

² The Board notes that, following the March 9, 2023 decision, appellant submitted additional evidence to OWCP. 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.*

ISSUES

The issues are: (1) whether OWCP properly denied authorization for right knee platelet-rich plasma (PRP) injections; and (2) whether OWCP properly denied appellant's request for an oral hearing as untimely filed, pursuant to 5 U.S.C. § 8124(b).

FACTUAL HISTORY

On April 12, 2021 appellant, then a 59-year-old transportation security officer, filed a traumatic injury claim (Form CA-1) alleging that on April 10, 2021 he injured his back and knees when he slipped and fell down steps while in the performance of duty. He stopped work on April 10, 2021. On May 7, 2021 OWCP accepted the claim for strain of the muscle, fascia, and tendon of lower back, contusion of the right knee, and sprain of unspecified site of the right knee. On June 30, 2021 it expanded the acceptance of his claim to include sprain of unspecified site of left knee.

An x-ray of the right knee dated April 10, 2021 revealed marked medial tibiofemoral and patellofemoral narrowing with osteophytes characteristic of osteoarthropathy, and small joint effusion.

On September 13, 2021 Dr. Randall Yee, a Board-certified orthopedist, performed a right lateral meniscectomy, right medial meniscectomy, excision of plica and synovectomy, and right chondroplasty. He diagnosed right medial meniscus tear, lateral meniscus tear, right synovitis, and right chondromalacia.

A bone scan, performed on October 8, 2021, revealed significant degenerative changes of the medial right knee.

On May 26, 2022 OWCP referred appellant to Dr. Michael T. Monroe, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine the nature and extent of his accepted employment-related conditions.

In a report dated June 30, 2022, Dr. Monroe diagnosed low back pain, left painful total knee arthroplasty, right knee osteoarthritis with exacerbation, and right hip pain. He opined that appellant's preexisting conditions included previous left total knee arthroplasty and end-stage right knee osteoarthritis, which had worsened with the described work injury. Dr. Monroe advised that appellant's work-related condition had not resolved, and he had not reached maximum medical improvement. He opined that he would benefit from additional intervention including right total knee arthroplasty and possible spine intervention with injections. Dr. Monroe advised that appellant could not return to his date-of-injury job, but could work with restrictions.

On July 25, 2022 OWCP expanded the acceptance of appellant's claim to include exacerbation of preexisting right knee osteoarthritis.

On August 9, 2022 the employing establishment offered appellant a limited-duty position in his capacity as a transportation security officer.

On September 8, 2022 appellant underwent a functional capacity evaluation and the test results were determined to have been invalid due to self-limiting and inconsistent behavior.

On September 22, 2022 OWCP requested a supplemental report from Dr. Monroe to clarify the work restrictions provided on June 30, 2022 and to discuss whether appellant was capable of performing the duties of the modified transportation security administrator position offered by the employing establishment. In an October 30, 2022 report, Dr. Monroe advised that appellant was able to sit for two hours intermittently with breaks as needed for comfort. He reviewed the modified transportation security administrator position, and opined that appellant was able to perform the job duties.

On October 4 and 11, 2022 Dr. Yee performed a series of PRP injections into the right knee. In an October 18, 2022 report, he examined appellant for right knee pain, and diagnosed pain in the right knee and unilateral primary osteoarthritis of the right knee. In a November 2, 2022 follow-up visit, Dr. Yee treated appellant for constant throbbing and pain in the left knee.³ He noted findings upon examination of the right knee of mild effusion, tenderness on the medial joint line, and crepitus. Dr. Yee diagnosed pain in the right knee and unilateral primary osteoarthritis of the right knee. He indicated that he would obtain authorization for PRP injections.

In a November 16, 2022 report, Dr. Yee noted appellant's complaints of right knee pain. He related that OWCP denied authorization for PRP injections. Dr. Yee noted findings on examination of mild effusion, tenderness to palpation of the medial joint line, crepitus, and painful range of motion. He diagnosed pain in the right knee and unilateral primary osteoarthritis of the right knee.

In a form report dated November 16, 2022, Dr. Yee diagnosed pain in the right knee and unilateral primary osteoarthritis of the right knee.

In an addendum report dated December 1, 2022, he again recommended PRP injections for the right knee. Dr. Yee indicated that the treatment as reported in medical literature demonstrated benefits in reducing symptoms and pain for osteoarthritis and post-traumatic arthritis.

On November 8, 2022 Dr. Gary Morris, a Board-certified orthopedist, treated appellant for left hip pain, which he attributed to a work injury on April 10, 2021. He noted appellant's history was significant for preexisting hip osteoarthritis and trochanteric bursitis. Dr. Morris diagnosed preexisting trochanteric bursitis of the left hip which was exacerbated by industrial accident.

On December 21, 2022 OWCP referred appellant's case record and a statement of accepted facts (SOAF) to Dr. Michael M. Katz, a Board-certified orthopedic surgeon serving as an OWCP district medical adviser (DMA), to determine whether the proposed right knee PRP injections were medically necessary for, and causally related to the accepted conditions.

On December 24, 2022 Dr. Katz reviewed the SOAF and the medical evidence of record. He indicated that the use of PRP injections and other stem cells treatments has not been shown in well-controlled studies to be superior to more cost-effective therapies for the treatment of the dominant condition of right knee osteoarthritis. For this reason, Dr. Katz was unable to recommend authorization of the proposed procedure.

³ This appears to be a typographical error as Dr. Yee's report addressed a right knee condition.

In a letter dated January 23, 2023, appellant disagreed with Dr. Katz' denial of PRP injections for the right knee. He indicated that medical studies revealed a reduction in pain and inflammation with the injections.

