United States Department of Labor
Employees' Compensation Appeals Board

J.J., Appellant	)	
and	)	**Docket No. 09-27**
	)	**Issued: February 10, 2009**
U.S. POSTAL SERVICE, POST OFFICE, Chicago, IL, Employer	)	

Appearances:
Jeffrey P. Zeelander, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 2, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' November 13, 2007 merit decision denying his claim for a consequential injury and resultant disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained a left leg condition and resultant disability as a consequence of his May 14, 2006 employment injury.

FACTUAL HISTORY

The Office accepted that on May 14, 2006 appellant, then a 53-year-old mail handler, sustained a lumbar radiculopathy due to pushing heavy cages of mail. Appellant began performing light-duty work for the employing establishment. In late September 2006, he reported to his physical therapist that he experienced low back pain with an occasional radiculopathy in the legs.

In an October 27, 2006 report, Dr. Mohammed Asgar, an attending Board-certified internist, stated that appellant presented with a complaint of his back giving way and falling while going down stairs. He recommended that appellant undergo diagnostic testing. After obtaining the results of magnetic resonance imaging (MRI) scan testing, Dr. Asgar stated on November 17, 2006 that appellant had a left quadriceps muscle rupture.[1]

On November 22, 2006 appellant filed a claim alleging that he sustained a recurrence of total disability on October 26, 2006 due to his May 14, 2006 employment injury.[2] He indicated that he was walking down stairs when he felt a spasm. Appellant's left leg weakened and failed to support his weight which resulted in him falling and rupturing the quadriceps muscle in his left leg. He asserted that since his May 14, 2006 injury he experienced limping, back muscle spasms and low back pain which radiated into his left leg. In subsequent letters, appellant asserted that his October 26, 2006 fall occurred as a consequence of his May 14, 2006 employment injury because that injury had weakened his legs.

On December 6, 2006 the Office requested that appellant submit additional factual and medical evidence in support of his claim. In a November 3, 2006 report, Dr. William Baylis, an attending osteopath, diagnosed left quadriceps contusion and a questionable partial quad tear. In a November 3, 2006 note, he indicated that appellant reported that he "missed a few steps and fell." In a November 24, 2006 report, Dr. Baylis stated that examination showed that appellant's left quadriceps mechanism was intact and that he was actively extending his leg. He diagnosed resolving contusion of the left quadriceps with partial undersurface injury. Dr. Baylis stated: "This injury occurred secondary to exacerbation of back pain that caused him to fall at work sustaining injury to his knee." In a November 24, 2006 note, he stated: "Partial left quadriceps tear secondary to fall because back gave out at work."

On January 9, 2007 Dr. Benjamin P. Crane, a Board-certified orthopedic surgeon who served as an Office medical adviser, discussed the treatment of appellant's left leg after he claimed that he fell on October 26, 2006 while walking down stairs at home. He indicated that he could not make a determination regarding whether appellant sustained a left leg injury as a consequence of his May 14, 2006 employment injury because not all of the relevant medical evidence was available.

In a March 1, 2007 decision, the Office denied appellant's claim on the grounds that he had not submitted sufficient medical evidence to establish that he sustained a left leg condition and resultant disability as a consequence of his May 14, 2006 employment injury. It found that the medical evidence did not establish that appellant sustained a fall at home on October 26, 2006 due to his May 14, 2006 employment injury.[3]

[1] The record contains the findings of October 30, 2006 MRI scan testing of appellant's left thigh which shows evidence of a strain or partial tear involving portions of the quadriceps muscle and quadriceps tendon.

[2] Appellant stopped work on October 26, 2006 and did not return.

[3] The March 1, 2007 decision amended a February 21, 2007 decision which contained errors regarding appellant's accepted employment injury.

In an April 17, 2007 report, Dr. Satish Patel, an attending Board-certified internist, stated that appellant reported that on October 26, 2006 he was walking down the stairs at his home and, when he reached the bottom two stairs, he felt his lower back give out. He indicated that appellant's left leg buckled and he went straight down. Dr. Patel advised that he was diagnosed with a deep vein thrombosis of his left leg and bilateral pulmonary embolism prior to being referred for treatment. He stated: "I have come to the conclusion that all injuries sustained since the initial incident on May 14, 2006 were a direct result of the May 14, 2006 work injury."

In a May 27, 2007 report, Dr. Robert Wysocki, a Board-certified internist who served as an Office medical adviser, concluded that appellant's left leg injury was not a consequential injury related to the accepted lumbar radiculopathy. He noted that Dr. Patel did not document any specific physical examination or diagnostic testing findings that led to his conclusion that it was a consequential injury. Moreover, there was no documentation of lower extremity weakness or of a radiculopathy causing frequent falls. Dr. Wysocki stated:

> "If there are in fact no conclusive examination or imaging findings, then the determination must be based purely on history. Thus one can best reason that the most accurate history of the circumstances of the fall is likely the report closest to the time of the injury. It would also stand to reason that the details of the fall would be more difficult to recall accurately as time progresses. At the present time, since the emergency room note from the time of presentation is not available, the report closest to the time of injury is the November 3, 2006 documentation of the claimant 'missing a few steps' without any mention of the back or leg giving way."

