup> 5 U.S.C. § 8103(a).

<sup>5</sup> See *Dale E. Jones*, 48 ECAB 648, 649 (1997).

<sup>6</sup> *D.C.*, Docket No. 18-0080 (issued May 22, 2018); *Mira R. Adams*, 48 ECAB 504 (1997).

<sup>7</sup> *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 (1992).

<sup>8</sup> *Kennett O. Collins, Jr.*, 55 ECAB 648, 654 (2004).

<sup>9</sup> *M.B.*, 58 ECAB 588 (2007).

<sup>10</sup> *J.L.*, Docket No. 18-0990 (issued March 5, 2019); *R.C.*, 58 ECAB 238 (2006).

<sup>11</sup> *E.L.*, Docket No. 17-1445 (issued December 18, 2018); *L.W.*, 59 ECAB 471 (2008); *P.P.*, 58 ECAB 673 (2007).

In a report dated January 23, 2023, Dr. Harris, serving as the DMA, reviewed the medical record and SOAF. He noted that the case file did not contain any reports from a physician documenting the need for right total knee arthroplasty. Dr. Harris concluded that there was insufficient information in the medical record as there were no reports documenting appellant's response to intra-articular injections, diagnostic studies demonstrating the extent of osteoarthritis and joint space narrowing, or recommendations with request for authorization for right total knee arthroplasty. As he provided a well-reasoned opinion explaining that appellant had not met the criteria needed for approval of the proposed right knee arthroplasty, Dr. Harris' opinion represents the weight of the medical evidence.<sup>12</sup> Thus, the Board finds that OWCP has not abused its discretion by denying appellant authorization for right arthroplasty.<sup>13</sup>

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 properly denied authorization for right knee arthroplasty.

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<sup>12</sup> See *A.S.*, Docket No. 19-0745 (issued October 10, 2019); *M.M.*, Docket No. 19-0491 (issued August 14, 2019); *N.M.*, Docket No. 18-1584 (issued March 15, 2019).

<sup>13</sup> *M.S.*, Docket No. 22-0113 (issued June 7, 2022).

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 2, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 19, 2023  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board