By decision dated January 24, 2023, OWCP denied appellant's request for authorization for PRP injections, finding that the evidence of record did not support that the procedure was medically necessary to address the effects of his work-related condition under FECA.

On February 24, 2023 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated March 9, 2023, OWCP denied appellant's request for an oral hearing, finding that it was untimely filed. It further exercised its discretion and determined that the issue in the case could equally well be addressed by a request for reconsideration before OWCP, along with the submission of new evidence.

LEGAL PRECEDENT -- ISSUE 1

Section 8103(a) of FECA⁴ 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.⁵

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.⁶ 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 to produce a contrary factual conclusion.⁷

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly denied appellant's request for authorization of right knee PRP injections.

In a November 2, 2022 report, Dr. Yee treated appellant for throbbing left knee pain. He diagnosed pain in the right knee and unilateral primary osteoarthritis of the right knee and requested authorization for right knee PRP injections. In reports dated November 16, 2022, Dr. Yee diagnosed pain in the right knee and unilateral primary osteoarthritis of the right knee. He noted that appellant was a good candidate for right knee PRP injections. Similarly, in an addendum report dated December 1, 2022, Dr. Yee recommended PRP injections for the right knee. He

⁴ *Supra* note 1.

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

⁶ *See D.C.*, Docket No. 20-0854 (issued July 19, 2021); *C.L.*, Docket No. 17-0230 (issued April 24, 2018); *D.K.*, 59 ECAB 141 (2007).

⁷ *See E.F.*, Docket No. 20-1680 (issued November 10, 2021); *J.L.*, Docket No. 18-0503 (issued October 16, 2018).

indicated that the treatment as reported in medical literature demonstrated benefits in reducing symptoms and pain for osteoarthritis and post-traumatic arthritis. Dr. Yee did not, however, specifically address whether the procedure was medically necessary, or whether it was warranted due to the accepted employment injury, and thus his report is insufficient to establish that the requested procedures should be authorized.⁸

Following appellant's request for authorization of PRP injections, OWCP sent a copy of the case record, and a SOAF to Dr. Katz, serving as a DMA, for an opinion as to whether the requested PRP injections were medically necessary and resulted from the accepted April 10, 2021 employment injury. Dr. Katz reviewed the medical evidence of record and concluded that the proposed PRP injections were neither warranted nor necessitated by appellant's accepted conditions. He explained that the use of PRP injections and other stem cells treatments have not been shown in well-controlled studies to be superior to more cost-effective therapies for the treatment of the dominant condition of right knee osteoarthritis and were, therefore, not medically necessary.

The remaining medical evidence of record from Dr. Morris did not address the relevant medical issues.⁹ Therefore, this report was insufficient to establish that the requested procedure should be authorized.

As noted above, the only restriction on OWCP's authority to authorize medical treatment is one of reasonableness.¹⁰ As none of the medical evidence explained how the proposed PRP injections were medically necessary or causally related to the accepted strain contusion of the right knee, sprain of unspecified site of the right knee, and exacerbation of preexisting right knee osteoarthritis, the Board finds that OWCP acted reasonably in denying appellant's request for authorization for right knee PRP injections. Thus, the Board finds that OWCP did not abuse its discretion in denying authorization for the proposed PRP injections.

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.

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."¹¹ 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

⁸ See *J.M.*, Docket No. 17-1688 (issued December 13, 2018).

⁹ See *T.A.*, Docket No. 19-1030 (issued November 22, 2019); *Cathy B. Millin*, 51 ECAB 331, 333 (2000).

¹⁰ *Supra* note 6. See also, *B.I.*, Docket No. 18-0988 (issued March 13, 2020); *Daniel J. Perea*, 42 ECAB 214, 221 (1990) (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).

¹¹ 5 U.S.C. § 8124(b).

representative of the Secretary.¹² 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.¹³ 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.¹⁴

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's request for an oral hearing as untimely filed, pursuant to 5 U.S.C. § 8124(b).

On February 24, 2023 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. As this request was made more than 30 days after OWCP's January 24, 2023 decision, it was untimely filed, and appellant was not entitled to an oral hearing as a matter of right.

Although appellant was not entitled to an oral hearing as a matter of right, OWCP's Branch of Hearings and Review may exercise its discretion to either grant or deny a hearing following reconsideration.¹⁵ The Board has held that the only limitation on OWCP's authority is reasonableness. An 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. In this instance, OWCP denied a discretionary oral hearing because appellant could instead submit new evidence and request reconsideration before OWCP. The Board finds that OWCP properly exercised discretionary authority in denying his request for an oral hearing.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for authorization of right knee PRP injections. The Board further finds that OWCP properly denied appellant's requests for an oral hearing as untimely filed, pursuant to 5 U.S.C. § 8124(b).

¹² 20 C.F.R. §§ 10.616, 10.617.

¹³ *Id.* at § 10.616(a).

¹⁴ *M.F.*, Docket No. 21-0878 (issued January 6, 2022); *W.H.*, Docket No. 20-0562 (issued August 6, 2020); *P.C.*, Docket No. 19-1003 (issued December 4, 2019); *Eddie Franklin*, 51 ECAB 223 (1999); *Delmont L. Thompson*, 51 ECAB 155 (1999).

¹⁵ *T.D.*, Docket No. 21-1063 (issued April 17, 2023); *A.S.*, Docket No. 22-1227 (issued April 6, 2023).

ORDER

IT IS HEREBY ORDERED THAT the March 9 and January 24, 2023 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 13, 2024
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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

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