United States Department of Labor
Employees' Compensation Appeals Board

L.W., Appellant	)	
and	)	**Docket No. 14-162**
	)	**Issued: April 7, 2014**
DEPARTMENT OF AGRICULTURE, INSPECTION OPERATIONS PROGRAM, Clinton, NC, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 24, 2013 appellant filed a timely appeal from a June 18, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant established that she sustained a right ankle condition, consequential to her accepted July 5, 2012 left knee injury.

FACTUAL HISTORY

On July 9, 2012 appellant, then a 47-year-old meat inspector, filed a claim alleging that she injured her left knee on July 5, 2012 when she slipped on a piece of meat. She stopped work

[1] 5 U.S.C. § 8101 *et seq.*

on July 9, 2012. Appellant submitted a July 11, 2012 excuse slip from Dr. David R. Parker, a specialist in family medicine, placing her off work from July 11 to 24, 2012.

By letter dated August 2, 2012, OWCP advised appellant that it required additional factual and medical evidence to determine whether she was eligible for compensation benefits. It had administratively authorized payment for a limited amount of medical expenses and no lost time. The merits of appellant's claim were not formally considered. As she had not yet returned to work in a full-time capacity, OWCP had reopened the claim for consideration. It asked appellant to submit a comprehensive medical report from a treating physician describing her symptoms and an opinion as to whether her left knee condition was causally related to the July 5, 2012 work incident.

In a September 5, 2012 decision, OWCP denied appellant's claim. It found that she failed to submit sufficient medical evidence to establish her left knee injury was related to the July 5, 2012 incident.

On September 25, 2012 appellant requested an oral hearing, which was held on February 14, 2013.

In a March 8, 2013 report, Dr. Parker related that appellant had complaints of chronic knee pain which started on July 5, 2012 when she slipped on a piece of meat and heard a pop which turned out to be a torn meniscus. On evaluation, appellant's left knee joint had significant osteoarthritis. Dr. Parker opined that surgical meniscus repair would likely produce little improvement of her pain and that she was too young for a total knee replacement. He asserted that the uneven walk appellant developed to relieve some of her left knee pain caused an aggravation of arthritis pain in her right ankle, which still had a surgical pin from a 1979 fracture that had been asymptomatic until recently. X-rays showed that the old pin may have shifted as a result of the increased stress over the past few months and might have to be surgically removed. Appellant had largely asymptomatic arthritic changes in her joints before the accident which caused additional trauma to the left knee joint that was already flawed. This accelerated the aging process and aggravated the arthritic changes to a painful level. Dr. Parker stated that the shifted pin in her right ankle, which likely occurred after she started favoring the right leg after the July 5, 2012 accident, might turn out to be an additional chronic pain problem which he was currently investigating.

By decision dated April 19, 2013, OWCP's hearing representative set aside the September 25, 2012 decision. She noted that Dr. Parker found that the July 5, 2012 incident resulted in a torn left medical meniscus and had aggravated arthritic changes in her left knee. The hearing representative remanded the case to OWCP to request the right ankle x-ray report referenced by Dr. Parker, prepare a statement of accepted facts and refer appellant for a second opinion examination with a Board-certified orthopedic specialist.

In an April 5, 2013 report, Dr. Seth R. Yarboro, a specialist in orthopedic surgery, stated that an examination revealed tenderness to palpation along the posterior tibial tendon to insertion at navicula. He also noted significant tenderness at the subtibular region on the lateral aspect of the right foot and advised that appellant was unable to perform heel rise on the right side. Dr. Yarboro stated that radiographic imaging of the right ankle showed mild decrease in joint

space on the lateral aspect of the tibiotalar joint. He diagnosed stage 3/4 posterior tibial tendon dysfunction and opined that the posterior tendinitis and subtibular impingement from the valgus alignment were contributing to her symptoms.

