

also indicated that he worked on the saw tooth.¹ Appellant reported any sacks that were overweight to his supervisor. He stated that the saw tooth averaged 100 to 150 bags a night. Appellant noted that usually two people worked the saw tooth but on some nights he had to work the saw tooth by himself. He related that he went to his physician on March 23, 1992 complaining of knee pain. Appellant was referred to an orthopedic surgeon for an examination. The orthopedic surgeon conducted a magnetic resonance imaging (MRI) scan which showed a meniscus tear in the right knee. Appellant stated that lifting heavy weight, such as 70-pound mailbags, hurt his knee to the point where he could barely walk. He stated that the surgery had helped him partially but he could not stand for prolonged periods because the knee would give way. Appellant noted that he still had pain in his knee for which he took medication and used ice.

Appellant submitted a rating decision from the Veterans Administration. The decision indicated that in an October 1984 report appellant slipped on ice and fell, landing on his right knee. The decision noted that an April 8, 1985 x-ray of the left knee showed no acute fracture dislocation but did show mild degenerative changes of the patella-femur articulation. Appellant was awarded a 10 percent impairment rating. Appellant underwent surgery on May 1, 1992 for repair of a medial meniscus tear of the right knee.

In a September 10, 1993 letter, the Office accepted appellant's claim for temporary aggravation of chondromalacia, degenerative torn meniscus of the right knee and degenerative changes in the left knee. The Office also accepted appellant's May 1, 1992 surgery in retrospect.

Appellant filed a claim for a recurrence of disability beginning January 21, 1994. In a March 23, 1994 decision, the Office found that the medical evidence failed to establish that his recurrence of disability from January 22 to 25, 1994 was causally related to appellant's initially accepted, work-related, employment aggravation.

A May 31, 1994 surgical report reveals that appellant underwent a partial medial meniscectomy for a cystic medial meniscus in the left knee. In a September 13, 1995 report, Dr. R.A. Hutson, a Board-certified orthopedic surgeon, indicated that appellant had a history of a left knee injury at work when a table collapsed and landed on his left knee. Dr. Hutson noted that appellant had a cystic medial meniscus of the left side.

On June 6, 1996 the Office issued a schedule award for an 11 percent impairment of the right leg. Appellant requested a hearing before an Office hearing representative. In a December 31, 1996 decision, the Office hearing representative found that the case was not in posture for a hearing. She stated that in a separate claim, appellant had been awarded a 33 percent schedule award for the left leg. The Office then cancelled a second schedule award for the left leg and directed appellant to return the compensation he had received under the schedule award. The hearing representative instructed the Office to combine the case records regarding the left leg and remanded the case for further development. In an April 11, 1997 decision, the Office issued a schedule award for an additional 25 percent permanent impairment of the right leg. In an accompanying memorandum, the Office noted that the Office medical adviser had

¹ A saw tooth platform is a platform for sorting sacks, surrounded by nutting trucks placed in a sawtooth pattern for easy loading.

indicated that appellant had a 38 percent permanent impairment of the left leg. It pointed out that appellant had received a schedule award for a 33 percent permanent impairment of the left leg and was receiving a second schedule award for a 7 percent permanent impairment when it cancelled the second schedule award. The Office indicated that appellant was entitled to an additional 5 percent permanent impairment of the left leg but had received 5.258 percent of the second schedule award at the time it was cancelled. The Office therefore concluded that appellant had received his schedule award compensation for the left leg. The overpayment was deducted from appellant's schedule award for the right leg.

In an October 2, 1997 report, Dr. John R. McCarroll, a Board-certified orthopedic surgeon, stated that appellant was having considerable back problems with pain over his left sacroiliac joint. He commented that appellant probably had a sacroiliac joint instability or arthritis in the area.² In an October 13, 1997 report, Dr. McCarroll stated that an MRI scan of the back showed changes in the right L5 pedicle suggestive of occult spondylolysis, indicating degenerative arthritic changes in appellant's back.

In a March 4, 2002 letter, appellant stated that he was pursuing his case as a consequential injury due to his prior accepted conditions of both knees and right hip. He contended that the chair provided by the employing establishment was not the direct cause of his back condition. Appellant related the back condition to the abnormal gait of his legs caused by his knee injuries.

Appellant submitted an August 15, 2000 report from Dr. John Shay, a Board-certified orthopedic surgeon, who stated that appellant had back problems beginning in 1994 after knee surgery. He noted that the symptoms were primarily on the left side. Dr. Shay stated that appellant currently had left lower lumbar pain which was aggravated by bending. He noted that a July 2000 MRI scan showed some facet inflammation in the left L4-5 facet. Dr. Shay found no obvious herniated disc. He diagnosed chronic lumbar syndrome with left lower lumbar pain, occasional radiation of pain into the left, and no focal neurologic symptoms. In an August 29, 2000 report, Dr. Shay noted that appellant asked whether his lower back complaints could be the result of an abnormal gait secondary to wearing a brace on his left knee. He commented that appellant's MRI scan and x-rays showed some evidence of degenerative disease in the lumbar region which was unlikely to be the result of his abnormal gait. Dr. Shay stated that it was certainly possible that the degenerative back condition could have been aggravated by an abnormal gait.

