

**United States Department of Labor  
Employees' Compensation Appeals Board**

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V.G., Appellant )

and )

U.S. POSTAL SERVICE, OAK PARK POST )  
OFFICE, Oak Park, IL, Employer )

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**Docket No. 08-77**

**Issued: February 23, 2009**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

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

**JURISDICTION**

On September 11, 2007 appellant filed a timely appeal from the April 24, 2007 merit decision of the Office of Workers' Compensation Programs, which denied her claim for consequential injury and medical treatment. Pursuant to 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 knee injury that required surgery as a consequence of her accepted November 20, 2001 employment-related left knee injuries.

**FACTUAL HISTORY**

On November 20, 2001 appellant, then a 43-year-old distribution clerk, sustained injury to her left knee after being struck by an all-purpose container that was being pushed by a coworker. By letter dated April 4, 2002, the Office accepted the claim for a strain and meniscus tear of the left knee.

In an undated letter received by the Office on December 23, 2004, appellant requested that it authorize medical treatment for her right knee. She stated that, following injury, her right knee became aggravated by carrying her weight for a long period of time. Appellant was diagnosed with having a complex tear in the right knee based on a magnetic resonance imaging (MRI) scan. On January 20, 2005 the Office authorized appellant to undergo bilateral arthroscopic knee surgery.

On January 23, 2005 Dr. Eric Berkson, an Office medical adviser, reviewed appellant's case record which included a history of her right and left knee and right foot conditions and surgery. He noted the August 18, 1999 finding of Dr. Sarmed G. Elias, a surgeon, that appellant had a history of bilateral genu valgum and tilt of the patella. Dr. Berkson also noted x-rays of the right knee which demonstrated some evidence of osteolysis which suggested reflex sympathetic dystrophy. An MRI scan of both knees revealed degenerative meniscal tear and chondromalacia of the left knee and a horizontal cleavage tear and cystic changes within the patella of the right knee. A January 24, 2004 MRI scan of the right knee demonstrated a complex tear of the anterolateral meniscus and portion of the body of the meniscus. There was also chondromalacia of the lateral femoral condyle. Dr. Berkson noted Dr. Elias's history that appellant had favored her right leg since the employment-related left knee injury and his requests for surgery. He established that appellant had a preexisting right knee condition dating back to August 18, 1999. Dr. Berkson related that both knees were subjected to the nontraumatic and nonwork-related degeneration found by Dr. Elias on August 18, 1999. He opined that appellant's right knee condition was not a consequential injury of her employment-related left knee injury. Dr. Berkson further opined that arthroscopic debridement may be considered reasonable medical treatment but it should not be authorized as a work-related condition.

Appellant underwent right knee surgery on March 16, 2005 which was performed by Dr. Elias.

In a June 23, 2005 letter, the Office advised appellant that, since her claim had only been accepted for a left knee condition, no other conditions could be authorized. It rescinded its prior authorization for bilateral knee surgery. The Office noted that Dr. Berkson's January 23, 2005 opinion that appellant's right knee condition was not due to the accepted November 20, 2001 employment injury. It advised that she was being referred for a second opinion evaluation to determine whether her right knee condition should be considered a consequential injury of the accepted left knee injury and whether surgery should be approved.

On July 20, 2005 the Office referred appellant, together with a statement of accepted facts, the case record and a list of questions to be addressed, to Dr. Leonard R. Smith, a Board-certified orthopedic surgeon.

In an August 10, 2005 report, Dr. Smith reviewed a history of appellant's November 20, 2001 left knee injury, her right knee and foot conditions and medical treatment. He noted her left and right knee symptoms and physical limitations. On x-ray examination of both knees, Dr. Smith reported mild osteoporosis of the right lower extremity and more marked findings on the left, considerable lateral displacement of the patella on the left and right, narrowing on the right medial joint line and marked narrowing on the left, irregularity on the medial femoral condyle, valgus deformity on the right and significant narrowing of the patellofemoral junction

with chondromalacia of the patella bilaterally. On physical examination, he reported healed arthroscopic surgery scars on both knees. On the right there was tenderness anteriorly and on the left it was anteriorly and posteriorly. On the right there was mild loss of hollow landmarks. There was marked loss of the hollow landmarks on the left. Collateral and cruciate ligaments on the right were intact. There was a positive drawer sign on the left with indication of anterior cruciate instability. Internal and external rotation of the tibia upon the bent femur on the right was normal, on the left they were limited five degrees. Slocum, grinding, varus and valgus straining McMurray and Ballottement tests were negative on the right. There was 1+ crepitation in both knees. Dr. Smith reported his circumference measurements for the thighs, knees and calves. Anterior and posterior tibial pulses were intact. There was a decreased patellar tendon reflex on the right. There was a moderately antalgic gait on the left. A valgus deformity was noted on the left. Dr. Smith stated that appellant had difficulty in squatting and rising to a standing position. Appellant had full passive range of motion in the right knee with extension to 180 degrees and flexion to 135 degrees. On the left there was limitation of 20 degrees of passive extension and 10 degrees of passive flexion.

