

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MELISSA M. FREDRICKSON and DEPARTMENT OF
TRANSPORTATION, Portsmouth, Va.

*Docket No. 97-1034; Submitted on the Record;
Issued December 2, 1998*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant sustained a comminuted fracture of her right leg causally related to her November 23, 1994 employment injury.

On December 9, 1994 appellant filed a claim for a traumatic injury occurring on November 23, 1994 when she "slipped and missed one step while descending stairs at work. My right leg absorbed the impact." Appellant related that she experienced pain and swelling of the leg, and that on November 25, 1994 while she was at home she "turned in my kitchen and my right leg 'snapped' between the knee [and] ankle."

By decision dated June 27, 1995, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that she did not establish an injury in the performance of duty. In a decision dated May 28, 1996, an Office hearing representative affirmed the Office's June 27, 1995 decision.

On July 26, 1996 appellant requested reconsideration and submitted additional evidence. By decision dated October 31, 1996, the Office found that the evidence submitted was sufficient to warrant modification of the prior decision. The Office accepted appellant's claim for a nondisplaced fracture of the right leg on November 23, 1994. The Office found, however, that the evidence failed to establish that appellant's comminuted fracture of the right leg resulted from the November 23, 1994 employment injury.

The Board has duly reviewed the case record and finds that appellant has established that she sustained a comminuted fracture of her right leg causally related to her November 23, 1994 employment injury.

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 condition.¹

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

“[W]hen 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.”

“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.”²

Thus it is accepted that 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 If a member weakened by an employment injury contributes to a later fall or other injury, the subsequent injury will be compensable as a consequential injury.⁴ If further complication flows from the compensable injury, *i.e.*, so long as it is clear that the real operative factor is the progression of the compensable injury, with an exertion that in itself would not be unreasonable under the circumstances, the condition is compensable.⁵

In the present case, appellant sustained an employment-related injury on November 23, 1994 which was accepted for a nondisplaced fracture of the right leg. On November 25, 1994 appellant stood in her kitchen at home, turned, and felt her right leg “snap.” The issue is whether appellant’s November 25, 1994 comminuted fracture of the right leg is compensable as the “direct and natural” result of the November 23, 1994 employment injury.

In a report dated February 8, 1995, Dr. J. Collier, a Board-certified orthopedic surgeon who treated appellant for her fracture, discussed her history of slipping on the steps at work with subsequent pain and walking with a limp. He noted, “[o]n November 25, 1994, while in her kitchen, she turned with her leg planted and felt a snap in the lower extremity.” Dr. Collier diagnosed a comminuted fracture of the mid and distal right tibia and fibula. He related that on December 9, 1994 appellant underwent an internal fixation of the fractured tibia. In conclusion, Dr. Collier stated, “In my opinion, [appellant] had an injury while at work, which quite possibly caused stress to the bone and later when it pivoted, it broke with much comminution.”

¹ A. Larson, *The Law of Workers’ Compensation* § 13.00 (1993); see *John R. Knox*, 42 ECAB 193 (1990).

² *Id.* at § 13.11.

³ *Id.* at § 13.11(a).

⁴ *Id.* at § 13.12(a); *Sandra Dixon-Mills*, 44 ECAB 882 (1993).

⁵ *Robert W. Meeson*, 44 ECAB 834 (1993).

In a report dated June 25, 1996, Dr. Collier discussed appellant's history of slipping on steps at work on November 23, 1994 and opined that "the fall on the steps injured her bone." He related:

"There are many fractures to the bone which a person can continue to walk on although it is painful and from reading the report it has been documented that [appellant] did have pain.

"I feel that the fracture occurred at this time and that the displacement of this fracture was caused by her stepping on the foot and twisting. Therefore, in using terms that I understand are acceptable in a court of law, it is medically probable that the incident on the stairs contributed and caused the fracture."

The medical evidence thus supports that the employment-related fracture which occurred at work on November 23, 1994 caused or contributed to the subsequent comminuted fracture on November 25, 1994. Applying the principles previously discussed, the Board finds that the comminuted fracture of appellant's right leg was a "natural progression" of her employment-related nondisplaced fracture of the right leg sustained two days prior. Appellant's injury on November 25, 1994 is not an independent intervening cause attributable to her own intentional conduct but instead is the natural consequence or progression of her November 23, 1994 employment injury. Appellant was unaware that she had sustained a nondisplaced fracture of her right leg on November 23, 1994 and thus her November 25, 1994 activities of standing on the leg and turning do not constitute exertions unreasonable under the circumstances. The Board therefore finds that appellant has established that her comminuted fracture of the right leg was a consequential injury arising from her November 23, 1994 employment injury. The case will be remanded for a determination of compensable periods of disability.

The decision of the Office of Workers' Compensation Programs dated October 31, 1996 is affirmed in part, reversed in part, and the case is remanded for further development in accordance with this decision.

Dated, Washington, D.C.
December 2, 1998

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member