

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

B.W., Appellant

and

**U.S. POSTAL SERVICE, DETROIT
PERFORMANCE CLUSTER, Detroit, MI,
Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 12-1504
Issued: December 20, 2012**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 3, 2012 appellant filed a timely appeal from the June 19, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her consequential injury claim. 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.²

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained an injury on August 13, 2011 as a consequence of her April 25, 2003 work injury.

¹ 5 U.S.C. §§ 8101-8193.

² Appellant requested an oral argument. The Clerk of the Board mailed a letter to appellant to confirm a continuing desire for an oral argument in Washington, DC. No written confirmation was received. The Board in its discretion has decided the appeal on the case record.

FACTUAL HISTORY

OWCP accepted that on April 25, 2003 appellant, then a 60-year-old clerk, sustained a left knee sprain, left hip joint contracture, lumbosacral sprain and arm contusions when she fell from a broken chair and struck the floor. She continued work in a light-duty position and retired on December 31, 2004.³

On October 28, 2011 appellant telephoned OWCP and asserted that she sustained an injury on August 13, 2011 as a consequence of her April 25, 2003 work injury when she fell to the floor at home while getting out of bed.⁴ She stated that her left knee buckled while getting out of bed and the fall to the floor caused her to injure her head and sustain a nose bleed.⁵

In a January 10, 2012 statement, appellant noted that on August 13, 2011, at 8:00 a.m., she was stepping out of bed and her left knee “went out” from under her. She fell to the floor. Appellant stated that it took her a long time to get up and that she experiencing a great deal of pain. She visited her attending physician on August 19, 2011.

Appellant submitted the findings of an October 21, 2011 magnetic resonance imaging (MRI) scan test of her left knee. It showed a Baker’s cyst in the medial aspect of the popliteal fossa, severe osteoarthritic change in the medial compartment of the knee and less prominent osteoarthritic change in the lateral compartment. Appellant submitted reports dated between December 2011 and January 2012, in which Dr. Prinz reported left knee examination findings. She exhibited tenderness along the medial line and diagnostic testing revealed severe degenerative disease in the medial compartment of her left knee.

In February 10, 2012 letter, OWCP requested that appellant submit additional factual and medical evidence in support of her claim.

In a March 6, 2012 report, Dr. Prinz stated that appellant had exhibited medial joint tenderness in her left knee. He noted that left knee replacement would be a treatment option of last resort. Appellant also resubmitted reports previously of record.

On May 14, 2012 OWCP’s medical adviser reviewed the medical evidence of record and concluded that there was insufficient evidence that appellant’s August 13, 2011 fall was a consequence of her April 25, 2003 work injury. He made note of her preexisting degenerative arthritis and obesity and suggested that these nonwork conditions caused her fall.

³ In June 15, 2005 and September 25, 2009 decisions, OWCP granted a schedule awards for a total left leg impairment of 16 percent.

⁴ Appellant was not receiving OWCP disability compensation at this time.

⁵ The record contains an August 19, 2011 report in which a physician’s assistant indicated that appellant fell on her left knee on August 13, 2011. Swelling and medial joint tenderness were observed in the knee. The findings of August 19, 2011 x-ray testing showed left knee arthritis with severe medial compartment arthritic change, but no acute osseous pathology or fracture. On August 26, 2011 Dr. Paul T. Prinz, an attending Board-certified orthopedic surgeon, stated that appellant returned for a follow-up on her left knee and noted that she had tenderness in her medial joint line and proximal tibia. On September 16, 2011 he reported similar left knee findings and noted, “There is a history of trauma.” It should be noted that medical evidence from 2010 shows that appellant complained of medial line tenderness in her left knee prior to August 13, 2011.

In a June 19, 2012 decision, OWCP denied appellant's claim. It found that she did not submit sufficient medical evidence to establish that she sustained an injury on August 13, 2011 as a consequence of her April 25, 2003 work injury. It determined that none of the medical reports submitted by appellant contained an opinion that her August 13, 2011 fall at home was a consequence of her accepted work injury.

LEGAL PRECEDENT

The general rule respecting consequential injuries is 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 intentional conduct.⁶ A claimant bears the burden of proof to establish a claim for a consequential injury. As part of this burden, he or she must present rationalized medical opinion evidence.⁷

ANALYSIS

OWCP accepted that on April 25, 2003 appellant sustained an upper limb contusion, left knee sprain, lumbosacral sprain and hip joint contracture due to falling from a broken chair and hitting the floor. In October 2011, appellant claimed that she sustained an injury on August 13, 2011, as a consequence of her April 25, 2003 work injury, when she fell to the floor at home while getting out of bed.

The Board finds that appellant did not submit sufficient medical evidence to meet her burden of proof to establish that she sustained an injury on August 13, 2011 as a consequence of her April 25, 2003 work injury.

Appellant submitted several reports, dated between August 26, 2011 and early 2012, in which Dr. Prinz, an attending Board-certified orthopedic surgeon, reported the findings on examination of her left knee and noted that she exhibited tenderness along the medial line. Dr. Prinz stated that diagnostic testing revealed severe degenerative disease in the medial compartment of her left knee.

None of the medical reports of Dr. Prinz contained any opinion addressing how appellant's August 13, 2011 fall at home occurred as a consequence of her April 25, 2003 work injury. Dr. Prinz did not provide any discussion of appellant's April 25, 2003 injury or the August 13, 2011 fall at home. He noted that appellant had severe degenerative disease in the medial compartment of her left knee, but did not explain whether the April 25, 2003 work injury contributed to this condition. Appellant has not submitted any medical evidence relating her claimed August 13, 2011 consequential injury to her April 25, 2003 work injury. There is no medical evidence showing that the April 25, 2003 fall was a natural consequence that flowed from the April 25, 2003 injury.⁸

⁶ S.S., 59 ECAB 315 (2008).

⁷ Charles W. Downey, 54 ECAB 421 (2003).

⁸ See *supra* note 6. Moreover, on May 14, 2012, OWCP's medical adviser indicated that there was no evidence that appellant's August 13, 2011 fall was a consequence of her April 25, 2003 work injury.

For these reasons, appellant did not meet her burden of proof to establish that she sustained an injury on August 13, 2011 as a consequence of her April 25, 2003 work injury.⁹

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained an injury on August 13, 2011 as a consequence of her April 25, 2003 work injury.

ORDER

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

Issued: December 20, 2012
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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

⁹ On appeal, appellant questioned why OWCP had indicated in its June 19, 2012 decision that she sustained a left knee injury in 1986. The Board notes that OWCP did not indicate that she sustained a left knee injury in 1986, but rather that OWCP was referring to a Board case involving another claimant as a means of explaining Board precedent for establishing a consequential injury.