U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CONSTANTINO CHIARELLI and DEPARTMENT OF TRANSPORTATION, U.S. COAST GUARD, Governors Island, NY

Docket No. 99-971; Submitted on the Record;
Issued January 24, 2001

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof to establish a consequential back injury, due to his accepted employment-related left knee injury.

In this case, the Office of Workers' Compensation Programs accepted that on February 1, 1996 appellant, then a 34-year-old firefighter, sustained a traumatic injury to his left knee when he was struck by a heavy hose coupling while in the performance of duty. The Office initially accepted the claim for a left knee contusion and later expanded its acceptance to include a left meniscal tear. On an August 19, 1996 attending physician's report, Form CA-20a, and accompanying office note, Dr. Michael Soojian, appellant's treating orthopedist, diagnosed chondromalacia of the patella and lumbar strain and requested authorization for knee surgery as well as for appellant to receive physical therapy for his lumbar spine due to his limping. On September 8, 1996 the Office authorized the requested knee surgery and additionally authorized 10 weeks of physical therapy for appellant's lumbar spine. On November 11, 1996 appellant underwent arthroscopic lateral release with proximal realignment of the patella. Appellant continued to experience lumbar pain and spasms and an x-ray of appellant's lumbar spine taken on October 7, 1996 revealed early osteoarthritic changes. By letter dated January 23, 1997, Dr. Thomas Courtney, a chiropractor, stated that he had treated appellant nine times since April 9, 1996 and in his opinion, appellant's altered gate due to his knee condition was a contributing cause of appellant's back problems.

On February 24, 1997 at the request of the Office appellant underwent a second opinion examination by Dr. Anthony G. Puglisi. In his report, Dr. Puglisi diagnosed status post contusion of the left knee with stabile medial meniscal tear, but aside from noting appellant's complaints of back pain, did not offer any comment or opinion on appellant's back condition.

Appellant continued to experience knee and low back pain, as noted by Dr. Soojian on his March 17 and April 15, 1997 attending physician's reports and by letter dated April 29, 1997, Dr. Soojian stated that appellant had a lumbar sprain due to his inability to walk properly and that a regimen of therapy was ordered to reduce the pain and inflammation. He requested that

both the postoperative left knee therapy and lumbar spine therapy be continued, explaining again that appellant walked favoring his knee which caused pain and discomfort to his lower spine.

By letter dated May 15, 1997, the Office authorized an additional 90 days of physical therapy for appellant's knee, but declined to authorized additional therapy for appellant's spine pending the receipt of additional rationalized medical evidence.

In a report dated May 22, 1997, Dr. Soojian noted appellant's history of having been struck on the knee by a hose coupling and stated that "as a result of the injury, the patient developed lumbosacral pain, secondary to his altered gait and continues to require chiropractic therapy." He additionally stated that appellant continued to experience knee pain, required surgical arthroscopic examination with possible repair of the medial meniscus and continued to have persistent lumbosacral pain and left sacroiliac joint pain, due to his altered gait. Dr. Soojian formally requested authorization for arthroscopic knee surgery and for continued chiropractic care for appellant's lumbosacral pain and sacroiliac joint pain. On an accompanying attending physician's report, he diagnosed internal derangement of the left knee and right SI joint sacroiliitis and indicated by checkmark that these conditions were causally related to appellant's accepted employment injury.

In a report dated July 17, 1997, Dr. Soojian noted that appellant was still suffering from internal derangement of the left knee and lumbar sprain with sacroiliitis and further noted that recent x-rays of appellant's pelvis were normal. He renewed his request for authorization for left knee arthroscopic surgery and additionally requested authorization for magnetic resonance imaging (MRI) of appellant's back.

By letter dated November 18, 1997, the Office authorized the left knee surgery and an MRI of appellant's lumbar spine, as requested. The Office declined to authorize any additional physical therapy, chiropractic or otherwise, pending the receipt of a detailed rationalized medical report explaining the necessity for such therapy.[1] An MRI of appellant's spine, performed on December 4, 1997, revealed degenerative disc disease from L3-S1, schmorl nodes involving L3-4, bulging disc from L3-S1, hemangioma of the body of S3 and no evidence of a herniated disc.

On attending physician's reports dated December 19, 1997 and February 9, 1998, Dr. Soojian again diagnosed lumbar sprain and sacroiliitis, in addition to appellant's knee conditions and indicated by checkmark that the diagnosed conditions were causally related to appellant's employment injury.

[1] The Office also advised appellant that should additional therapy be approved, pursuant to section 8101(2) of the Federal Employees' Compensation Act, reimbursable chiropractic services would be limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist. The Board notes, however, with respect to treatment provided by Dr. Courtney, regardless of whether appellant has a subluxation, as Dr. Soojian, appellant's treating physician, clearly recommended that appellant receive medical services provided by the chiropractor, these services may be potentially covered pursuant to 5 U.S.C. § 8103, which provides coverage for treatment likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of compensation.

By letter dated May 6, 1998, appellant's treating chiropractor Dr. Courtney, requested authorization for chiropractic treatment for appellant's back condition and explained that appellant's knee condition had caused him to alter his gait, which in turn exacerbated his low back condition.