OWCP referred appellant to Dr. Robert M. Moore, a specialist in orthopedic surgery. In a June 13, 2013 report, Dr. Moore noted complaints of left knee and right ankle pain. He reviewed the history of injury and stated that following the July 5, 2012 incident appellant's left knee became progressively more painful over the next two days. Dr. Moore advised that a magnetic resonance imaging (MRI) scan dated July 11, 2012 showed the presence of medial compartment with marked degenerative changes and a nondisplaced degenerative tear of the posterior horn of the medial meniscus, with effusion. Appellant related a history of right ankle fracture in the 1980's which had caused mild, occasional symptoms of right ankle discomfort since that time. Dr. Moore advised that approximately three months after her left knee injury she began to experience numbness in the right foot with increased pain in the right foot and ankle regions. An x-ray of appellant's right ankle was obtained and she was told that the surgical pin in her right ankle had moved as a result of her abnormal walking pattern following the knee injury. Dr. Moore stated that radiographic test of the right ankle of April 4, 2013 showed a nail traversing the medial malleolus with posterior prominence, an ossicle at the tip of the medial malleolus and degenerative changes. He asserted that in addition to pain about the right foot and ankle with weight-bearing, appellant continued to have some symptoms of partial numbness and tingling in the right foot, involving the entire foot and all toes.

Dr. Moore advised that x-rays of the left knee showed medial compartment joint cartilage space narrowing and osteophyte formation, with mild osteophyte formation in the lateral and patellofemoral compartment and no evidence of fracture or lytic lesion. He diagnosed advanced osteoarthritis of the left knee, with osteoarthritis and posterior tibia tendon dysfunction of the right ankle. Dr. Moore opined that the left knee osteoarthritis was preexisting and was permanently aggravated by the July 5, 2012 work injury; the left knee MRI scan done soon after her injury showed that degenerative change was already present in the knee. He advised that the increase in left knee symptoms which developed at the time of injury has been persistent despite extensive conservative treatment; therefore the aggravation of the left knee condition was permanent.

Dr. Moore stated that appellant underwent x-rays of the right ankle at the time of his examination that showed a headed nonthreaded fixation pin present in the medial malleolus, extending at least one centimeter posterior to the tibial cortex. He advised that cortical irregularity was present in the medial malleolus and the lateral malleolus, consistent with healed fractures. Dr. Moore also noted a one centimeter ossicle at the tip of the medial malleolus, which was un-united, with mild-to-moderate narrowing of the medial tibiotalar joint cartilage space. He advised that joint cartilage space narrowing and osteophyte formation were also present in the talonavicular joint, demonstrated on the lateral ankle view. Dr. Moore advised that the x-ray results showed no evidence of recent fracture.

As to whether the right ankle condition was causally related the July 5, 2012 work incident, Dr. Moore found appellant's osteoarthritis and posterior tibial tendon dysfunction to be a result of an old injury and surgery of the right ankle sustained in the 1980's. He determined

that there was no objective evidence that she sustained any injury to the right ankle on July 5, 2012. Dr. Moore stated:

> "In my opinion it is medically more likely that the residual joint incongruity (resulting from [appellant's] original fracture) and protruding hardware in the medial malleolus are the causes of her current condition of osteoarthritis and posterior tibial tendon dysfunction. There is considerable posterior prominence of the fixation pin. In [appellant's] right ankle, which probably produced some mechanical damage to the retromalleolar tendons over the scars and has likely contributed to her posterior tibial tendon dysfunction. However, the position of this pin, with the head of the pin flush with the anterior medial mallafleolar surface, suggests that it was placed intentionally in this position at the time of her original surgery and there is no evidence that the fixation pin in the medial malleolus has 'moved' in any way as a result of her left knee injury or altered walking pattern."

On June 18, 2013 OWCP accepted permanent aggravation of appellant's left knee osteoarthritis due to the July 5, 2012 incident.

By decision dated June 18, 2013, OWCP found that appellant failed to establish that her right ankle condition was a consequence of her July 5, 2012 left knee injury. It found that Dr. Moore's opinion represented the weight of the medical evidence.