As to whether appellant's right knee was a consequence of the left knee injury, Dr. Smith noted a history of left knee problems and multiple surgical procedures prior to November 20, 2001. He stated that the disconnect between the time of the alleged onset of symptoms from the accepted employment injuries and resulting surgery caused considerable doubt regarding causal relationship based on his findings, with the exception of a possible recurrent meniscal injury. Dr. Smith noted that the described history of injury was not usually associated with meniscal injury and may only be an aggravation of a preexisting condition. He stated that it was extremely difficult to quantify what, if any, residual findings were on the basis of the November 2001 employment injuries or preexisting conditions. Dr. Smith opined that appellant appeared to have reached maximum medical improvement noting, that she had returned to her previous work activities. He could not recommend any specific treatment modalities other than nonsteroidal anti-inflammatory medication. Dr. Smith concluded that appellant was able to work full time in a sedentary position with restrictions that were probably permanent in nature.

In a March 21, 2007 letter, appellant stated that on October 17, 2003 she filed a CA-1 form for a tear in her right knee that resulted from jumping out of the way of a moving object at work to prevent her from falling onto the floor. She believed that this incident caused her right knee injury.

By decision dated April 24, 2007, the Office denied appellant's claim. It found that the medical evidence was insufficient to establish that she sustained a right knee condition that necessitated surgery as a consequence of her accepted November 20, 2001 employment-related left knee injury.

### **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>1</sup> The subsequent injury is compensable if it is the direct and natural result of a compensable primary injury.<sup>2</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>3</sup>

Proceedings under the Federal Employees' Compensation Act are not adversary in nature, nor is the Office a disinterested arbiter.<sup>4</sup> While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence. It has the obligation to see that justice is done.<sup>5</sup> Accordingly, once the Office undertakes to develop the medical evidence further, it has the responsibility to do so in the proper manner.<sup>6</sup>

### ANALYSIS

The Board finds that the case is not in posture for decision as to whether appellant sustained a right knee condition consequential to her November 20, 2001 employment-related left knee strain and meniscus tear.

In an August 10, 2005 report, Dr. Smith, an Office referral physician, provided his findings, among other things, on x-ray examination of appellant's knees. He reported mild osteoporosis of the right lower extremity and more marked findings on the condition on the left. Dr. Smith also reported considerable lateral displacement of the patella on the left and right, narrowing on the right medial joint line and marked narrowing on the left, irregularity on the medial femoral condyle, valgus deformity on the right and significant narrowing of the patellofemoral junction with chondromalacia of the patella bilaterally. He expressed doubt regarding causal relationship based on most of his findings but noted the exception of a possible recurrent meniscal injury. Dr. Smith addressed appellant's history of left knee problems and multiple surgical procedures prior to November 20, 2001, noting a disconnect between the time of the alleged onset of her symptoms from the accepted employment injuries and resulting surgery. He speculated that appellant may have only sustained an aggravation of a preexisting condition as the described history of injury was not usually associated with a meniscal injury. However, Dr. Smith related that it was extremely difficult to quantify what, if any, residual findings were on the basis of the November 2001 employment injuries or preexisting conditions. He found that appellant appeared to have reached maximum medical improvement noting, as she had returned to her previous work activities. Dr. Smith concluded that she was capable of working full time in a sedentary position with restrictions that were probably permanent in

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<sup>1</sup> *Albert F. Ranieri*, 55 ECAB 598 (2004).

<sup>2</sup> *Id.*; *Carlos A. Marrero*, 50 ECAB 117 (1998); A. Larson, *The Law of Workers' Compensation* § 10.01 (2005).

<sup>3</sup> *Kathy A. Kelley*, 55 ECAB 206 (2004).

<sup>4</sup> *Vanessa Young*, 55 ECAB 575 (2004).

<sup>5</sup> *Richard E. Simpson*, 55 ECAB 490 (2004).

<sup>6</sup> *Melvin James*, 55 ECAB 406 (2004).

nature. The Board has held that medical opinions that are speculative or equivocal in nature are of diminished probative value.<sup>7</sup> The Board finds that Dr. Smith's opinion is speculative as he did not provide an unequivocal opinion addressing the causal relationship between appellant's right knee conditions and her accepted employment-related left knee injuries. Further, Dr. Smith was uncertain about whether she had any continuing residuals related to her employment-related left knee injuries, whether she had reached maximum medical improvement and the duration of her physical restrictions. The Board, therefore, finds that the record does not include a probative medical opinion on the issue of whether appellant sustained a right knee injury consequential to her employment-related left knee injuries.

Once the Office undertakes development of the record, it has the responsibility to do so in a proper manner.<sup>8</sup> Given the deficiencies in Dr. Smith's report, the Office should not have denied appellant's claim for a consequential injury. Accordingly, the Board will remand the case to the Office for appropriate further medical development. On remand, the Office should secure a medical opinion that resolves the question of whether appellant has sustained a right knee injury and requires surgery as a consequence of her accepted November 20, 2001 employment-related left knee strain and meniscus tear. After further development as deemed necessary, it should issue an appropriate merit decision on appellant's claim.

### **CONCLUSION**

The Board finds that the case is not in posture for decision as to whether appellant sustained a right knee injury and required surgery as a consequence of her accepted November 20, 2001 employment-related left knee injuries.

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<sup>7</sup> *L.R. (E.R.)*, 58 ECAB \_\_\_ (Docket No. 06-1942, issued February 20, 2007); *D.D.*, 57 ECAB 734 (2006); *Cecelia M. Corley*, 56 ECAB 662 (2005).

<sup>8</sup> *Melvin James*, *supra* note 6.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 24, 2007 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development consistent with this decision of the Board.

Issued: February 23, 2009  
Washington, DC

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

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

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