

authorized left knee arthroscopic surgery, which was performed on February 11, 1999 and a total left knee replacement, which was performed on April 29, 1999.¹ On May 13, 2002 the Office expanded appellant's claim to include the condition of pain disorder associated with psychological factors and a generalized medical condition. The Office subsequently accepted appellant claims for recurrences of disability and intermittent periods of disability between 1981 to 2001.

On January 3, 2000 the Office issued a loss of wage-earning capacity decision, which found that appellant's actual earnings in the position of modified clerk carrier fairly and reasonably represented his wage-earning capacity. It noted that the employment was effective November 2, 1999 and that he earned weekly wages of \$772.52. On January 12, 2000 the Office issued a schedule award for a 47 percent permanent impairment of the left leg.

In a report dated June 20, 2001, Dr. Randy M. Rosenberg, a treating Board-certified neurologist, reported seeing appellant for "evaluation of a refractor left leg pain." Dr. Rosenberg noted that appellant had a 20-year history of left knee instability which "has largely been attributed to degenerative changes in the cartilage." Appellant related that subsequent to his 1999 surgery he developed subacute pain. A physical examination revealed an antalgic gait, "but without paresis or ataxia" and that he favored his left leg. Dr. Rosenberg reported reflexes in the lower extremity extremities as +1 for the left knee and +2 for the right knee and "both toes were downgoing."

In a report dated October 21, 2001, Dr. Michael J. Rosner, a treating Board-certified internist, related that appellant sustained a recurrence of disability on May 31, 2001 due to a fall on a curb and that appellant injured his lower back and his left lower extremity. Dr. Rosner noted:

"[Appellant] suffers from severe pain, swelling and weakness of his left lower extremity due to a peripheral neuropathy, which is probably secondary to his diabetes and arthritis of his spine with an L5 radiculopathy on the left."

Dr. Rosner indicated that appellant related that he fell "on the average of at least one time per week due to the symptoms" which began after the May 31, 2001 fall.

In a report dated November 19, 2001, Dr. Robert B. Aiken, a second opinion Board-certified neurologist, reviewed a statement of accepted facts, physical examination and list of questions. He concluded that appellant's "knee condition is quite active and causing persistent pain and disability." A physical examination revealed evidence of a traumatic nerve injury, probably of the superficial type and possibly in or around the left knee complicated by reflex sympathetic dystrophy. He attributed appellant's disability to "his knee injury and secondary problems related to degenerative joint disease and subsequent surgery with neurological complications."

¹ Appellant also had left knee arthroscopic surgery on October 19, 1981, October 8, 1982, March 8, 1983, October 18, 1985 and March 31, 1987.

In a December 5, 2001 report, Dr. Richard J. Mandel, a second opinion Board-certified orthopedic surgeon, diagnosed bilateral peripheral neuropathy and status post left total knee arthroplasty with evidence of residual synovitis affecting the knee joint. A physical examination revealed left knee range of motion as 0 to 90 degrees, diminished sensation in the foot and medial part of the calf and a positive Tinel's sign over the tibial nerve. Dr. Mandel opined that appellant's major current problem was his peripheral neuropathy. He noted:

"There is EMG [electromyogram] evidence of bilateral peripheral neuropathy, probably on a diabetic basis. Whether the neuropathy on the left is entirely diabetic or whether there is a component related to the knee injury or surgery is undetermined. Further, evaluation in the form of a new EMG study and new radiographs of the left knee are indicated."

On January 10, 2002 the Office accepted appellant's May 31, 2001 recurrence claim and placed him on the periodic rolls for temporary total disability.

In a report dated April 1, 2002, Dr. Rosner concluded that appellant was totally disabled due to intractable pain which he opined was "secondary to his peripheral neuropathy and reflex sympathetic dystrophy." Dr. Rosner noted that appellant fell frequently, which he attributed to appellant's left lower extremity giving out on him.