LEGAL PRECEDENT

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 which is attributable to the employee's own intentional conduct.[2] Regarding the range of compensable consequences of an employment-related injury, Larson notes that, 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 the claimant's own conduct as an independent intervening cause. 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. Thus, once the work-connected character of any condition is established, the subsequent progression of that condition remains compensable so long as the worsening is not shown to have been produced by an independent nonindustrial cause.[3]

A claimant bears the burden of proof to establish a claim for a consequential injury.[4] As part of this burden, he or she must present rationalized medical opinion evidence, based in a complete factual and medical background, showing causal relationship. Rationalized medical

[2] *Mary Poller*, 55 ECAB 483 (2004).

[3] A. Larson, *The Law of Workers' Compensation* § 10.01.

[4] *William C. Thomas*, 45 ECAB 591 (1994).

evidence is evidence, which relates a work incident or factors of employment to a claimant's condition, with stated reasons of a physician. The opinion must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship of the diagnosed condition and the specific employment factors or employment injury.[5]

ANALYSIS

OWCP accepted the condition of permanent aggravation of left knee osteoarthritis due to appellant's July 5, 2012 work incident. The issue is whether her right ankle condition was a consequence of the accepted left knee injury. The Board finds that appellant did not establish her right ankle condition was aggravated or a consequence of her left knee injury.

OWCP referred appellant to Dr. Moore, the second opinion physician, who found that her right ankle condition was preexisting, longstanding and not affected by the July 5, 2012 injury. Dr. Moore advised that appelant's right ankle symptoms resulted from an old injury in the 1980's and surgery to the right ankle. He reviewed radiographic tests from April 2013 and obtained additional studies of her right foot and right foot ankle. Dr. Moore advised that there was no evidence that the fixation pin in the medial malleolus had moved in any way as a result of appellant's left knee injury or due to her altered walking pattern. He concluded that there was no objective evidence that she sustained any injury to the right ankle on July 5, 2012.

The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.[6] The Board finds that OWCP properly found that Dr. Moore's opinion represented the weight of the medical evidence and was sufficient to negate any causal relationship between the July 5, 2012 work incident and the claimed right ankle condition. Dr. Moore's report is thorough, well-rationalized and provides a full explanation of why appellant's right ankle symptoms were not caused or aggravated by the July 5, 2012 work incident. The record also contains reports from Dr. Parker and Dr. Yarboro related to treatment of her right ankle condition. Dr. Parker indicated that the uneven walk she developed to relieve some of her left knee pain caused an aggravation of arthritis pain in her right ankle, which still had a surgical pin from a 1979 fracture that had been asymptomatic. He stated that x-rays demonstrated that the old pin may have shifted as a result of the increased stress over the past few months and might have to be surgically removed. Dr. Parker stated that the shifted pin in appellant's right ankle had probably occurred after she started favoring the right leg after the July 5, 2012 accident and might turn out to be an additional chronic pain problem, although he was still investigating this issue.

The opinion of Dr. Parker is of limited probative value as he did not provide sufficient medical rationale on the issue of causal relationship.[7] The weight of medical opinion is

[5] *Charles W. Downey*, 54 ECAB 421 (2003).

[6] *See Anna C. Leanza*, 48 ECAB 115 (1996).

[7] *William C. Thomas*, 45 ECAB 591 (1994).

determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.[8] Dr. Parker's opinion on causation is of limited probative value for the further reason that it is generalized in nature and equivocal in that he stated that x-rays demonstrated that the pin in appellant's right foot "may" have shifted due to increased stress and "might" turn out to be an additional chronic pain, an issue which he was still investigating. Dr. Yarboro stated findings on examination and diagnosed posterior tibial tendon dysfunction but did not provide any opinion as to whether these findings were causally related to the accepted injury. OWCP properly denied the right ankle condition based on Dr. Moore's opinion.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.[9] She did not provide a medical opinion which describes or explains the medical process through which she would have developed a right ankle condition as a consequence of her accepted July 5, 2012 left knee injury. OWCP properly denied appellant's claim for compensation.

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 has failed to establish that she sustained a right ankle condition as a consequence of her accepted July 5, 2012 left knee injury.

[8] *See Anna C. Leanza*, 48 ECAB 115 (1996).

[9] *Id.*

ORDER

IT IS HEREBY ORDERED THAT the June 18, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 7, 2014
Washington, DC

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

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

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