

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

D.H., Appellant)	
)	
and)	Docket No. 09-1925
)	Issued: March 15, 2010
DEPARTMENT OF THE ARMY,)	
Fort Lee, VA, Employer)	

Appearances: *Case Submitted on the Record*
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

DECISION AND ORDER

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

JURISDICTION

On July 22, 2009 appellant filed a timely appeal from the May 27 and June 4, 2009 decisions of the Office of Workers' Compensation Programs denying medical expenses and disability for his March 24, 2009 total knee replacement. 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 abused its discretion in denying appellant's request for a total knee replacement and resulting period of disability.

On appeal, appellant's attorney contends that the decisions are contrary to fact and law.

FACTUAL HISTORY

On February 22, 2007 appellant, then a 52-year-old information technology specialist, sustained a right knee sprain/strain, right tibial contusion and abrasion when the heel of her shoe became wedged in a step causing her to fall. On April 12, 2007 the Office accepted her claim for right knee sprain of the lateral collateral ligament and a tear of the medial meniscus. On April 10, 2007 Dr. William E. Nordt, III, a treating Board-certified orthopedic surgeon,

performed an arthroscopic chondroplasty. The Office approved this surgery on April 13, 2007. Appellant began treatment with a series of injections from April 27 to August 8, 2007. In a September 12, 2007 note, Dr. Nordt noted that appellant had exhausted most options with the exception of a patellofemoral replacement. On November 6, 2008 he advised that appellant was a borderline candidate for patellofemoral replacement, but noted that a total knee replacement seemed overly aggressive at this point. Appellant described her quality of life as being terrible due to knee pain. Dr. Nordt again injected her knee. Subsequent injections were provided through November 6, 2008.

In a January 5, 2009 note, Dr. Nordt stated that he discussed appellant's options and addressed a total knee replacement. He noted that a total knee replacement would not take away her pain, noting that 80 percent relief might be a realistic expectation. Appellant was also being treated for fibromyalgia and multiple joint pain.

On January 15, 2009 the Office asked the Office medical adviser to address whether appellant needed a total right knee replacement as a result of the accepted injury. On January 16, 2009 the Office medical adviser found that a right knee total replacement was not warranted based on the accepted diagnoses of knee contusion, sprain and medial meniscus tear. Based on the medical evidence total knee replacement was not indicated. The Office medical adviser noted that Dr. Nordt had stated that total knee replacement seemed overly aggressive. The medical adviser noted that a basis for total knee replacement was degenerative arthritis, which was not an accepted condition. Appellant's problem was confined to the patellofemoral joint.

On March 24, 2009 Dr. Nordt performed a total knee replacement surgery. On March 31, 2009 he noted that appellant had degenerative disease in her right knee, that he performed a right total knee replacement on March 24, 2009 and that she was discharged from the hospital on March 27, 2009. Dr. Nordt advised that appellant was totally disabled from March 24 through May 5, 2009. He checked a box indicating that he did not believe that the condition was caused or aggravated by appellant's employment activity. In a May 9, 2009 report, Dr. Nordt checked a box indicating that he believed appellant's chondromalacia patella and traumatic knee pain were caused by her employment, noting that she fell at work on February 13, 2007. He reiterated that appellant was totally disabled from March 24 to May 10, 2009.

Appellant filed claims for compensation for the period March 24 through May 9, 2009.

By decision dated May 27, 2009, the Office denied appellant's claim finding that her right knee total arthroplasty was not medically warranted and did not relate to her work injury. By decision dated June 4, 2009, it also denied appellant's claim for compensation from March 15 through May 9, 2009.

LEGAL PRECEDENT

Section 8103 of the Federal Employees' Compensation Act¹ 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

¹ See *Joe T. Williams*, 44 ECAB 518, 521 (1993).

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. It has discretion in choosing means to achieve this goal. The only limitation on the Office's authority is that of reasonableness.

For a surgery to be authorized, a claimant 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

ANALYSIS

The Office accepted appellant's claim for sprain of the right knee lateral collateral ligament, a tear of the medial meniscus and a leg contusion. It paid appropriate compensation and medical benefits, including her arthroscopic chondroplasty of April 10, 2007. Subsequent to this surgery, appellant continued treatment with Dr. Nordt, who provided steroid injections with conservative care. On November 6, 2008 Dr. Nordt advised that appellant was a borderline candidate for patellofemoral replacement but noted that a total knee replacement seemed overly aggressive. On January 5, 2009 he noted that appellant would ultimately undergo a total knee replacement. The Office referred the record to an Office medical adviser, who opined that a total right knee replacement was not warranted based on the accepted conditions. Dr. Nordt noted that appellant had degenerative arthritis, which was not an accepted condition, and performed a total right knee replacement on March 24, 2009. The subsequent reports did not provide any medical narrative opinion addressing how the surgery was due to the accepted injury. Dr. Nordt checked a box indicating that it was not related to appellant's employment; however, he subsequently checked a box indicating that appellant's condition and surgery were related to her employment, referencing her accepted fall.⁴

The Board finds that the Office properly denied appellant's request for medical benefits and wage-loss compensation relating to her total knee replacement. The record contains no rationalized medical opinion addressing why surgery was necessary or how it was related to her accepted claim. Dr. Nordt initially advised that the surgery was not related to appellant's employment; however, he subsequently found a causal relationship without providing any explanation as to how the surgery was due to the accepted injury. Appellant has not established that her surgery and subsequent disability for work were necessary treatment of her accepted conditions. The Office medical adviser found that the proposed surgery was not related to appellant's injury which was of the patellofemoral joint involving the collateral ligament and a tear of the medial meniscus. The Board finds that there is no rationalized medical opinion to

² *Id.*

³ *R.C.*, 58 ECAB 238 (2006).

⁴ A physician's opinion on causal relationship that consists only of checking "yes" on a form report is of diminished probative value. *See Sedi L. Graham*, 57 ECAB 494 (2006).

establish that the total knee replacement surgery and resulting disability were causally related to appellant's accepted injuries.

Accordingly, the Office did not abuse its discretion in denying authorization of the total knee replacement surgery and compensation for any periods of disability related to the surgery.⁵

CONCLUSION

The Board finds that the Office did not abuse its discretion in denying appellant's request for a total knee replacement and for the resulting period of disability.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 4 and May 27, 2009 are affirmed.

Issued: March 15, 2010
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

⁵ See *id.*