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

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| **M.R., Appellant** | ) | |
| **and** | ) | **Docket No. 17-0678** |
| | ) | **Issued: August 11, 2017** |
| **U.S. POSTAL SERVICE, POST OFFICE, Parkersburg, WV, Employer** | ) | |

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

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

### ***JURISDICTION***

On February 3, 2017 appellant, filed a timely appeal from a December 28, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

### ***ISSUE***

The issue is whether OWCP properly declined to authorize a left total knee arthroplasty.

### ***FACTUAL HISTORY***

On August 24, 2016 appellant, a 54-year-old city carrier, filed an occupational disease claim (Form CA-2) for a left knee condition that he attributed to 28 years of walking on concrete and uneven surfaces, and ascending/descending steps while carrying a 35-pound mailbag. He

[1] 5 U.S.C. § 8101 *et seq.*

identified May 12, 2016 as the date he first realized that his condition was employment related. Appellant reported having torn his left meniscus in 2004. He also had underwent three left knee surgical procedures, including a January 15, 2007 unicompartmental knee arthroplasty. Appellant stated that, since May 12, 2016, his left knee had been popping and giving out. He also noted that he had recently been advised that he needed a full knee replacement.

In an August 10, 2016 report, Dr. Adolph V. Lombardi, a Board-certified orthopedic surgeon, advised that appellant reported a three-month history of constant left knee pain, swelling, instability, popping, locking, and giving away. He noted that appellant had previously undergone a left medial, unicompartmental arthroplasty in 2007. Dr. Lombardi advised that recent left knee x-rays revealed a collapse of the tibial medial component, with subsidence of tibial plate, progression of lateral compartment osteoarthritis, and lucency around the femoral peg. He diagnosed bilateral knee osteoarthritis, status post left medial knee unicompartmental, and failed arthroplasty secondary to mechanical complications. Dr. Lombardi reported that appellant had failed conservative modalities secondary to pain, limited function, and a mechanical complication on the left. Therefore, he recommended additional surgery -- "conversion to total knee arthroplasty." Dr. Lombardi explained that after appellant's surgery he returned to work as a postman, and had been walking approximately one mile on his daily route. He further explained that appellant subsequently developed medial compartment collapse. Appellant continued to work and experienced a collapse of his lateral compartment secondary to daily walking on his mail route.

Dr. Lombardi also submitted an August 16, 2016 attending physician's report (Form CA-20) with a diagnosis of failed left knee arthroplasty. He attributed appellant's failed uni-arthroplasty to "job requirements of walking mail route." Dr. Lombardi explained that continuous walking accelerated the failure and development of lateral osteoarthritis. He also reiterated the recommended surgical conversion to total knee arthroplasty.

In a September 21, 2016 report, Dr. Lombardi reiterated his previous findings and conclusions and opined that appellant developed left knee osteoarthritis as a result of the daily walking on his postal route. He noted that after appellant underwent a medial unicompartmental arthroplasty of the left knee, appellant continued working on his daily mail route and had now developed osteoarthritis of the lateral compartment of his left knee, leading to the need for a total knee arthroplasty.

On November 17, 2016 OWCP advised appellant that his claim was accepted for aggravation of left knee osteoarthritis.

On November 28, 2016 Dr. Lombardi formally requested authorization for left knee surgery.

OWCP referred the request to Dr. William Tontz, an orthopedic surgeon and district medical adviser (DMA). In a December 20, 2016 report, Dr. Tontz reviewed appellant's medical history and opined that the proposed left total knee arthroplasty was not medically necessary. He advised that the criteria for knee joint replacement included conservative care with subjective findings, which included range of motion of less than 90 degrees and a body mass index (BMI) of less than 35 degrees. Dr. Tontz also advised that the patient should be older than 50 years of age and present findings on standing radiographs of significant loss of chondral clear space. He

asserted that the clinical information provided demonstrated insufficient evidence to support a total knee arthroplasty. Dr. Tontz advised that there was no documentation from the August 10, 2016 examination notes showing an updated BMI. He further noted that x-rays of the left knee showed a medial unicompartmental with collapse of the tibial medial component, subsidence of the tibial plate, progression of lateral compartment osteoarthritis, and lucency around the femoral peg. Based on these findings, the DMA determined that the proposed left total knee arthroplasty was not medically necessary. However, he concurred with Dr. Lombardi's opinion that appellant's left knee condition was employment related.

