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M.K., Appellant)	
)	
and)	Docket No. 08-354
)	Issued: May 22, 2008
U.S. POSTAL SERVICE, POST OFFICE,)	
Philadelphia, PA, Employer)	
)	

Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On November 14, 2007 appellant filed a timely appeal from the December 27, 2006 and July 5, 2007 merit decisions of the Office of Workers' Compensation Programs, which denied his claim of consequential injury and additional impairment. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case.

ISSUE

The issue is whether appellant developed a knee, hip or back injury as a consequence of his employment-related ankle and foot injuries, causing additional impairment.

FACTUAL HISTORY

On May 14, 1994 appellant, then a 44-year-old mail handler, filed a claim alleging that his bilateral plantar fasciitis was a result of his federal employment: “Condition began within 45 days of original injury and has progressed to date. Condition dramatically improves when not

standing on job-site floors.”¹ The Office accepted his claim for bilateral plantar fasciitis and bilateral subtraumatic subtalar arthritis. Appellant received a schedule award for a 15 percent impairment of his right lower extremity and a 14 percent impairment of his left lower extremity.

A conflict in medical opinion arose on the extent of appellant’s permanent impairment. On March 6, 2006 an Office hearing representative directed the Office to refer appellant to an impartial medical specialist to determine whether he developed a knee, hip or back condition in any way causally related to his accepted ankle and foot injuries. “After having addressed such,” the hearing representative stated, “the physician should then address in terms of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, fifth edition, all permanent impairment experienced by the claimant as a result of all employment-related conditions either by injury or consequential injury related thereto.”

The Office referred appellant, together with the case file and a statement of accepted facts, to Dr. Noubar A. Didizian, a Board-certified orthopedic surgeon. On November 29, 2006 Dr. Didizian reviewed appellant’s history and symptoms and described his findings on physical examination. He noted that appellant’s gait pattern was alternating with all three stages of gait analysis. Appellant was walking at a slower pace, with or without a cane. He was able to stand on his toes and heels holding the examination table but indicated that he could not do so independently without a cane.

Dr. Didizian found that appellant had a three percent pain-related impairment of each lower extremity due to the ankles. He also found a three percent pain-related impairment of each lower extremity due to the knees. Dr. Didizian did not report impairment due to the hips or low back.²

On the issue of consequential injury, Dr. Didizian offered the following opinion:

“I do not have any scientific work to indicate that if someone has plantar fasciitis or ankle sprain he/she will develop eventual knee pathology, hip pathology or back pathology. I would be interested in reading such a scientific publication if there is one in existence.”

In a decision dated December 27, 2006, the Office denied an additional schedule award. The Office found that Dr. Didizian’s opinion represented the weight of the medical evidence and established no consequential injury to the knees, hips or back and only a three percent impairment of each lower extremity. On July 5, 2007 an Office hearing representative affirmed the denial of an additional schedule award.

¹ Appellant was recovering from an employment-related left ankle sprain on February 24, 1989 (OWCP File No. 0301406230) when he filed his claim for bilateral plantar fasciitis. Other preexisting injuries include a right leg and ankle fracture in December 1990, a left ankle sprain in February 1993 and a right ankle sprain in August 1993. Appellant also has congenital subtalar joint coalition.

² Dr. Didizian reported no range of motion measurements for the hips.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of his duty.³ It is an accepted principle of workers' compensation law 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 attributable to the employee's own intentional conduct.⁴

If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.⁵ When there exist opposing medical reports of virtually equal weight and rationale, and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁶ When the Office secures an opinion from an impartial medical specialist for the purpose of resolving a conflict in the medical evidence and the opinion from the specialist requires clarification or elaboration, the Office has the responsibility to secure a supplemental report from the specialist for the purpose of correcting a defect in the original report.⁷

ANALYSIS

The opinion of Dr. Didizian, the impartial medical specialist, requires clarification and elaboration on the issue of consequential injury. He limited his discussion to two sentences. It is unclear whether Dr. Didizian means that there is no scientific literature to support the development of knee, hip or back pathology as a consequence of plantar fasciitis or ankle sprain, or whether he is simply unaware of such literature and remains open to the possibility. Regardless, he did not support his opinion with medical rationale sufficient to resolve the issue. Dr. Didizian reported that appellant's gait pattern was alternating with all three stages of gait analysis. He did not fully explain whether the accepted ankle and foot injuries caused this alternating gait pattern, whether an alternating gait pattern can physiologically cause a consequential injury to the knees, hips or low back, and if so, whether appellant in fact developed any such consequential injury. The Board finds that Dr. Didizian's report is not well rationalized. Appellant may be entitled to compensation for any knee, hip or low back injury that is consequential to his accepted employment injuries. The impartial medical specialist must therefore provide a well-reasoned opinion to resolve this issue.

³ 5 U.S.C. § 8102(a).

⁴ *John R. Knox*, 42 ECAB 193 (1990); *Lee A. Holle*, 7 ECAB 448 (1955).

⁵ 5 U.S.C. § 8123(a).

⁶ *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

⁷ *Nathan L. Harrell*, 41 ECAB 402 (1990).

The Board will set aside the Office's December 27, 2006 and July 5, 2007 decisions and remand the case for a supplemental report from the impartial medical specialist. Following such further development of the evidence as may be necessary, the Office shall issue an appropriate final decision on the issues of consequential injury and additional impairment.

CONCLUSION

The Board finds that this case is not in posture for decision. The medical evidence requires further development.

ORDER

IT IS HEREBY ORDERED THAT the July 5, 2007 and December 27, 2006 decisions of the Office of Workers' Compensation Programs are set aside. The case is remanded for further action consistent with this opinion.

Issued: May 22, 2008
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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