

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

S.J., Appellant)	
)	
and)	Docket No. 13-1241
)	Issued: September 23, 2013
DEPARTMENT OF AGRICULTURE, FOREST SERVICE, Albuquerque, NM, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 29, 2013 appellant filed a timely appeal from a November 19, 2012 decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 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 OWCP abused its discretion by denying authorization of appellant's left knee replacement surgery.

FACTUAL HISTORY

On September 14, 2012 appellant, a 79-year-old retired maintenance worker, requested authorization for left knee surgery. His claim was accepted for unspecified dislocation of the left knee on January 20, 1966 under case number xxxxxx661. On November 15, 1972 appellant sustained an injury to his right knee when dodging back and forth trying to catch a horse. He

¹ 5 U.S.C. § 8101 *et seq.*

subsequently filed a claim for benefits under case number xxxxxx221 which OWCP accepted for chondromalacia patellae and localized unspecified osteoarthritis of the right leg. On January 31, 1973 appellant underwent surgery for a right knee arthrotomy and medial meniscectomy that was authorized by OWCP. He retired from federal employment in 1991. On December 18, 2001 appellant underwent total right knee replacement surgery. OWCP authorized this procedure.

In a report dated May 26, 2011, Dr. Richard V. Williamson, Board-certified in orthopedic surgery, provided findings on examination and reviewed the medical history of appellant's left and right knees. He noted that appellant underwent a total right knee replacement. Dr. Williamson stated that appellant also had an open partial medial meniscectomy performed on his left knee many years prior but could not recall the exact date. While appellant related having difficulty with both knees, his left knee had become progressively more disabling. Dr. Williamson advised that appellant ambulated with a walker and was unstable on his feet. On examination appellant showed diffuse symmetric atrophy of both lower extremities, probably due to disuse. The left knee was stable to ligamentous testing and displayed tenderness primarily along the medial side of the knee, with McMurray's and Apley testing showing crepitation at the medial joint line.

Dr. Williamson advised that x-rays of the left knee revealed advanced medial compartment osteoarthritis with no evidence of significant lateral or patellofemoral disease noted. He opined that appellant had disability associated with his medial compartment but was reticent to consider surgical management which would likely be a unicompartmental knee arthroplasty if it was deemed appropriate.

In a February 15, 2012 report, Dr. Williamson stated that appellant's left knee had deteriorated to the point where it had become a profound disability. He stated that appellant's pain was all medial and activity related, with associated warmth and swelling. On examination appellant's left knee displayed varus deformity with tenderness at the medial joint line and intact skin condition. A radiographic test showed advanced medial compartment osteoarthritis of the left knee. Dr. Williamson opined that the meniscal pathology combined with underlying osteoarthritis was the likely source of appellant's symptoms. He recommended a simple arthroscopic surgical procedure to ameliorate appellant's symptoms, which entailed low risk of complication. Dr. Williamson stated, however, that while the surgery could reduce symptoms related to meniscal tears it would not necessarily ameliorate and resolve symptoms from osteoarthritis. He discussed with appellant the probable future progression of osteoarthritis as well as the magnitude of the surgery involved. Dr. Williamson advised that, based on his level of disability and desire to seek definitive management, appellant would seek authorization for unicompartmental knee arthroplasty.

In a report dated September 12, 2012, Dr. Williamson reiterated that he would proceed with a unicompartmental left knee replacement, arthroplasty surgery, as appellant had failed conservative treatment and was doing poorly. He related complaints of medial-sided pain, aching and swelling with activity. On September 14, 2012 Dr. Williamson requested authorization for a left knee arthroplasty.

On September 18, 2012 OWCP informed appellant that his request for authorization of left knee joint surgery could not be approved. It advised him that further medical development was needed before the request could be approved or denied.

By letter dated October 3, 2012, OWCP advised appellant that it was currently unable to authorize the requested revision of left knee joint procedure as the evidence did not explain why the procedure was necessitated by an accepted condition. It noted that the claim had been accepted for the condition of unspecified dislocation of the left knee on January 20, 1966. OWCP requested that appellant submit additional medical evidence based on a recent examination, findings and history of the current diagnosis which explained how the requested procedure was reasonable, necessary and causally related to his accepted condition. It requested that he submit this information within 30 days. Appellant did not submit any additional medical evidence.

In a decision dated November 19, 2012, OWCP denied authorization for surgery.

LEGAL PRECEDENT

Section 8103 of FECA² 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 OWCP considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation.³ In interpreting this section of FECA, the Board has recognized that OWCP has broad discretion in approving services provided under FECA. OWCP 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 therefore has broad administrative discretion in choosing means to achieve this goal. The only limitation on OWCP'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.⁴

ANALYSIS

Dr. Williamson requested authorization for a left knee arthroplasty. He indicated in his February 15 and September 12, 2012 reports that appellant's left knee had deteriorated to the point where it had rendered him totally disabled. Appellant ambulated with a walker and was unstable on his feet. Dr. Williamson stated that appellant's symptoms stemmed from meniscal pathology combined with underlying osteoarthritis. He advised that radiographic testing demonstrated advanced medial compartment osteoarthritis of the left knee. Dr. Williamson asserted that conservative measures to treat appellant's left knee symptoms were unsuccessful and he recommended left knee replacement surgery. He noted, however, that the procedure would not necessarily resolve symptoms from osteoarthritis. Dr. Williamson requested authorization for a left knee arthroplasty on September 14, 2012. By letters dated September 18 and October 3, 2012, OWCP informed appellant that it required additional medical evidence to support his request for authorization of left knee joint surgery; specifically, to support why the procedure was necessitated

² *Id.*

³ *Id.* at § 8103.

⁴ *Daniel J. Perea*, 42 ECAB 214 (1990).

by the accepted condition. Appellant did not submit any additional evidence. By decision dated November 19, 2012, OWCP denied authorization for left knee replacement surgery.

The only restriction on OWCP's authority to authorize medical treatment is one of reasonableness. Dr. Williamson did not provide sufficient medical rationale to support the causal relationship between appellant's accepted condition and the proposed left knee replacement surgery. He asserted that appellant was totally disabled due to his accepted left knee condition as a result of meniscal pathology and osteoarthritis. Dr. Williamson did not provide adequate rationale addressing how the left knee injury in 1966 gave rise to either the meniscal pathology or contributed to the diagnosed osteoarthritis. The record contains no contemporaneous medical evidence to causally connect the proposed left knee replacement surgery to the left knee injury accepted more than 40 years ago. OWCP did not abuse its discretion by denying appellant's request for surgery of his left knee. The Board will affirm the November 19, 2012 decision.

CONCLUSION

The Board finds that OWCP did not abuse its discretion in denying appellant authorization for left knee surgery.

ORDER

IT IS HEREBY ORDERED THAT the November 19, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 23, 2013
Washington, DC

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

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

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