

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

REBECCA L. DILEO, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Olathe, KS, Employer**

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**Docket No. 05-712
Issued: August 1, 2005**

Appearances:
Rebecca L. Dileo, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 3, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated November 3, 2004 which denied her request for bilateral knee arthroscopy and bilateral knee replacement surgery. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether the Office properly denied appellant's request for bilateral knee arthroscopy and bilateral knee replacement surgery.

FACTUAL HISTORY

On February 27, 2003 appellant, then a 45-year-old distribution clerk, filed an occupational disease claim alleging that she developed a bilateral knee condition as a result of performing her work duties. The Office accepted appellant's claim for aggravation of bilateral

knee osteoarthritis and paid appropriate compensation. Appellant became aware of her knee condition on September 28, 2000. She did not stop work at that time but resigned in July 2002.

Appellant came under the treatment of Dr. F. Daniel Koch, a Board-certified orthopedic surgeon, who treated appellant from September 28, 2000 to January 18, 2001 for left knee pain. He advised that appellant had no history of trauma but worked in the employing establishment and her position required her to stand. Dr. Koch noted that x-rays of the left knee revealed severe degenerative changes along the medial joint line area with osteoarthritic spurring. Appellant was also treated by Dr. William A. Bailey, a Board-certified orthopedic surgeon, who in reports dated February 22, 2001 to March 29, 2002, noted treating appellant for bilateral knee pain. He advised that appellant was a postal worker and stood for her entire shift. An x-ray dated February 22, 2001, revealed significant medial joint line narrowing on both sides.

Other reports from Dr. William W. Bohn, a Board-certified orthopedic surgeon, dated February 22 and March 28, 2002, noted that appellant was a postal worker who developed bilateral knee pain primarily around the medial aspect of the joint. He diagnosed early medial compartment arthritis of the knee with normal alignment and noted that the condition was fairly controlled with medication. Dr. Bohn treated appellant on July 16, 2002 for severe unicompartamental arthritis of the knees bilaterally. On December 3, 2002 Dr. Bohn advised that x-rays revealed extensive medial compartment osteoarthritis of the knees bilaterally and he recommended unispacer arthroplasty of the knees. In a January 13, 2003 operative report, Dr. Bohn noted performing bilateral arthroscopic surgery, tricompartmental synovectomy and a partial medial meniscectomy. He diagnosed bilateral degenerative joint disease with primary effectuation of medial tibial femoral compartment with Grade 3 chondromalacia involving 50 percent of the tibial plateau and 75 of the weight-bearing portion of the femur, medial femoral condyle, tricompartmental synovitis with villondular characteristic consistent with inflammatory arthritis and ventrical flap tear of the medial meniscus, mid and posterior portion. In a note dated January 22, 2003, Dr. Bohn noted that appellant was progressing favorably post surgery, and advised that she was bone on bone and would require bilateral total knee replacements.

On March 3, 2003 Dr. Bohn noted performing bilateral total knee arthroplasty and diagnosed bilateral degenerative joint disease. In a report dated March 18, 2003, he advised that appellant was progressing favorably. In an attending physician's report dated March 20, 2003, Dr. Bohn noted that appellant had no known injury but had to stand at work and diagnosed osteoarthritis of the left knee. He noted with a check mark "yes" that appellant's condition was aggravated by her employment. In a report dated April 29, 2003, Dr. Bohn opined that appellant's work at the employing establishment, where she was required to stand, exacerbated her osteoarthritis and led to the bilateral knee replacement surgery at a younger age than would be anticipated. On May 2, 2003 he noted performing a manipulation under anesthesia with release of adhesions of the left knee. In Dr. Bohn's report of July 15, 2003, he diagnosed patellar tendinitis of the right knee. Also submitted was a report from Dr. Bailey dated April 29, 2003. He noted that he did not believe appellant needed joint replacement; however, advised that, if she continued her work activities, she might need arthroscopic surgery to correct any tear of the medial meniscus.

On May 16, 2003 the Office referred appellant for a second opinion to Dr. Don Miskew, a Board-certified orthopedic surgeon. The Office provided Dr. Miskew with appellant's medical

records, a statement of accepted facts as well as a detailed description of appellant's employment duties. In a medical report dated July 18, 2003, Dr. Miskew indicated that he reviewed the records provided to him and performed a physical examination. He addressed the history of appellant's bilateral knee condition and diagnosed bilateral degenerative joint disease. Dr. Miskew noted that appellant denied any trauma to her knees or injury while working and opined that appellant's condition was entirely degenerative and unrelated to her duties as a postal clerk. He advised that appellant's knee condition was not precipitated by working for the employing establishment or aggravated by her light-duty job. Dr. Miskew opined that appellant did require bilateral total knee replacements; however, her condition was caused by a degenerative process unrelated to her work at the employing establishment.

The Office determined that a conflict of medical opinion had been established between Dr. Bohn, appellant's treating physician, and Dr. Miskew, an Office referral physician, regarding whether the accepted condition and the requested surgery were work related. To resolve the conflict, on September 22, 2003, the Office referred appellant to a referee physician, Dr. Dale D. Dalenberg, a Board-certified orthopedic surgeon.