On December 28, 2016 OWCP informed appellant that it had denied authorization for a total knee replacement and stated that the "enclosed Notice of Decision [explained] why medical authorization [had been] denied." It further noted that it had enclosed a copy of the DMA's December 20, 2016 report. The December 28, 2016 correspondence also included a notice of appeal rights, as well as an appeal request form.

## ***LEGAL PRECEDENT***

An injured employee is entitled to receive all medical services, appliances, or supplies which a qualified physician prescribes or recommends and which OWCP considers necessary to treat the work-related injury.[2] OWCP has broad discretion in reviewing requests for medical services under 5 U.S.C. § 8103(a), with the only limitation on its authority being that of reasonableness.[3] Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or administrative actions which are contrary to both logic and probable deductions from established facts.[4]

While OWCP is obligated to pay for treatment of work-related conditions, appellant has the burden of proof to establish that the medical expenditure was incurred for treatment of the effects of a work-related injury or condition.[5] Proof of causal relationship must include rationalized medical evidence.[6] In addition to demonstrating causal relationship, the injured employee must show that the requested services, appliances, or supplies are medically warranted.[7]

## ***ANALYSIS***

The Board finds that the case is not in posture for decision. OWCP accepted appellant's occupational disease claim for aggravation of left knee osteoarthritis. Dr. Lombardi, appellant's treating physician, recommended that appellant undergo a left total knee arthroplasty. In

[2] 5 U.S.C. § 8103(a); 20 C.F.R. § 10.310(a).

[3] *Joseph E. Hofmann*, 57 ECAB 456, 460 (2006).

[4] *Id.*; *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

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

[6] *Supra* note 3.

[7] *Id.* at 460-61.

November 2016, he formally requested authorization for left knee surgery. In a December 20, 2016 report, the DMA, Dr. Tontz, recommended that OWCP deny authorization for the requested surgery. He opined that the proposed left total knee arthroplasty was not medically necessary.

In a December 28, 2016 report, OWCP notified appellant that authorization for the requested surgery had been denied. It provided him a copy of the DMA's reports, along with a notice of appeal rights and an appeal request form. However, OWCP neglected to include a copy of the referenced "Notice of Decision" that reportedly explained why the request for authorization had been denied.

In deciding matters pertaining to a given claimant's entitlement to FECA benefits, OWCP is required both by statute and regulation to make findings of fact.[8] OWCP's procedure manual further specifies that a final decision of OWCP "should be clear and detailed so that the reader understands the reason for the disallowance of the benefit and the evidence necessary to overcome the defect of the claim."[9] The above-noted requirements regarding the format and content of an OWCP final decision are supported by Board precedent.[10]

Because the December 28, 2016 correspondence did not include the referenced "Notice of Decision," OWCP did not fully comply with applicable statutory and regulatory requirements.[11] Accordingly, the case shall be remanded for issuance of an appropriate final decision.

## ***CONCLUSION***

The Board finds that the case is not in posture for decision.

[8] Pursuant to 5 U.S.C. § 8124(a), OWCP "shall determine and make a finding of facts and make an award for or against payment of compensation." Additionally, 20 C.F.R. § 10.126 provides in pertinent part that the final decision of OWCP "shall contain findings of fact and a statement of reasons."

[9] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5c(3)(e) (February 2013).

[10] *See D.K.*, Docket No. 15-1769 (issued April 4, 2016); *G.J.*, Docket No. 14-0528 (issued October 16, 2014).

[11] *See supra* note 8.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the December 28, 2016 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision.

Issued: August 11, 2017
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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