Appellant submitted a March 21, 2001 report from Dr. McCarroll who stated that appellant had degenerative arthritis of the knees. He noted that appellant also discussed his back although another physician treated him for the back problem. Dr. McCarroll indicated that an abnormal gait could cause an aggravation of a back condition. He noted that multiple people in his practice who did not have a back problem would have back pain after a knee injury which would not resolve until the knee injury was straighten out. Dr. McCarroll stated that the more appellant's knees had become affected, his flexibility was affected which obviously affected his

² The record contains a September 15, 1997 decision by an Office hearing representative who found that appellant had not met his burden of proof in establishing that his back condition was causally related to his use of the chair provided by the employing establishment.

back. He also commented that the problem with a painful gait would affect his back because he did not walk normally. Dr. McCarroll concluded that he thought “it is certainly a fact that knees can certainly aggravate one’s back.”

In a September 26, 2002 report, Dr. McCarroll addressed the issue of the relationship between appellant’s degenerative bilateral knee condition and his back pain. He stated that back problems could certainly be aggravated by an abnormal gait. Dr. McCarroll commented that, if someone had arthritic knees and limped, he or she would have difficulty walking and climbing because of the knee condition which would put strain on the back and could cause back pain. He indicated that many people who had appellant’s problems had back pain which they needed to be treated. Dr. McCarroll pointed out that arthritic knees would not cause degenerative diseases of the back or disc disease. He stated that the knee condition just caused back pain and aggravation of the back because of the difficulty patients would have getting around. Dr. McCarroll noted that there was no doubt that appellant limped because of his arthritic knees and had difficulty walking, climbing and squatting. He indicated that these activities would bother appellant’s back at times. Dr. McCarroll commented, however, that he could not believe that appellant was walking very much or working so much that the back pain would bother him enough for him to relate the back pain to his knees. He stated that he could not and would not reach that conclusion. Dr. McCarroll concluded that knee problems could aggravate the back.

Appellant also submitted an August 21, 2002 report from Dr. Eric E. Awwad who stated that an August 20, 2002 MRI scan showed the L3-4 disc was unremarkable and the L5-S1 disc was within normal limits. Dr. Awwad found a probable left paracentral disc herniation at L4-5 with questionable involvement of the left L4 nerve root. He recommended clinical correlation.

In a June 12, 2003 decision, the Office denied appellant’s claim that his back condition was caused by his employment-related bilateral knee condition because the medical evidence of record did not establish that he had sustained a degenerative back condition consequential to his bilateral knee condition.

In a June 23, 2003 letter, appellant requested a hearing before an Office hearing representative, which was conducted on January 27, 2004. In a May 4, 2004 decision, the Office hearing representative found that the medical evidence did not support appellant’s claim that he sustained a back injury caused or aggravated by an abnormal gait arising from his employment-related knee injuries. He affirmed the Office’s June 12, 2003 decision.

LEGAL PRECEDENT

The Board has recognized the 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 which is attributable to the employee’s own intentional

conduct.³ An employee has the burden of establishing that any specific condition for which compensation is claimed is causally related to the employment injury.⁴

ANALYSIS

Appellant contended that his degenerative back condition was caused or aggravated due to the abnormal gait caused by the employment injuries to his knees that resulted in degenerative arthritis in the knees. Appellant submitted medical evidence in support of his claim. However, the Board finds that the medical evidence does not establish that his back condition is causally related to the employment injuries to his knees. Dr. McCarroll, in a March 21, 2001 report, indicated that an abnormal gait could aggravate a back condition. This opinion is equivocal and speculative and therefore insufficient to meet appellant's burden of proof. In a September 26, 2002 report, Dr. McCarroll stated that appellant's arthritic knees would not cause degenerative diseases of the back or disc disease. He indicated that the bilateral knee condition would just cause back pain and aggravation of the back due to the difficulty appellant would have in getting around. In an August 29, 2000 report, Dr. Shay stated that appellant's abnormal gait was unlikely to cause his degenerative disease of the lumbar region. He commented that it was possible that appellant's abnormal gait aggravated his degenerative back condition. This opinion is also equivocal and speculative. It therefore has little probative value and is insufficient to satisfy appellant's burden of proof.

Dr. Awwad stated that an August 20, 2002 MRI scan showed a probable herniated disc at the L4-5 level with possible involvement of the left L4 nerve root. He indicated that the finding needed clinical correlation. There is no medical evidence of record that would establish that appellant's apparent L4-5 herniated disc was caused or aggravated by the abnormal gait due to his employment-related bilateral knee condition or by any other factor of his employment.

CONCLUSION

Appellant failed to establish that his degenerative back condition was causally related to his accepted bilateral degenerative knee condition by reason of an abnormal gait.

³ *Carols A. Marrero*, 50 ECAB 117, 119-120 (1998); *John Knox*, 42 ECAB 193, 196 (1990).

⁴ *William F. Gay*, 50 ECAB 276, 277 (1999).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs, dated May 4, 2004, is affirmed.

Issued: March 9, 2005
Washington, DC

Alec J. Koromilas
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member