

FACTUAL HISTORY

On January 14, 2000 appellant, then a 70-year-old historical architect, filed a claim for compensation for a traumatic injury to his right leg just below the knee sustained on December 22, 1999 when a stack of chairs fell on his leg. He did not stop work.

Appellant was seen at a hospital emergency department on January 18, 2000 for right leg swelling from the knee down. Dr. Garry Penner, who is Board-certified in emergency medicine, stated that this swelling was most likely the result of venous insufficiency, but that there was no evidence of deep venous thrombosis on a Doppler study. The next day, appellant was seen by Dr. George R. Fisher, a Board-certified internist, who stated that he had a mixture of edema and possible phlebitis and prescribed rest and elastic stockings.

The Office accepted that appellant sustained a contusion to his right knee and lower leg.

On March 27, 2001 appellant filed a claim for a recurrence of medical condition on March 4, 2001 stating that he had continued swelling and stiffness of the right leg that had worsened. A March 28, 2001 magnetic resonance imaging (MRI) scan of his right knee on March 28, 2001 showed tears of the medial and lateral menisci and the anterior cruciate ligament, chondromalacia, marked lateral patellar subluxation, marked degenerative changes and a large effusion with several small loose bodies. In a May 1, 2001 report, Dr. Lewis S. Sharps, a Board-certified orthopedic surgeon, described the December 22, 1999 employment injury, noted that x-rays demonstrated significant tri-compartment degenerative disease, diagnosed “symptomatic degenerative disease of the right knee directly attributable to his work injury in December of 1999,” and recommended total knee replacement surgery. Dr. Sharps performed surgery on May 31, 2001.

An Office medical adviser reviewed the medical evidence on July 27, 2001 and concluded that it was insufficient to show that appellant’s employment injury contributed to the knee replacement, as Dr. Sharps provided no rationale explaining how the injury caused severe tri-compartment degenerative joint disease. On September 25, 2001 the Office referred appellant, his medical records and a statement of accepted facts to Dr. Anthony Salem, a Board-certified orthopedic surgeon, for a second opinion of whether the knee replacement surgery was related to the employment injury. In an October 22, 2001 report, Dr. Salem concluded that the only injury appellant sustained on December 22, 1999 was a contusion to the right leg, that the injury “in no way created the severe degenerative changes that I saw on the x-rays,” that these degenerative changes had nothing to do with any trauma, but that they were present for years and got progressively worse, resulting in the knee replacement surgery.

By decision dated December 8, 2001, the Office denied appellant’s claim for a recurrence of medical condition and total knee replacement surgery on the basis that they were not causally related to his December 22, 1999 employment injury.

Appellant requested a hearing, which was held on June 19, 2002. At the hearing he submitted a June 6, 2002 report from Dr. Sharps, that set forth a history that when the stack of chairs fell on appellant’s right leg on December 22, 1999 he twisted his right knee and had immediate right knee pain. Dr. Sharps stated that appellant sustained a direct injury to the right

knee on December 22, 1999 that resulted in an intra-articular derangement of the knee joint which was superimposed upon preexisting degenerative disease of the knee. He also stated that the employment injury resulted in tears of both menisci, which resulted in edema within the knee joint, that these tears aggravated the preexisting degenerative disease which in turn directly necessitated the total knee replacement. Dr. Sharps stated that the employment injury “set in process a series of progressive changes within the knee joint which in turn resulted in the patient’s underlying degenerative disease becoming symptomatic to a point where total knee replacement was indicated. It is further my opinion that without the injury of [December 22, 1999] the patient would not have required the total knee replacement that I performed on [May 31, 2001].”

By decision dated August 27, 2002, an Office hearing representative found that there was a conflict of medical opinion between Dr. Salem and Dr. Sharps. To resolve this conflict, the Office referred appellant, the case record and a statement of accepted facts, to Dr. William D. Emper, a Board-certified orthopedic surgeon, on October 1, 2002. In an October 21, 2002 report, Dr. Emper set forth a history of appellant’s December 22, 1999 employment injury and medical treatment, described his symptoms and findings on physical examination and reviewed the x-rays, MRI scan and Dr. Sparks’ May 1, 2001 report. Dr. Emper concluded:

“It is my impression that [appellant] had a preexisting condition of advanced degenerative arthritis at the time of his injury in [December 1999]. The type of injury that he sustained at that time, the chairs falling on his knee, was consistent with a diagnosis of a contusion. In my opinion the surgery that was performed by Dr. Sharps was appropriate for diagnosis of advanced degenerative arthritis but it was not secondary to the work-related injury but secondary to a progressive degenerative process that was present prior to his injury in 1999. A contusion to the leg or knee would not result in advanced degenerative arthritis noted on x-rays less than 2 years later. I believe that he would have required a total knee replacement regardless of the injury that he sustained in [December 1999] because of the progressive nature of his degenerative arthritis.”

