United States Department of Labor
Employees' Compensation Appeals Board

P.M., Appellant	)	
and	)	**Docket No. 06-1813**
	)	**Issued: February 28, 2007**
DEPARTMENT OF JUSTICE, FEDERAL CORRECTIONAL INSTITUTION, Danbury, CT, Employer	)	

Appearances:
Craig D. Robinson, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 21, 2006 appellant filed a timely appeal from the July 22, 2005 merit decision of the Office of Workers' Compensation Programs which denied authorization for surgery. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this denial.

ISSUE

The issue is whether the Office properly denied authorization for appellant's total left knee replacement.

FACTUAL HISTORY

On the prior appeal of this case,[1] the Board noted that appellant was a 45-year-old counselor when she stepped into a rodent hole on June 23, 1992 and twisted her left knee. The

[1] Docket No. 05-338 (issued May 5, 2005).

Office authorized an August 14, 1992 high tibial osteotomy and a follow-up procedure in 1993. A conflict later arose on whether appellant's total left knee replacement on June 8, 2001 was causally related to the 1992 incident. Dr. Robert C. George, a Board-certified orthopedic surgeon and impartial medical specialist, reported that the 1992 incident had triggered a period of symptoms, but he considered it inconceivable that her total knee replacement should relate back to the 1992 incident. Appellant had significant preexisting osteoarthritis, Dr. George observed, so she would have had a high tibial osteotomy sooner or later and it was a foregone conclusion that she would eventually need a total knee replacement. In a supplemental report, Dr. George clarified that the 1992 and 1993 surgeries did not accelerate or precipitate the need for a total knee replacement. The osteotomy was a "buy-time" procedure, he explained and appellant did relatively well for some time after.

The Board found a significant omission in Dr. George's opinion. He indicated that the 1992 incident aggravated the underlying osteoarthritis, but he did not say whether the aggravation had ceased or whether appellant had returned to her preinjury status at any time prior to the 2001 total knee replacement. Finding that it was premature for the Office to deny authorization for a total knee replacement without first obtaining clarification from the impartial medical specialist on this issue, the Board remanded the case for additional opinion from Dr. George. The facts of this case as set forth in the Board's prior decision are hereby incorporated by reference.

On remand, the Office asked Dr. George to clarify whether the June 23, 1992 aggravation of appellant's left knee osteoarthritis was temporary or permanent and if permanent, whether the June 8, 2001 total knee replacement was causally related. The Office advised him: "Please also be sure to support any statements or conclusions with specific medical rationale." Dr. George replied on July 8, 2005:

> "It has been a couple of weeks or more since we received the file on [appellant]. I needed to clarify exactly what was requested because there was some confusion in my mind. It seemed to me based on review of her file and my previous [i]ndependent [m]edical [e]xam[ination] report issued on April 17, 2002 and my follow-up letter of March 12, 2003, that my opinion with regard to the [statement of accepted facts] was pretty clear. Nonetheless, at your request and in an attempt to clarify my position, I spend considerable time reviewing my records and the file which you sent. Any reader so interested should use my April 17, 2002 report and my follow-up letter of March 12, 2003 as a basis for this brief commentary. To summarize my feelings, it was very clear to me that [appellant] was genetically predisposed to osteoarthritis and further disposed by her obesity. My opinion with regard to the relevance of her injury of June 23, 1992 was similarly echoed by another independent examiner, Dr. Staub. I believe that the June 23, 1992 aggravation of her left knee osteoarthritis was temporary and that her eventual total knee replacement was inevitable."

In a decision dated July 22, 2005, the Office denied authorization for appellant's June 8, 2001 total knee replacement. The Office found that the replacement surgery was not a result of the June 23, 1992 employment injury.