In a report dated May 21, 2002, Dr. Rosenberg stated:

"He continues to experience paroxysms of left leg and knee pain, which result in startle reactions, loss of balance and unpredictable falling. When this occurs he finds that back pain markedly flares."

Dr. Rosenberg noted that appellant experienced left leg pain and appellant related "because of paroxysmal discomfort his balance remains jeopardized." A physical examination revealed an antalgic gait, weakness of the extensor of the great and lesser toes and reflexes were abolished at the knees and ankles. Dr. Rosenberg stated that appellant's "L5 radiculopathy remains a source of significant disability and opined that his "back pain is a direct consequence of both falling, as well as degenerative disease."

In a July 9, 2002 report, Dr. Rosenberg related that appellant continued to have left leg pain which can be paroxysmal and result in a fall. Appellant attributed his falls to severe left leg pain, which prompted him to shift his balance to the right leg. A physical examination revealed "mild weakness in the left L5 distribution, sensory loss to pin is noted in a left L5 distribution and gait is antalgic."

In an October 1, 2002 report, Dr. Rosenberg stated:

"There is no atrophy in either lower extremity. There is mild, but convincing weakness of the extensor hallucis longus and extensor of the toes. A relative hypalgesia to pinprick exists in the proximal right L4 distribution. Reflexes are absent at both knees and ankles and both toes are downgoing. The gait is antalgic."

In a February 11, 2003 report, Dr. Rosner noted that appellant has been treated for low back pain and refractory left leg. He related that the severity of the symptoms and the accompanying intermittent numbness resulted in appellant's "having multiple falls which, at times, have resulted in considerable trauma." Dr. Rosner recommended a lumbar MRI scan "to identify stenosis (narrowing) of the lateral portion of the L4-5 intervertebral space."

In a report dated February 23, 2003, Dr. Rosner stated that appellant was totally disabled due to "his intractable pain, weakness in his left lower extremity, difficulty ambulating and frequent falls," which a result the December 17, 1980 employment injury. Dr. Rosner noted that appellant has a severe disability due to his ambulation problems.

In an April 28, 2003 report, Dr. Rosenberg concluded that appellant's left leg and back pain were related. He stated:

"[Appellant] has more than one source of pain and disability effecting his left leg. There is both local musculoskeletal factors related to orthopedic disease plus a more proximal radiculopathy. The conclusion by his insurance carrier that the studies of the lumbar spine are unrelated to the leg defy common sense and logic as most assuredly a disturbance of nerve root supply proximally will often provoke symptoms that seem mostly focal in the leg."

In a September 30, 2003 report, Dr. Rosenberg noted that appellant had "two serious falls, both of which occurred down a flight of steps." Appellant related increased left leg and low back pain subsequent to the falls, which Dr. Rosenberg attributed to appellant's experiencing "sudden flares of pain that prompted him to lose balance." A physical examination revealed "[r]eflexes remained abolished in both lower extremities and both toes were downgoing."

In a December 23, 2003 report, Dr. Rosenberg noted that appellant experienced "his typical lightning-like pains into the left leg." Based upon a neurological examination, the physician diagnosed "an antalgic gait, pain in the left leg and a tendency to favor by placing weight over the right." A physical examination revealed "mild weakness of the extensor hallucis longus on the left" and "[r]eflexes were +1-2 at the knees, trace at the ankles and both toes were downgoing."

In a report dated April 8, 2004, Dr. Rosenberg noted that appellant continued to have leg pain and episodic falling. Physical and neurological examinations revealed an antalgic gait, left knee trace reflexes and "both toes were downgoing." In an April 28, 2004 report, Dr. Rosenberg stated that appellant's lumbar condition and his left leg were related. He noted: "the multiple aspects of disability and pain this patient experiences are due to factors other than solely knee joint disease."

In a July 8, 2004 report, Dr. Rosenberg noted that appellant continued to have "major left knee pain which can flare unexpectedly." He noted that appellant "will rapidly shift balance to the right" in order relieve the weight on his painful left leg, which sometimes results in a fall. With regards to appellant's gait, Dr. Rosenberg noted it was "obviously antalgic and he favors the left leg" but appellant compensated for his gait with a cane.

