

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

---

N.S., Appellant )

and )

DEPARTMENT OF THE NAVY, )  
PHILADELPHIA NAVAL SHIPYARD, )  
Philadelphia, PA, Employer )

---

**Docket No. 06-1298**  
**Issued: February 27, 2007**

*Appearances:*  
*Jeffrey P. Zeelander, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On May 22, 2006 appellant filed a timely appeal of a May 11, 2006 merit decision of the Office of Workers' Compensation Programs with respect to authorization for surgery. Pursuant to 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 the Office properly denied authorization for right knee surgery.

**FACTUAL HISTORY**

The record establishes that there were two claims for right knee injuries. On December 30, 1992 appellant tripped over a box and the claim was accepted for a torn meniscus of the right knee. On January 11, 1995 appellant was involved in a motor vehicle accident while in the performance of duty. This claim was accepted for cervical and lumbosacral strains, as well as right knee contusion. Appellant underwent arthroscopic right knee surgery on January 2, 1997.

Dr. Andrew Collier, the attending orthopedic surgeon, opined in a treatment note dated July 6, 2000 that appellant needed a total right knee replacement. The Office referred the case for a second opinion examination by Dr. Donald Leatherwood, an orthopedic surgeon. In a report dated August 21, 2000, Dr. Leatherwood opined that, while appellant may require surgery some time in the future, it would not be based on the employment injuries but rather on an underlying degenerative process. The Office found a conflict and referred the case to Dr. Joseph Jelen, Jr., a Board-certified orthopedic surgeon, who opined in an October 31, 2000 report that no surgery was required, noting appellant's young age and the mild degree of arthritis found.

By decision dated May 16, 2001, the Office denied authorization for the proposed right knee surgery. This decision was affirmed by an Office hearing representative in a decision dated February 20, 2002.

Dr. Collier continued to treat appellant and, in a report dated August 20, 2002, he diagnosed reflex sympathetic dystrophy (RSD), post-traumatic degenerative arthritis in the medial joint and post-traumatic chondromalacia of the patellae. He also stated that appellant was depressed and should be evaluated.

The Office referred appellant to Dr. Steven Valentino, an osteopath, regarding her orthopedic condition, and Dr. Harry Doyle, a psychiatrist, regarding an emotional condition. Dr. Valentino submitted a November 13, 2002 report stating that he found no objective effects of a work injury of January 9, 1995 and no objective evidence to substantiate a diagnosis of RSD. In a report also dated November 13, 2002, Dr. Doyle diagnosed dysthymic disorder and pain disorder with both psychological factors and a general medical condition. He opined that these conditions were directly related to the right knee work injury and associated physical sequelae of that injury.<sup>1</sup>

Appellant continued to receive compensation for wage loss. In a treatment note dated March 14, 2006, Dr. Collier indicated that appellant was having severe knee pain with synovitis, minimal effusion, varus collapse, lateral thrust and antalgic gait. He stated that appellant "really needs a knee joint." In a report dated April 10, 2006, Dr. Collier diagnosed post-traumatic chondromalacia patellae, post-traumatic meniscal tears, residual post-traumatic arthritis and sequelae of RSD. He opined, "Her diagnosed condition is medically connected to her work injury by direct cause." Dr. Collier stated that appellant continued to have significant disability due to her right knee and leg.

The Office requested that an Office medical adviser provide an opinion as to authorization for a total knee replacement. In a report dated April 12, 2006, the medical adviser reviewed medical records and stated in pertinent part:

"However, it is recognized that patients who have reflex sympathetic dystrophy typically would have the reflex sympathetic dystrophy increase in severity following major operative procedure. Therefore, the RSD represents a contraindication in the operative procedure.

---

<sup>1</sup> The record transmitted to the Board indicated a consequential emotional condition was accepted by the Office, although appellant apparently was not notified until after the May 11, 2006 decision.

“It is also recognized that she had a full recovery for her work-related injury of 1995. She had an interval in 2002 where there was no evidence of any progressive osteoarthritis or need for a knee replacement according to multiple consultants.

“Therefore, it could be concluded that the claimant had a full recovery from the injury and her multiple arthroscopic procedures and that any new complaints are unrelated to the 1995 injury.

“Therefore, it would not be appropriate to recommend the knee replacement based on the work-related injury that was documented in 1995 as a result of the federal employment.

“There is a psychiatric history which could represent a contraindication to knee replacement.”

By decision dated May 11, 2006, the Office denied authorization for total knee replacement surgery for the right knee.

### **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.<sup>2</sup> 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.<sup>3</sup>

In order for a surgery to be authorized, appellant must submit evidence to show that the requested procedure is for a condition causally related to the employment injury and that it is medically warranted. Both of these criteria must be met in order for the Office to authorize payment.<sup>4</sup>

---

<sup>2</sup> 5 U.S.C. § 8103(a).

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

<sup>4</sup> *Cathy B. Mullin*, 51 ECAB 331 (2000).

### **ANALYSIS**

The issue of whether total knee replacement for the right knee should be authorized was previously developed by the Office and was denied based on an October 31, 2000 report from Dr. Jelen, an orthopedic surgeon selected as an impartial medical specialist. The attending orthopedic surgeon, Dr. Collier, again opined in a March 14, 2006 treatment note that appellant needed a total knee replacement. In an April 10, 2006 report, he did not specifically discuss the proposed surgery. Dr. Collier indicated that appellant continued to have right knee symptoms, as well as back and ankle symptoms. He provided several diagnoses for the right knee, including post-traumatic chondromalacia patellae, post-traumatic arthritis and he also diagnosed RSD of the right leg. These conditions are not accepted as employment related and Dr. Collier did not provide a rationalized medical opinion on causal relationship with the employment injuries. Dr. Collier stated that the conditions were causally related to a work injury, without providing medical reasoning. His reports are of diminished probative value on the issue of whether the proposed surgery is warranted as a result of an employment injury.

On the other hand, the Office medical adviser provided a reasoned opinion that the total knee replacement should not be authorized. He noted the prior medical history and indicated that the knee complaints were not employment related. The medical adviser also noted that the surgery was contraindicated by other diagnoses, including RSD and psychiatric conditions.

As noted above, the Office has discretion to achieve the goals set forth in section 8103. Based on the evidence of record, the Office reasonably concluded that the proposed total knee replacement for the right knee was not appropriate in this case. The Board finds no error in the Office's denial of authorization for the proposed right knee surgery.

### **CONCLUSION**

The medical evidence does not establish that the Office abused its discretion in denying authorization for right knee surgery.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated May 11, 2006 is affirmed.

Issued: February 27, 2007  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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