In a report dated November 18, 2003, Dr. Dalenberg reviewed the records provided to him and performed a physical examination. He noted a history of appellant's work-related injury. Dr. Dalenberg diagnosed osteoarthritis of the knees and opined that this condition was not caused or precipitated by her job duties at the employing establishment. Rather, he advised that the etiology of osteoarthritis of the knees was multifactorial and could not be related simply to standing and performing the duties of a distribution clerk. Dr. Dalenberg indicated that appellant's knee arthrosis condition predated her employment and would have been the same degree of severity just by virtue of aging, the passage of time and daily walking. He advised that appellant's work duties caused a temporary symptom aggravation while she worked; however, she did not sustain a permanent aggravation of the condition at work. Dr. Dalenberg opined that appellant's knee surgeries were not required by her employment, but were the result of a natural progression of osteoarthritis of the knees and that appellant's condition had been progressive for several years predating her federal employment.

In a decision dated January 14, 2004, the Office denied appellant's claim for bilateral arthroscopic knee surgery in January 2003 and bilateral knee replacements in March 2003 on the grounds that the surgery was not causally related to appellant's accepted work-related condition. The Office further noted that, because appellant's exposure to work factors ended in July 2002, her case was closed and she was no longer eligible for medical care or disability compensation.

On April 11, 2004 appellant appealed her claim to the Board. In an order dated August 31, 2004, the Board remanded the matter to the Office for proper assemblage of the case record, noting that the January 14, 2004 decision was not in the case record and advised the Office to issue a merit decision to preserve appellant's right to appeal.¹

In a decision dated November 3, 2004, the Office denied appellant's claim for bilateral knee arthroscopies on January 2003 and bilateral knee replacements on March 2003 on the grounds that the proposed surgery was not causally related to appellant's accepted work-related

¹ Docket No. 04-1273 (issued August 31, 2004).

condition. The Office further noted that, because appellant's exposure to work factors ended in July 2002, appellant's case was closed and appellant was no longer eligible for medical care or disability compensation.

LEGAL PRECEDENT

Section 8103(a) of the Federal Employees' Compensation Act 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 the Office considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation.² The Office has the general objective of ensuring that an employee recovers from his injury to the fullest extent possible in the shortest amount of time. The Office, therefore, has broad administrative discretion in choosing means to achieve this goal. The only limitation on the Office's authority is that of 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 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.³

Proof of causal relationship in a case such as this must include supporting rationalized medical evidence. Thus, in order for cervical surgery to be authorized, appellant must submit evidence to show that these are for a condition causally related to the employment injury and that these were medically warranted. Both of these criteria must be met in order for the Office to authorize payment.⁴

ANALYSIS

The Office accepted that appellant sustained an aggravation of bilateral knee osteoarthritis. Appellant did not stop work but resigned in July 2002. The Office properly determined that a conflict of medical opinion existed over whether bilateral arthroscopic surgery on January 13, 2003 and bilateral total knee replacements on March 3, 2003 were warranted and causally related to her accepted work condition. Dr. Bohn, appellant's treating physician, opined that appellant's work at the employing establishment exacerbated her osteoarthritis and led to the bilateral knee replacement surgery, while Dr. Miskew, an Office referral physician, opined that appellant did require bilateral total knee replacements. He found that her condition was caused by a degenerative process which was unrelated to her work at the employing establishment. The Office properly referred appellant to Dr. Dalenberg, for an impartial medical examination.

² 5 U.S.C. § 8103(a).

³ *Francis H. Smith*, 46 ECAB 392 (1995); *Daniel J. Perea*, 42 ECAB 214 (1990).

⁴ *Cathy B. Mullin*, 51 ECAB 331 (2000).

Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.⁵

The Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Dalenberg. After reviewing appellant's complaints, her medical history, her medical records and conducting a physical examination, Dr. Dalenberg diagnosed osteoarthritis of the knees and opined that this condition was not caused, aggravated or precipitated by her job duties at the employing establishment. Rather, he advised that appellant's condition would have been the same degree of severity just by virtue of aging, the passage of time and daily walking. Dr. Dalenberg noted that appellant's work duties caused a temporary symptom aggravation; however, she did not sustain a permanent aggravation of the condition at work. He further opined that appellant's operations were not caused by her employment and noted that the progression of symptoms that led to appellant's need for surgery was a natural progression of osteoarthritis of the knees and that appellant's condition had been progressive for several years predating her federal employment.

Dr. Dalenberg reviewed the case record and various reports, including Dr. Bohn's report on appellant's medical treatment since the initial July 2002 resignation. He examined appellant thoroughly, discussed the diagnostic testing, explained his clinical findings and provided medical rationale for his conclusion that the bilateral arthroscopic surgery on January 13, 2003 and bilateral total knee replacement of March 3, 2003 were not causally related to her accepted work condition. Thus, Dr. Dalenberg provided an opinion that was sufficiently well rationalized and based upon a proper factual background such that his opinion is entitled to special weight. The Board finds that Dr. Dalenberg's report represents the weight of the medical opinion evidence and establishes that surgical procedures at issue were not necessary treatment for the accepted work injury.⁶

Accordingly, the Board finds that the Office properly denied authorization for the requested surgeries.

CONCLUSION

The Board finds that the Office properly denied appellant's claim for authorization of a bilateral arthroscopic surgery and bilateral total knee replacements.

⁵ *Solomon Polen*, 51 ECAB 341 (2000).

⁶ *David Alan Patrick*, 46 ECAB 1020, 1023 (1995) (impartial medical examiner's opinion was based on a complete review of the medical record and a thorough examination and was sufficiently rationalized to establish that appellant had no work-related residuals of his diagnosed condition; thus, his opinion was entitled to special weight).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 3, 2004 is affirmed.

Issued: August 1, 2005
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board