

¹ Docket No. 04-296 (issued August 26, 2004).

a recurrence of disability on and after May 25, 2001 due to her accepted May 10, 1996 employment injury. The Office also informed appellant that her claim alleging that she sustained a consequential right knee injury was being referred to another claims examiner for adjudication. In the August 26, 2004 decision, the Board noted that appellant had submitted medical evidence supporting her contention that “she had an ongoing bilateral knee condition causally related to her May 10, 1996 accepted injury.” The law and the facts of the case as set forth in the Board’s prior decision are hereby incorporated by reference.²

In reports dated December 11, 2002 and February 12, 2003, Dr. Marc Silverman, a treating Board-certified orthopedic surgeon, concluded that appellant sustained a consequential right knee injury. He diagnosed right knee severe to moderate arthritis and patellofemoral and medial narrowing. Dr. Silverman opined that appellant’s severe left knee injury “caused her to compensate towards her right knee to the point that she cannot function due to the severe pain in her right knee.” He noted the medical and factual history of appellant’s left knee injury. Dr. Silverman reported that, in September and October 1996, appellant began to have right knee pain as a result of her “putting a lot of pressure” on that knee to compensate for her left knee injury. As a result of appellant compensating for her left knee injury, Dr. Silverman opined that appellant sustained a consequential right knee injury. He noted that “due to the compensation from her left knee caused her to have a lot of discomfort.”

On October 16, 2006 Dr. Harold H. Alexander, a second opinion physician, diagnosed bilateral knee osteoarthritis and opined that the right knee condition was not employment related. He reported that appellant was a morbidly obese female who walked slowly and in small steps. Range of motion in her right knee was 0 degrees extension and 0 to 85 degrees for flexion. A physical examination of both knees revealed no instability or crepitus with well-healed anterior scars and medial lateral stability and anterior-posterior stability. In support of his conclusion that the right knee was not employment related, Dr. Alexander stated that appellant’s right knee condition was basically a nonwork-related “problem” and her total right knee replacement was due to the underlying osteoarthritis.

By decision dated January 9, 2007, the Office denied appellant’s claim for a consequential right knee injury.

LEGAL PRECEDENT

The basic rule respecting consequential injuries, as expressed by Professor Larson in his treatise, 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 likewise arises out of the employment.³ The subsequent injury is compensable if it is the direct and natural result of a compensable primary injury.⁴ With regard to consequential injuries, the Board has stated that

² Appellant, then a 46-year-old nurse, filed a traumatic injury claim on May 11, 1996 alleging that she injured her left knee on May 10, 1996 in the performance of duty. The Office accepted the claim for ligament pull, left knee sprain and torn medial meniscus.

³ A. Larson, *The Law of Workers’ Compensation* § 13.00 (2000).

⁴ *Id.* at § 13.11.

where an injury is sustained as a consequence of an impairment residual to an employment injury, the new or second injury is deemed, because of the chain of causation, to arise out of and be in the course of employment.⁵

The claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or factors of employment. As part of this burden, the claimant must present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, establishing a causal relationship.⁶

Section 8123(a) of the Federal Employees' Compensation Act provides in pertinent part: 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.⁷ When there are opposing reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a) of the Act, to resolve the conflict in the medical evidence.⁸

ANALYSIS

The Office accepted that appellant sustained ligament pull, left knee sprain and torn medial meniscus as a result of her accepted May 10, 1996 employment injury. The question on appeal is whether appellant sustained a consequential right knee injury.

Appellant contended that her right knee condition was caused by her left knee employment injury. She submitted medical evidence in support of her claim for a consequential injury. In a December 11, 2002 report, Dr. Silverman, an attending Board-certified orthopedic surgeon, diagnosed right knee severe to moderate arthritis and patellofemoral and medial narrowing. He opined that appellant's severe left knee injury "caused her to compensate towards her right knee to the point that she cannot function due to the severe pain in her right knee." Dr. Silverman, in a February 12, 2003 report, related that, in September and October 1996, appellant began to have right knee pain due to her "putting a lot of pressure" on that knee in order to compensate for her left knee. He opined that appellant sustained a consequential right knee injury due to compensation for her left knee injury.

Dr. Alexander, an Office referral physician, reviewed the medical evidence and statement of accepted facts and performed a physical examination. He provided a report concerning appellant's medical history, her difficulty walking and diagnosed bilateral knee osteoarthritis.

⁵ *Debra L. Dillworth*, 57 ECAB ____ (Docket No. 05-159, issued March 17, 2006); *Margarette B. Rogler*, 43 ECAB 1034 (1992).

⁶ *Brian E. Flescher*, 40 ECAB 532 (1989).

⁷ 5 U.S.C. § 8123(a); *R.C.*, 58 ECAB ____ (Docket No. 06-1676, issued December 26, 2006); *Darlene R. Kennedy*, 57 ECAB ____ (Docket No. 05-1284, issued February 10, 2006).

⁸ *M.S.*, 58 ECAB ____ (Docket No. 06-797, issued January 31, 2007).

Dr. Alexander concluded that appellant's right knee condition did not constitute a consequential injury of the accepted work-related left knee injury but was due to her arthritis.

The Board finds a conflict in the medical opinion between Dr. Silverman and Dr. Alexander.⁹ The Board will remand the case to the Office for appropriate development of the medical record to determine whether appellant sustained a right knee injury as a consequence of her accepted employment-related left knee injury. On remand the Office should prepare a statement of accepted facts and a list of questions and refer appellant to an appropriate Board-certified physician to determine whether her right knee condition was caused by the employment-related left knee injury. Following this and any other further development as deemed necessary, the Office shall issue an appropriate decision on appellant's claim.

CONCLUSION

The Board finds that the case is not in posture for a decision regarding the issue of whether appellant established that her right knee condition is a consequential injury of her accepted employment-related left knee injury due to an unresolved conflict of medical opinion evidence regarding the cause of her right knee condition.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 9, 2007 is set aside and the case is remanded for further proceedings consistent with the above opinion.

Issued: October 5, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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

⁹ *Bryan O. Crane*, 56 ECAB ____ (Docket No. 05-232, issued September 2, 2005).