

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

J.W., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Blackwood, NJ, Employer**

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**Docket No. 06-2159
Issued: February 2, 2007**

Appearances:
Thomas R. Uliase, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 27, 2006 appellant filed a timely appeal of merit decisions of the Office of Workers' Compensation Programs dated October 31, 2005 and April 3, 2006 denying 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 total knee replacement surgery.

FACTUAL HISTORY

On March 13, 2003 appellant filed a traumatic injury claim alleging that he sprained his right knee while delivering mail on March 12, 2003. On March 17, 2003 Dr. Enrico A. Marcelli, a Board-certified orthopedic surgery, diagnosed preexisting osteoarthritis of the right knee and acute synovitis, secondary to the March 12, 2003 injury. Noting that x-rays revealed a significant amount of tricompartmental arthrosis, Dr. Marcelli released appellant to full duty as

of March 21, 2003. On April 7, 2003 the Office accepted appellant's claim for right knee sprain. In its acceptance letter, the Office stated that it did not accept as compensable appellant's preexisting condition of osteoarthritis.

On October 27, 2003 appellant requested authorization for a total right knee replacement. In support of his request, he submitted a May 3, 2003 report from Dr. Marcelli reflecting that appellant wanted a total right knee arthroplasty. His examination of the right knee revealed a well-healed scar from a previous meniscectomy; crepitation of motion from five to ninety degrees; no gross instability; and a normal neurovascular status. On November 19, 2003 appellant's representative contended that appellant's need for surgery was caused by the March 12, 2003 work injury, which had exacerbated his preexisting osteoarthritis.

The Office forwarded the case file and a statement of accepted facts to the district medical adviser for review and an opinion as to whether appellant's need for surgery was causally related to the accepted condition. The statement of accepted facts indicated that he had undergone a right knee meniscectomy 30 years previously. The Office medical adviser opined that the total knee replacement surgery requested was not related to, or appropriate for, the accepted condition. He stated that appellant's physician had not explained how the need for a total knee replacement had been caused by the March 12, 2003 injury. Noting that the claim had been accepted only for a right knee sprain, the district medical adviser surmised that the surgery was necessitated by appellant's advanced, preexisting osteoarthritis. By letter dated February 3, 2004, the Office informed appellant that it was unable to authorize his request for total knee replacement surgery, without medical rationale explaining how the need for the surgery was brought on by the March 12, 2003 incident.

In a March 22, 2004 report, Dr. Marcelli stated that appellant had preexisting osteoarthritis of the right knee. He opined that the "slip and fall" on March 12, 2003 exacerbated his symptomatology. Dr. Marcelli indicated that appellant "more than likely eventually would have needed a total knee arthroplasty." He noted that, although the fall may have accelerated the need for the surgical intervention, it certainly did not cause his arthrosis.

The Office referred the case to Dr. Zohar Stark, a Board-certified orthopedic surgeon, for a second opinion examination, and an opinion as to whether the proposed surgery was medically necessary as a result of the March 12, 2003 injury. In a report dated July 12, 2005, Dr. Stark opined that the knee replacement surgery was not related to the accepted condition of right knee sprain. He stated that appellant's history and physical examination supported a diagnosis of advanced degenerative joint disease of the right knee, which was not related to the March 12, 2003 injury. Noting appellant's preexisting joint disease and multiple injuries to the right knee prior to the March 12, 2003 injury, Dr. Stark opined that the accepted sprain did not produce or aggravate the joint disease or result in any permanency.