In a decision dated May 28, 1998, the Office denied appellant's claim for a consequential back injury due to his accepted employment-related knee condition.

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

Appellant asserts that his low back condition was caused by his altered gait, which was a consequence of his accepted left knee condition. It is an accepted principle of workers' compensation law and the Board has so recognized, that when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause which is attributable to the employee's own conduct.[2] Once the work connected character of any condition is established, "the subsequent progression of that condition remains compensable so long as the worsening is not shown to have been produced by an independent nonindustrial cause."[3]

The Board notes that appellant bears the burden of proof to establish his claim for a consequential injury in the form of a lumbar sprain and sacroiliitis due to his left knee injury and related surgeries.[4] As part of this burden, appellant must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.[5] Rationalized medical evidence is evidence which relates a work incident or factors of employment to a claimant's condition, with stated reasons of a physician.[6] The opinion of the physician must be one of reasonable medical certainty and must be supported by medical

[2] Larson, *The Law of Workers' Compensation* § 13.00; *see John R. Knox*, 42 ECAB 193 (1990). In discussing how far the range of compensable consequences is carried, once the primary injury is causally connected with the employment, Professor Larson notes: "When the question is whether compensability should be extended to a subsequent injury or aggravation related in some way to the primary injury, the rules that come into play are essentially based upon the concepts of direct and natural results" and of claimant's own conduct as an independent intervening cause. The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury. Larson § 13.11.

[3] *Id*. at § 13.11(a); *see also Robert W. Meeson*, 44 ECAB 834 (1993) (where the Board determined that striking a deer in an automobile accident constituted an independent intervening cause which broke the chain of causation with respect to a claimant's prior employment back injury); *Anthony S. Wax*, 7 ECAB 330 (1954).

[4] An employee seeking benefits under the Act has the burden of establishing the essential elements of his or her claim including the fact that the injury that any disability or specific condition, for which compensation is claimed is causally related to the employment injury; *see Elaine Pendleton*, 40 ECAB 1143 (1989).

[5] *See Kathryn Haggerty*, 45 ECAB 383 (1994); *Lucretia M. Nielson*, 42 ECAB 583 (1991).

[6] *Gary L. Fowler*, 45 ECAB 365 (1994); *Debra A. Kirk-Littleton*, 41 ECAB 703 (1990); *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (finding that a medical opinion not fortified by medical rationale is of little probative value).

rationale explaining the nature of relationship of the diagnosed condition and the specific employment factors or employment injury.[7]

Appellant submitted numerous attending physician's form reports from Dr. Soojian, his treating orthopedic surgeon, on which the physician diagnosed lumbar strain and sacroiliitis, in addition to the accepted knee conditions and indicated by checkmark that these conditions were causally related to appellant's accepted knee condition. In addition, Dr. Soojian submitted a narrative report dated May 22, 1997, in which he explained that as a result of appellant's accepted knee condition, appellant developed an altered gait, which in turn caused him to develop persistent lumbosacral and sacroiliac joint pain, requiring therapy.[8] Applying the principles noted above regarding a consequential injury, the Board finds that the medical reports taken as a whole constitute sufficient evidence in support of appellant's claim to require further development by the Office as they provide support that appellant's back condition is causally related to the February 1, 1996 accepted knee injury. Although these reports are insufficient to discharge appellant's burden of establishing that his condition is causally related to the February 1, 1996 employment injury, in the absence of medical evidence to the contrary, the reports constitute sufficient evidence in support of appellant's claim to require further development of the record by the Office.[9] It is well established that proceedings under the Act[10] are not adversarial in nature[11] and while the claimant has the burden to establish entitlement to compensation the Office shares responsibility in the development of the evidence.[12] On remand the Office should compile a statement of accepted facts and refer appellant, together with the complete case record and questions to be answered, to a Board-certified specialist for a detailed opinion on the relationship of appellant's diagnosed back conditions and the February 1, 1996 employment injury. After such development as the Office deems necessary, a *de novo* decision shall be issued.

[7] *Id*.

[8] Appellant additionally submitted several reports from his treating chiropractor, Thomas J. Courtney, explaining the causal relationship between appellant's altered gait and his back condition. Under section 8101(2) of the Act chiropractors are considered physicians and their reports considered medical evidence, only to the extent that they treat spinal subluxations as demonstrated by x-ray to exist. *Theresa M. Fitzgerald*, 47 ECAB 689 (1996). As appellant has not been diagnosed with spinal subluxation, Dr. Courtney's opinion cannot be considered a medical opinion and, therefore, has no probative value on the issue of causal relationship. *Id.*

[9] *See John J. Carlone*, 41 ECAB 354 (1989).

[10] 5 U.S.C. §§ 8101-8193.

[11] *See, e.g., Walter A. Fundinger, Jr.*, 37 ECAB 200 (1985).

[12] *See Dorothy L. Sidwell*, 36 ECAB 699 (1985).

The decision of the Office of Workers' Compensation Programs dated May 28, 1998 is hereby set aside and remanded to the Office in accordance with this decision of the Board.

Dated, Washington, DC
January 24, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member