

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JANICE L. MUHAMMAD and U.S. POSTAL SERVICE,
POST OFFICE, Kansas City, MO

*Docket No. 03-1284; Submitted on the Record;
Issued November 4, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether appellant has established that her right knee condition is a consequential injury of her accepted bilateral ankle condition; and (2) whether the Office of Workers' Compensation Programs properly refused to reopen appellant's claim for further review of the merits.

On August 25, 1999 appellant, then a 43-year-old flat sorting machine operator, noticed that her feet began to swell and became painful while working overtime and during prolonged standing. The Office accepted appellant's claim for bilateral Achilles' tendinitis with a subsequent debridement and calcaneal ostectomy and paid her appropriate compensation. Appellant has been working as a modified distribution clerk since February 27, 2002.

On October 2, 2002 appellant filed a claim for a consequential injury to her right knee which she attributed to wearing an ankle brace while driving and placing her right leg under her left leg. In a letter dated October 11, 2002, the Office advised appellant of the information required to support her claim for a consequential injury. This included a medical explanation with supporting medical rationale to explain how appellant's accepted condition or work factors contributed to her current condition. Appellant submitted medical evidence which included an October 8, 2002 letter from Dr. Joe A. Ramsey, a Board-certified internist, and treatment notes dated October 23 and November 13, 2002 from Dr. Stanley A. Bowling, a Board-certified orthopedic surgeon, which noted appellant's status and indicated that there was evidence of a medial meniscus tear, as shown by magnetic resonance imaging (MRI) scan, for which arthroscopic surgery was indicated. The evidence, however, did not address the relationship of the right knee condition to the accepted conditions or appellant's work factors.

By decision dated November 20, 2002, the Office denied appellant's claim for a consequential injury on the grounds that the medical evidence did not establish that appellant's

right knee condition was related to her accepted conditions arising from the August 25, 1999 work injury.¹

On January 9, 2003 appellant requested reconsideration and submitted additional evidence which showed that her right knee condition was determined by an MRI scan to be a medial meniscus tear for which she underwent surgical repair on December 12, 2002. None of the medical evidence submitted contained a rationalized medical opinion on causal relationship between appellant's current right knee meniscus condition and her accepted bilateral ankle condition.

In a decision dated February 13, 2003, the Office denied modification of the November 20, 2002 decision.

On March 3, 2003 appellant again requested reconsideration and submitted an April 27, 2003 medical excuse note and an April 27, 2003 chart note from Dr. Bowling noting the status of appellant's right knee.

In a decision dated April 24, 2003, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was cumulative in nature and not sufficient to warrant review of its prior decision.

The Board finds that appellant has not established that her right knee condition is a consequential injury of her accepted bilateral ankle 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 intentional conduct.² The subsequent injury is compensable if it is the direct and natural consequence of a compensable primary injury.³

In discussing how far the range of compensable consequences is carried, once the primary injury is causally connected with the employment, Professor Larson notes in his treatise:

"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.

¹ By decision dated December 20, 2002, the Office awarded appellant a 15 percent permanent impairment to her right lower extremity. As appellant has not contested this decision on appeal, the Board will not address the merits of the schedule award decision.

² Larson, *The Law of Workers' Compensation* § 10.00 (2000); see also John R. Knox, 42 ECAB 193 (1990).

³ Larson, *supra* note 2 at § 10.01 (2000); see also Dana Bruce, 44 ECAB 132 (1992).

“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.”⁴

Applying the principles noted above regarding a consequential injury, the Board finds that the medical evidence in this case relevant to appellant’s right knee condition is insufficient to establish that her right knee condition is causally related to the accepted bilateral ankle condition of August 25, 1999.

The medical evidence consists of an October 8, 2002 letter from Dr. Ramsey, a Board-certified internist, copies of the October 24, 2002 MRI scan of the right knee, and numerous treatment notes dated October 23, November 13, December 23, 2002 and January 6 and February 3, 2003 from Dr. Bowling, a Board-certified orthopedic surgeon, which noted appellant’s knee status prior to and after her December 12, 2002 right knee surgery for a medial meniscus tear. The medical evidence of file, however, failed to establish any consequential right knee condition related to the prior accepted bilateral ankle condition. In order to establish causal relationship, a physician’s opinion must be based on a complete factual and medical background and must be supported by medical rationale which establishes that the diagnosed condition resulted from the accepted employment injury. A medical opinion supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to absolute medical certainty, but neither can the opinion be speculative or equivocal.⁵ As appellant failed to provide rationalized medical evidence attributing her right knee condition to the August 25, 1999 bilateral ankle condition, either by precipitation or aggravation, she has failed to meet her burden of proof. Therefore, the Office correctly found that the consequential injury to her right knee had not been established.

The Board further finds that the Office properly refused to reopen appellant’s claim for further review.

To require the Office to reopen a case for merit review under section 8128(a) of the Act,⁶ the Office’s regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) submit relevant and pertinent new evidence not previously considered by the Office.⁷ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.⁸ When a claimant fails to meet one of the above

⁴ See also *John R. Knox*, *supra* note 2; *Larson*, *supra* note 2.

⁵ *Roger Dingess*, 47 ECAB 123 (1995).

⁶ 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, “[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application.” 5 U.S.C. § 8128(a).

⁷ 20 C.F.R. § 10.606(b)(1)-(2).

⁸ *Id.* at § 10.607(a).

standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.⁹

Appellant's March 3, 2003 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, appellant did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2). With respect to the third requirement, submitting relevant and pertinent new evidence not previously considered by the Office, the evidence appellant submitted on reconsideration, an April 27, 2003 medical excuse note and an April 27, 2003 medical chart note from Dr. Bowling reflecting the status of her right knee, although new, is not relevant to the issue of causal relationship and is cumulative in nature to evidence previously of record. As this evidence does not constitute "relevant and pertinent new evidence," it is insufficient to warrant modification of the prior decision.¹⁰

The Board finds that, as appellant did not meet any of the requirements under section 10.606(b)(2), the Office properly denied the request for reconsideration without merit review of the claim.

⁹ 20 C.F.R. § 10.608(b).

¹⁰ Evidence that is repetitious or duplicative of that already in the case record has no evidentiary value in establishing a claim and does not constitute a basis for reopening the claim. *Sandra B. Williams*, 46 ECAB 546 (1995); *Sandra F. Powell*, 45 ECAB 877 (1994).

The April 24 and February 13, 2003 and November 20, 2002 decisions of the Office of Workers' Compensation Programs are hereby affirmed.¹¹

Dated, Washington, DC
November 4, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

¹¹ The Board notes that the record contains new evidence following the Office's April 24, 2003 decision. However, the Board cannot consider evidence that was not before the Office at the time of the final decision; *see Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35 (1952); 20 C.F.R. § 501.2(c)(1). Appellant may resubmit this evidence and legal contentions to the Office accompanied by a request for reconsideration pursuant to 5 U.S.C. § 8128(a). 20 C.F.R. § 501.2(c).