On the issue of whether the proposed surgery was medically necessary, the Office found that a conflict in the medical evidence existed and the case was referred to Dr. George Glenn, a Board-certified orthopedic surgeon, to resolve the conflict. In a report dated September 15, 2005, Dr. Glenn provided a history and results on examination. He noted significant varus deformity of the right knee. The right knee demonstrated significant lateral play, with limitation in motion with crepitus. There was general tenderness about the right knee and any attempt to

demonstrate strength produced significant pain. X-rays showed long-standing, chronic changes, including: advanced tricompartmental degenerative osteoarthritis, with marked narrowing of the medial compartment and, to a lesser degree, the lateral compartment with degenerative spur formation; narrowing in the patellofemoral compartment; and spurs involving the superior pole of the patella. Dr. Glenn stated that appellant's diagnosed acute synovitis (inflammation of the lining of the joint), which was secondary to his fall, had resolved. He opined that the March 12, 2003 injury did not cause a permanent exacerbation or worsening of appellant's preexisting degenerative arthritis. Dr. Glenn further opined that appellant's need for total knee replacement surgery was not, in any way, related to the March 12, 2003 incident.

By decision dated October 31, 2005, the Office denied authorization for the proposed total knee replacement surgery. The Office found that the weight of the evidence, which was represented by Dr. Glenn's report, established that the requested procedure was for a condition that was not causally related to the employment injury.

Appellant requested a hearing before an Office hearing representative, which was held on February 7, 2006. He testified that he underwent right knee surgery 30 years ago as a result of a sports injury, and had been treated for knee complaints ever since. Appellant stated that his knee had been further weakened by repeated injuries during the course of his employment over the years, which included incidents of falling and twisting of his knee. He stated that he had discussed the possibility of right knee replacement surgery with Dr. Marcelli prior to the March 12, 2003 injury, but that, following the accepted injury, his knee was "shot." Appellant's representative contended that the March 12, 2003 injury was the "straw that broke the camel's back," and accelerated his condition to the point that he required total knee replacement surgery.

In a decision dated April 3, 2006, the hearing representative affirmed the October 31, 2005 decision. The hearing representative found that the weight of the medical evidence on the issue was represented by Dr. Glenn's report and that the Office properly denied appellant's request for authorization of a total right knee replacement.

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.¹ 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

¹ 5 U.S.C. § 8103(a).

established facts. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.²

In order for 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.³

It is well established that, when a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.⁴

ANALYSIS

Appellant's treating physician, Dr. Marcelli, proposed a total right knee replacement. The second opinion physician, Dr. Stark, opined that the knee replacement surgery was not related to the accepted condition of right knee sprain. The Office properly found a conflict in the evidence with respect to the need for right knee replacement surgery.⁵ The referee examiner, Dr. Glenn, provided a reasoned medical opinion that the March 12, 2003 injury did not cause a permanent exacerbation or worsening of appellant's preexisting degenerative arthritis. He further opined that appellant's need for total knee replacement surgery was not, in any way, related to the March 12, 2003 incident.

As noted above, a reasoned opinion from a referee examiner is entitled to special weight. Dr. Glenn provided a reasoned opinion based on a complete background on the issue presented. His opinion is entitled to special weight and represents the weight of the evidence in this case. Appellant has not presented any medical evidence sufficient to overcome the weight of the referee examiner's opinion. The Board finds that the evidence fails to establish that the proposed surgery was required for a condition causally related to the March 12, 2003 employment injury. Accordingly, the Office did not abuse its discretion under 5 U.S.C. § 8103 in denying authorization for the proposed knee replacement surgery.

² *Francis H. Smith*, 46 ECAB 392 (1995); *Daniel J. Perea*, 42 ECAB 214 (1990).

³ *Cathy B. Mullin*, 51 ECAB 331 (2000).

⁴ *Harrison Combs, Jr.*, 45 ECAB 716, 727 (1994).

⁵ The Act provides that, if there is a 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 the examination. 5 U.S.C. § 8123(a). The implementing regulation states that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an Office medical adviser, the Office shall appoint a third physician to make an examination. This is called a referee examination and the Office will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case. 20 C.F.R. § 10.321 (1999).

CONCLUSION

The evidence of record did not establish that the proposed right knee replacement surgery was medically necessary for the accepted work injury and therefore the Office properly denied authorization.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated April 3, 2006 and October 31, 2005 are affirmed.

Issued: February 2, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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