



## **FACTUAL HISTORY**

This case has previously been before the Board. In a January 22, 2013 decision, the Board set aside a May 30, 2012 OWCP decision denying appellant's claim for a consequential left knee injury.<sup>2</sup> The Board found an unresolved conflict in the medical opinion evidence between Dr. Dina Zaza, a treating Board-certified physiatrist, and Dr. Ronald M. Lampert, a second opinion Board-certified orthopedic surgeon, on the issue of whether appellant sustained a consequential left knee injury resulting from the August 22, 1979 employment injury or consequential 2008 fall. The claim was remanded to OWCP to refer appellant for an impartial medical evaluation. The facts of the case as set forth in the Board's prior decision are incorporated herein by reference.<sup>3</sup>

On remand, OWCP referred appellant to Dr. John Ehteshami, a Board-certified orthopedic surgeon, selected as the impartial medical specialist on the issue of whether appellant sustained a consequential left knee injury.

In a May 17, 2013 report, Dr. Ehteshami diagnosed left knee arthritis status post meniscectomy; decreased left knee range of motion with continued left knee pain; status post lumbar fusion with left lower extremity weakness resulting from the lumbar fusion; and status post right total knee arthroplasty. On physical examination, there was no significant knee swelling and some left knee effusion; lack of full left knee extension by about 20 degrees and stable medial and lateral loading. Dr. Ehteshami stated that appellant's April 12, 2008 fall was due to his accepted 1979 employment injury, previous back surgeries and left lower extremity weakness. The fall on April 12, 2008 "could have resulted in an injury to his knee." With respect to appellant's left knee, Dr. Ehteshami attributed the condition to appellant's left knee meniscal surgery which predated the accepted 1979 employment injury. He related that studies have shown that arthritic changes and progressive degenerative changes occur subsequent to meniscal surgery. Dr. Ehteshami concurred with Dr. Lampert's opinion that the left knee condition was unrelated to the accepted 1979 employment injury or the April 12, 2008 fall. He stated that based on the "history of knee injuries treated with arthrotomy and meniscectomy," that appellant's left knee condition was due to his 1974 injury and unrelated to his accepted low back injury.

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<sup>2</sup> Docket No. 12-1417 (issued January 22, 2013).

<sup>3</sup> On August 22, 1979 appellant, then a 32-year-old police officer, filed a traumatic injury claim alleging that he injured his lower back that day while lifting a handcuffed suspect from the floor. OWCP accepted the claim for a low back strain, aggravation of L4 degenerative disc disease and authorized lumbosacral decompression surgery, which occurred on October 7, 1984 and March 3, 1998. It also accepted consequential injuries of right knee contusion, aggravation of preexisting right knee osteoarthritis, head contusion and headaches and authorized right knee arthroscopic surgery, which was performed on October 29, 2009 and February 23, 2010. Appellant received compensation and retired from federal service effective September 1, 2010. On October 16, 2002 OWCP granted him a schedule award for a three percent permanent impairment of the right lower extremity and a three percent permanent impairment of the left lower extremity.

By decision dated August 1, 2013, OWCP denied appellant's claim for a consequential left knee condition causally related to the accepted August 22, 1979 employment injury or April 12, 2008 consequential fall.

### **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.<sup>4</sup> The subsequent injury is compensable if it is the direct and natural result of a compensable primary injury.<sup>5</sup> With respect to consequential injuries, the Board has stated that, where an injury is sustained as a consequence of an impairment residual to an employment injury, the new or second injury, even though nonemployment related, is deemed, because of the chain of causation to arise out of and in the course of employment and is compensable.<sup>6</sup>

Section 8123(a) of FECA 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."<sup>7</sup> 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 FECA, to resolve the conflict in the medical evidence.<sup>8</sup>

### **ANALYSIS**

OWCP accepted the claim for a low back strain and aggravation of L4 degenerative disc disease sustained on August 22, 1979. It also authorized lumbosacral decompression surgery, which occurred on March 3, 1998. OWCP subsequently accepted consequential injuries of right knee contusion, aggravation of preexisting right knee osteoarthritis, head contusion and headaches and authorized right knee arthroscopic surgery, which was performed on October 29, 2009 and February 23, 2010. The issue is whether appellant sustained a consequential left knee condition due to the accepted August 22, 1979 employment injury or fall on April 12, 2008.

OWCP properly referred appellant to Dr. Ehteshami to resolve the conflict in the medical opinion evidence between Dr. Zaza, a treating Board-certified physiatrist, and Dr. Lampert, a second opinion Board-certified orthopedic surgeon, on the issue of whether appellant sustained a

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<sup>4</sup> *Albert F. Ranieri*, 55 ECAB 598 (2004).

<sup>5</sup> *S.M.*, 58 ECAB 166 (2006); *Debra L. Dillworth*, 57 ECAB 516 (2006); *Carlos A. Marrero*, 50 ECAB 117 (1998); A. Larson, *the Law of Workers' Compensation* § 10.01 (2005).

<sup>6</sup> *L.S.*, Docket No. 08-1270 (issued July 2, 2009); *Kathy A. Kelley*, 55 ECAB 206 (2004).

<sup>7</sup> 5 U.S.C. § 8123(a); *see T.C.*, Docket No. 08-2112 (issued June 12, 2009).

<sup>8</sup> *L.S.*, Docket No. 12-139 (issued June 6, 2012); *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

consequential left knee injury. Dr. Ehteshami opined that appellant's left knee condition was unrelated to either the accepted August 22, 1979 employment injury or the April 12, 2008 consequential fall. He attributed appellant's left knee condition solely to a 1974 left knee injury and resulting left knee arthrotomy and meniscectomy surgeries. Dr. Ehteshami explained that studies have shown that arthritic changes and progressive degenerative changes occur subsequent to meniscal surgery.

The Board has carefully reviewed the opinion of Dr. Ehteshami and finds that it has reliability, probative value and convincing quality with respect to whether appellant's left knee condition developed as a consequence of either the August 22, 1979 employment injury or subsequent consequential fall on April 12, 2008. The Board finds that the special weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Ehteshami, the impartial medical examiner selected to resolve the conflict in the medical opinion evidence.<sup>9</sup>

On appeal, appellant argues that the consequential fall on April 12, 2008 caused his left knee condition. He also contends that, as OWCP accepted a consequential right knee condition as a result of the fall, it should have also accepted a consequential left knee condition. As explained above, the special weight of the medical evidence, as represented by Dr. Ehteshami's impartial opinion, establishes that appellant's left knee was not causally related to the accepted August 22, 1979 employment injuries or April 12, 2008 consequential fall but was attributable to the 1974 nonemployment-related injury and attendant surgeries. Appellant has not established a consequential left knee condition.

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 OWCP properly denied appellant's claim for a left knee consequential condition

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<sup>9</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated August 1, 2013 is affirmed.

Issued: February 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