United States Department of Labor
Employees' Compensation Appeals Board

C.A., Appellant	)	
and	)	**Docket No. 08-808**
	)	**Issued: July 21, 2008**
SOCIAL SECURITY ADMINISTRATION, DIVISION OF TRAINING & EMPLOYEE DEVELOPMENT, Falls Church, VA, Employer	)	

Appearances:
Appellant, pro se
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 January 18, 2008 appellant filed a timely appeal from a December 20, 2007 Office of Workers' Compensation Programs' merit decision. Under 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 abused its discretion by denying authorization for total right knee replacement surgery.

FACTUAL HISTORY

Appellant, a 57-year-old clerk typist, injured her right knee on October 10, 2006 when she tripped on a carpeted floor. She filed a claim for benefits, which the Office accepted for torn right medial meniscus. The Office paid appropriate compensation for temporary total disability.

The Office authorized arthroscopic surgery for appellant's right knee. On January 10, 2007 Dr. Joseph Hanna, a specialist in orthopedic surgery, performed a right knee arthroscopy

with partial medial meniscectomy and chondroplasty of the patellofemoral and medial femoral condyle joints. In a report dated April 9, 2007, he stated:

> "[Appellant] comes in today again for her knee. She has finished her physical therapy and this has not really helped her knee pain. [Appellant] still continues to have the same problem and the same pain. Her exam[ination] is unchanged."

Dr. Hanna diagnosed postsurgical knee pain and discomfort, with significant arthritis. He asserted:

> "I do not think [appellant] will gain any relief without having a knee replacement. She has already had cortisone injections which provided her with two days of relief. [Appellant] had a knee scope and continues to have significant pain. I think this pain is from further degeneration of her articular cartilage. [Appellant] was able to work prior to her injury and she is unable to work now and I do not think she will be able to get any sort of relief unless she has a total knee arthroplasty. At this point, ... this is the only way to give her any sort of long[-]term relief. I will try to get this scheduled as soon as it is approved."

On May 7, 2007 Dr. Hanna requested authorization to perform surgery for a total right knee replacement. In a June 15, 2007 report, he reiterated his opinion that appellant's knee would not improve without a total knee replacement.

In a report dated August 2, 2007, an Office medical adviser reviewed the medical record and recommended that the authorization request be denied. He noted that Dr. Hanna stated that the need for such a procedure was based on degenerative arthritis, which was not an accepted, work-related condition.

In order to determine whether a total right knee replacement surgery was warranted and its relationship to the October 10, 2006 employment injury, the Office referred appellant to Dr. Robert A. Smith, Board-certified in orthopedic surgery, for a second opinion examination. In an October 9, 2007 report, Dr. Smith noted that appellant underwent a magnetic resonance imaging (MRI) scan about three weeks after the October 10, 2006 work injury. The MRI scan indicated that, in addition to her torn medial meniscus, she also had severe degenerative disease involving the knee, particularly the medial compartment. Based on this study, appellant's arthritic condition was a preexisting condition. Dr. Smith stated that there was nothing found in the MRI scan report indicating a structural aggravation of the knee with regard to arthritis, due to the October 10, 2006 work incident. He advised that Dr. Hanna stated in his reports that appellant's mechanical symptoms stemming from the work-related meniscus tear had improved; however, she continued to have pain in the joint which was related to her nonindustrial arthritis. Dr. Smith concluded:

> "The diagnosis in this case is appropriately a torn medial meniscus, related to work by direct cause. Clearly, [appellant's] arthritis is nonindustrial and preexisting. There does not appear to be any evidence of a causal relationship between her arthritis and her federal employment or any evidence of aggravation or acceleration either.

"The correct diagnosis in this case then is a torn right medial meniscus requiring an arthroscopic surgery. That surgery was successful in removing meniscal fragments that were causing [appellant] some mechanical symptoms, but now she has symptoms from her nonindustrial arthritis.

"I have reviewed imaging studies, including x-rays, of [appellant's] knee that show longstanding arthritis that is unrelated to her federal employment. She might be a candidate for a total knee replacement on that basis, but it would be unrelated to her work with [the employing establishment] or the specific incident of October 10, 2006."

By decision dated December 20, 2007, the Office denied authorization for total right knee replacement surgery, finding that Dr. Smith's referral opinion represented the weight of the medical evidence.

LEGAL PRECEDENT

Section 8103 of the Federal Employees' Compensation Act[1] 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] In interpreting this section of the Act, the Board has recognized that the Office has broad discretion in approving services provided under the Act. 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]

ANALYSIS

The Office accepted that appellant had sustained a torn medial meniscus of the right knee. Dr. Hanna stated in an April 9, 2007 report that appellant continued to experience pain in her right knee caused by further degeneration of her articular cartilage. He advised that physical therapy had not improved her condition. Dr. Hanna diagnosed significant arthritis and opined that appellant would not be able to gain any longtime relief without undergoing knee replacement surgery. He requested authorization for total right knee arthroplasty on May 7, 2007 and reiterated that appellant's knee would not improve without such surgery in subsequent reports.

[1] 5 U.S.C. § 8101 *et seq.*

[2] 5 U.S.C. § 8103.

[3] *Daniel J. Perea*, 42 ECAB 214 (1990).

Appellant's authorization request was reviewed by the Office medical adviser, who recommended that the Office deny the request because the record did not establish that appellant's degenerative arthritis condition was work related. She was referred to Dr. Smith, who stated findings on examination, reviewed the medical history and concluded that the need for the requested total right knee replacement was not related to any work-related condition. Dr. Smith advised that the MRI scan and x-rays taken after appellant's October 2006 work injury revealed longstanding, preexisting, severe degenerative disease in her right knee, most notably in the medial compartment, which was unrelated to the work injury. He noted that Dr. Hanna had indicated that, although appellant's symptoms stemming from the work-related meniscus tear had improved, she continued to experience pain in the joint related to her nonindustrial arthritis. Dr. Smith opined that there was no causal relationship between appellant's arthritis and her federal employment. He concluded that the requested total right knee arthroplasty was unrelated to any work-related condition or the October 10, 2006 work injury.

As noted above, the only restriction on the Office's authority to authorize medical treatment is one of reasonableness. Appellant failed to submit sufficient medical evidence explaining why the need for a total right knee arthroplasty was due to residuals of her accepted injury. None of Dr. Hanna's medical reports indicated such a need for such a procedure. Further, Dr. Smith provided a thorough, probative, well-rationalized opinion that the need for total right knee replacement surgery was not related to her injury, accepted for a torn medial meniscus.

The weight of the medical evidence, as represented by Dr. Smith's referral report, establishes that the need for total right knee replacement surgery is due to appellant's preexisting arthritis. The Office did not abuse its discretion in denying her request for authorization to undergo surgery.

CONCLUSION

The Board finds that the Office did not abuse its discretion by denying appellant's request for total right knee replacement surgery.

ORDER

IT IS HEREBY ORDERED THAT the December 20, 2007 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: July 21, 2008
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