By decision dated October 29, 2004, the Office denied appellant's claim to include conditions of lumbar strain and abnormal gait as consequential injuries. The Office noted that the only accepted conditions were left knee dislocation, left knee arthroscopy and "other," *i.e.*, torn meniscus. The Office also denied authorization for an MRI scan of the lumbar spine.

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

"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

ANALYSIS

The Board notes that the Office has accepted the conditions of left knee torn meniscus, left knee degenerative joint disease, left knee degenerative joint disease pain disorder associated with psychological factors and a generalized medical condition.

The Board finds that the Office has not properly developed appellant's claim for a consequential injury. The medical evidence supports that appellant may have sustained a consequential injury due to his accepted left knee conditions. In a June 20, 2001 report, Dr. Rosenberg noted that appellant had a 20-year history of left knee instability subacute pain subsequent to a 1999 surgery. Dr. Rosenberg also noted that appellant had a 20-year history of left knee instability, which "has largely been attributed to degenerative changes in the cartilage and an antalgic gait. In a May 21, 2002 report, Dr. Rosner concluded that appellant's "back pain is a direct consequence of both falling, as well as degenerative disease" with the falls caused by loss of balance due to "paroxysms of left leg and knee pain." Dr. Rosenberg concluded that appellant's left knee and lumbar condition were related in an April 28, 2004 report. He noted that appellant had "major left knee pain which can flare unexpectedly," which results in appellant shifting his balance to his right leg and sometimes results in a fall. With regard to appellant's gait, the physician noted it was "obviously antalgic and he favors his left leg." In a July 8, 2004 report, Dr. Rosenberg attributed his back pain to his falling and degenerative disease.

² A. Larson, *The Law of Workers' Compensation* § 10.00 (2000); see also *John R. Knox*, 42 ECAB 193 (1990).

³ A. Larson, *supra* note 2 at 10.02 (2003); see also *Kathy A. Kelley*, 55 ECAB ____ (Docket No. 03-1660, issued January 5, 2004); *Stuart K. Stanton*, 40 ECAB 859 (1989); *Robert R. Harrison*, 14 ECAB 29 (1962).

Proceedings under the Federal Employees' Compensation Act⁴ are not adversarial in nature nor is the Office a disinterested arbiter.⁵ While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence and the Office has an obligation to see that justice is done.⁶ This holds true in recurrence claims and consequential injury claims, as well as in initial traumatic and occupational disease claims.

The Board notes that, while none of these reports of appellant's attending physicians are completely rationalized, they are consistent in indicating that appellant sustained consequential gait and back problems due to falls caused by his left leg instability causally related to the April 17, 1980 employment-related injury. Thus, they raise a controverted inference between appellant's claimed conditions and the employment injury of April 17, 1980 and are sufficient to require the Office to further develop the medical evidence and the case record.⁷

The case, therefore, is will be remanded to the Office for further development as is deemed necessary.

CONCLUSION

The Board finds that the case is not in posture for decision on the issue of whether appellant sustained a consequential injury. In view of the disposition of the first issue in this case, *i.e.*, whether appellant established that he sustained consequential injuries of lumbar strain and abnormal gait, the Board need not address the second issue, *i.e.*, whether the Office improperly denied authorization of an MRI scan.

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Betty J. Smith*, 54 ECAB ____ (Docket No. 02-149, issued October 29, 2002).

⁶ *See Phillip L. Barnes*, 55 ECAB ____ (Docket No. 02-1441, issued March 31, 2004); *Lourdes Davila*, 45 ECAB 139 (1993).

⁷ *Allen C. Hundley*, 53 ECAB 551 (2002).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs' hearing representative dated May 11, 2005 is set aside and the case remanded for further proceedings consistent with the above opinion.

Issued: January 17, 2006
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