By decision dated November 27, 2002, the Office found that appellant’s recurrence of medical condition on March 4, 2001 and the May 31, 2001 knee replacement surgery were not causally related to the December 22, 1999 injury. Appellant requested a hearing. By decision dated June 22, 2004, an Office hearing representative found that further development of the medical evidence was necessary. The hearing representative found that Dr. Emper did not answer the Office’s question of whether the employment injury altered the course of the degenerative condition and did not address Dr. Sharps’ opinion that the work injury aggravated the preexisting arthritis to where the knee replacement was necessary. In response to the Office’s July 26, 2004 request to address these issues, Dr. Emper stated in an August 23, 2004 report:

“It is my opinion that the work-related injury which I characterized as a contusion did not aggravate, precipitate or accelerate the degenerative arthritis that was preexisting. A contusion is a soft tissue injury that is superficial to the knee joint and would not affect the condition of the knee joint itself. This contusion which

was a work-related injury was temporary and did not result in a material change that would have altered the course of the degenerative arthritis of his knee.”

By letter dated September 16, 2004, the Office asked Dr. Emper to provide a rationalized opinion of whether appellant’s work injury aggravated appellant’s preexisting arthritis to where the knee replacement was necessary. In a December 9, 2004 report, Dr. Emper stated:

“It is my opinion that the work injury which was a contusion was superimposed on preexisting degenerative arthritis but [did] not exacerbate the degenerative arthritis. His degenerative arthritis was already so advanced at the time of the injury that it was already determined that a total knee replacement would be necessary for this relief of pain, therefore, I do not believe that the surgery was secondary to the work-related injury.”

By decision dated December 16, 2004, the Office found that appellant’s recurrence of medical condition on March 4, 2001 and the May 31, 2001 knee replacement surgery were not causally related to appellant’s December 22, 1999 injury. On December 18, 2004 appellant requested a review of the written record. By decision dated May 23, 2005, an Office hearing representative found that Dr. Emper’s reports constituted the weight of the medical evidence and established that the claimed recurrence and knee surgery were not related to the accepted employment injury but were related to the preexisting degenerative condition, which was not affected by the work injury.

LEGAL PRECEDENT

The recurrence of a medical condition is defined as a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage.¹ An employee claiming a recurrence of a medical condition has the burden of proof to establish that the need for medical treatment is causally related to the accepted condition or injury.² Causal relationship is a medical question and the evidence required to establish a causal relationship is rationalized medical opinion, which includes a physician’s opinion on the issue of whether there is a causal relationship between the diagnosed condition and the employment factors or injury.³ The opinion of the physician must be based on a complete factual and medical history of the claimant, must be one of reasonable medical certainty and must be supported by rationale explaining the nature of the relationship between the diagnosed condition and specific factors of employment.⁴

In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the

¹ 20 C.F.R. § 10.5(y).

² See *Joan R. Donovan*, 54 ECAB ____ (Docket No. 03-297, issued June 13, 2003).

³ See *Allen C. Hundley*, 53 ECAB 551-53 (2002).

⁴ *Id.*

conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.⁵

ANALYSIS

There was a conflict of medical opinion in this case on the question of whether appellant's knee replacement surgery on May 31, 2001 was causally related to his December 22, 1999 employment injury. Dr. Sparks, the Board-certified orthopedic surgeon, who performed the surgery, concluded in a June 6, 2002 report that the December 22, 1999 injury aggravated the preexisting degenerative disease of appellant's right knee resulting in the disease becoming symptomatic to the point where a total knee replacement was necessary. Dr. Salem, a Board-certified orthopedic surgeon, to whom the Office referred appellant for a second opinion, opined in an October 22, 2001 report that appellant sustained only a contusion on December 22, 1999 that the degenerative disease of his knee had nothing to do with the trauma. He concluded that the progression of the degenerative disease resulted in the knee replacement surgery without any contribution by the accepted injury.

To resolve this conflict, the Office, pursuant to section 8123(a) of the Federal Employees' Compensation Act,⁶ referred appellant, the case record and a statement of accepted facts to Dr. Emper, who submitted three reports, the first of which contained an accurate history of appellant's December 22, 1999 employment injury. This accurate history contrasts with Dr. Sparks' inaccurate history that appellant had immediate right knee pain at the time of the December 22, 1999 injury. Appellant did not list a knee injury on his January 14, 2000 traumatic injury claim form, nor did he complain of knee pain at a hospital emergency department on January 18, 2000 or when seen by Dr. Fisher on January 19, 2000. The first mention of right knee pain in the evidence in the case record was in March 2001.

The Board finds that the reports of Dr. Emper contain sufficient rationale to afford his medical opinion special weight. Dr. Emper stated that the type of injury that was reported was consistent with a contusion, that a contusion was a soft tissue injury that did not affect the condition of the knee joint itself and that a contusion to the leg or knee would not result in the advanced degenerative arthritis seen on x-rays less than two years later or alter the course of appellant's degenerative arthritis. Dr. Emper also stated that the degenerative arthritis was already so advanced at the time of appellant's employment injury that a total knee replacement was needed and that the knee replacement was not secondary to the work injury but rather to the progression of degenerative arthritis. The Board finds that Dr. Emper's opinion consistent with the mechanism of appellant's employment injury and with the onset of knee pain more than 14 months after the injury. The opinion of this impartial medical specialist resolving a conflict of medical opinion constitutes the weight of the medical evidence in this case.

⁵ *James P. Roberts*, 31 ECAB 1010 (1980).

⁶ 5 U.S.C. § 8123(a) states 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."

CONCLUSION

The Board finds that the weight of the medical evidence establishes that appellant's medical treatment of the right knee beginning March 4, 2001 and his total knee replacement on May 31, 2001 were not causally related to his December 22, 1999 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the May 23, 2005 and December 16, 2004 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 7, 2005
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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