LEGAL PRECEDENT

Section 8103 of the Federal Employees' Compensation Act provides for the furnishing of services, appliances and supplies prescribed or recommended by a qualified physician that the Office, under authority delegated by the Secretary of Labor, "considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of monthly compensation."[2]

In interpreting section 8103, the Board has recognized that the Office, acting as the delegated representative of the Secretary, has broad discretion in approving services provided under the Act to ensure that an employee recovers from his or her injury to the fullest extent possible in the shortest amount of time.[3] The Office has administrative discretion in choosing the means to achieve this goal, and the only limitation on the Office's authority is that of reasonableness.[4]

While the Office is obligated to pay for treatment of employment-related conditions, appellant has the burden of establishing that the expenditure is incurred for treatment of the effects of an employment-related injury or condition.[5] Thus, to be entitled to reimbursement of medical expenses by the Office, appellant must establish a causal relationship between the expenditure and the treatment by submitting rationalized medical evidence that supports such a connection and demonstrates that the treatment is necessary and reasonable.[6]

When the Office secures an opinion from an impartial medical specialist for the purpose of resolving a conflict in the medical evidence and the opinion from the specialist requires clarification or elaboration, the Office has the responsibility to secure a supplemental report from the specialist for the purpose of correcting a defect in the original report. When the impartial medical specialist's statement of clarification or elaboration is not forthcoming or if the specialist is unable to clarify or elaborate on the original report or if the specialist's supplemental report is also vague, speculative or lacks rationale, the Office must submit the case record together with a detailed statement of accepted facts to a second impartial specialist for a rationalized medical

[2] 5 U.S.C. § 8103.

[3] *Marla Davis*, 45 ECAB 823, 826 (1994).

[4] *Daniel J. Perea*, 42 ECAB 214, 221 (1990) (holding that abuse of discretion by the Office is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or administrative actions that are contrary to both logic and probable deductions from established facts).

[5] *Mamie L. Morgan*, 41 ECAB 661, 667 (1990).

[6] *Debra S. King*, 44 ECAB 203, 209 (1992).

opinion on the issue in question.[7] Unless this procedure is carried out by the Office, the intent of section 8123(a) of the Federal Employees' Compensation Act[8] will be circumvented when the impartial specialist's medical report is insufficient to resolve the conflict of medical evidence.[9]

ANALYSIS

Dr. George's supplemental opinion on whether the aggravation of appellant's preexisting osteoarthritis was temporary or permanent lacks adequate rationale. His opinion is clear enough -- the aggravation was temporary -- but he did not explain the basis for this condition.

The question is not whether appellant was going to need a total knee replacement eventually, even without the 1992 injury. The issue is whether residuals of the 1992 aggravation resolved at some point before the surgery and if so, the medical basis for such stated conclusion.[10]

Dr. George stated that an earlier physician, Dr. Edward M. Staub, a Board-certified orthopedic surgeon and Office second-opinion physician, had echoed his opinion on the relevance of the 1992 injury. An impartial medical specialist selected to resolve a conflict between physicians should provide his own reasons for drawing a conclusion and not simply state that he agrees with one of the other physicians. Moreover, Dr. Staub's March 5, 2001 report appears inconsistent with Dr. George's opinion that the 1992 injury caused only a temporary aggravation. Dr. Staub indicated that the 1992 injury had permanently aggravated appellant's significant preexisting osteoarthritis. Although he stated that a knee replacement would be done "because" of her preexisting condition and not "because" of the 1992 injury, Dr. Staub nonetheless attributed a part of appellant's permanent disability or impairment to the 1992 injury.

The Board finds that the supplemental opinion of Dr. George lacks rationale. The case will be remanded to the Office to submit the case record, together with a detailed statement of accepted facts, to a second impartial specialist for a well-reasoned medical opinion on the issue in question. The Board will set aside the Office's July 22, 2005 decision denying authorization for the June 8, 2001 surgery and will remand the case for further development of the medical evidence.

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[7] *See Nathan L. Harrell*, 41 ECAB 402 (1990).

[8] 5 U.S.C. § 8123(a) provides: "An employee shall submit to examination by a medical officer of the United States or by a physician designated or approved by the Secretary of Labor, after the injury and as frequently and at the times and places as may be reasonably required. The employee may have a physician designated and paid by him present to participate in the examination. If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."

[9] *Harold Travis*, 30 ECAB 1071 (1979).

[10] As the Board explained on the prior appeal, there should be no attempt to apportion between the preexisting condition and the aggravation of that condition. The aggravation of a preexisting condition is as compensable as an original or new injury and the resulting disability is compensable regardless of the degree of such aggravation. *Charles A. Duffy*, 6 ECAB 470, 471 (1954); *Henry Klaus*, 9 ECAB 333, 334 (1957).

CONCLUSION

The Board finds that the case is not in posture for decision and requires further medical development.

ORDER

IT IS HEREBY ORDERED THAT the July 22, 2005 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Issued: February 28, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board