The Office determined that there was a conflict in the medical opinion between Drs. Patel and Baylis, appellant's attending physicians, and the Office medical adviser, Dr. Wysocki, regarding whether appellant sustained a left leg injury as a consequence of his May 14, 2006 employment injury. In order to resolve the conflict, the Office referred appellant, to Dr. Joseph Thometz, a Board-certified orthopedic surgeon, for an impartial medical examination and an opinion on the matter.

On July 16, 2007 Dr. Thometz described appellant's factual and medical history and stated that appellant reported that on October 26, 2006 he was "going down his stairs and his back gave out and he fell down two or three stairs and landed on his left leg." On examination, appellant had evidence of moderate reconditioning and residual atrophy of his left thigh which would be expected to improve and resolve with a course of physical therapy. Appellant exhibited some findings of symptom magnification with marked splinting and grimacing when getting on and off the examination table. Dr. Thometz stated that it was not clear from the medical evidence whether appellant fell on October 26, 2006 and then his back gave way or whether his back gave out and then he fell. He stated that it would be helpful to have copies of the emergency room evaluation from October 26, 2006, the date of injury, and requested that these documents be provided for his review.

The October 26, 2006 emergency room report was added to the record. The report indicated that appellant had stated that "this morning he fell down two or three stairs while going to let the dog out and he hurt his left knee and thigh and states that he can't move his left

knee…." The report indicated "none" in the section for listing reported back pain and contained the diagnosis of left quadriceps rupture.

On November 22, 2007 Dr. Thometz reviewed the October 26, 2006 emergency room report. He stated:

> "The history obtained at that time states that a fall down the stairs while going to let the dog out and the emergency room record under history of injury, under location, there is a reference to back pain followed by response 'none.' On the basis of these records, I do not find a clear causal relationship correlating the back disability and the subsequent injury to the knee which occurred on October 26, 2006. As there is no specific reference to the back or findings of back disability at the time of his emergency room visit, I cannot find a clear causal relationship between the back injury and the fall from October 26, 2006."

In a November 13, 2007 decision, the Office affirmed its March 1, 2007 decision. It found that the weight of the medical evidence rested with the well-rationalized opinion of Dr. Thometz who determined that appellant did not sustain a left leg injury as a consequence of his May 14, 2006 employment 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. The subsequent injury is compensable if it is the direct and natural result of a compensable primary injury. 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.[4]

A claimant bears the burden of proof to establish a claim for a consequential injury. As part of this burden, he must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship. Rationalized medical evidence is evidence which relates a work incident or factors of employment to a claimant's condition, with stated reasons of a physician. The opinion must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship of the diagnosed condition and the specific employment factors or employment injury.[5]

Section 8123(a) of the Federal Employees' Compensation Act 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

[4] *S.S.*, 59 ECAB ___ (Docket No. 07-579, issued January 14, 2008).

[5] *Charles W. Downey*, 54 ECAB 421 (2003).

an examination."[6] 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 the Act, to resolve the conflict in the medical evidence.[7] In situations where there exist 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 conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[8]

ANALYSIS

The Office accepted that on May 14, 2006 appellant, then a 53-year-old mail handler, sustained a lumbar radiculopathy due to pushing heavy cages of mail. Appellant began performing light-duty work for the employing establishment. He claimed that he sustained a fall down stairs at home on October 26, 2006 due to residuals of his May 14, 2006 employment injury because that injury had weakened his leg muscles. Appellant asserted that he sustained a left leg injury due to this fall, including a quadriceps muscle rupture and claimed that he sustained disability from October 26, 2006.

The Office determined that there was a conflict in the medical opinion between Dr. Baylis, an attending osteopath, and Dr. Patel, an attending Board-certified internist, on the one hand, and Dr. Wysocki, a Board-certified internist who served as an Office medical adviser, regarding whether appellant sustained a consequential left leg injury. Pursuant to section 8123(a) of the Act, it properly referred appellant to Dr. Thometz, a Board-certified orthopedic surgeon, for an impartial medical examination and an opinion on the matter.

The Board finds that the special weight of the medical evidence rests with the well-rationalized opinion of the impartial medical specialist, Dr. Thometz, who determined that appellant did not sustain a left leg injury as a consequence of his May 14, 2006 employment injury.[9]

Dr. Thometz provided an accurate factual and medical history. He indicated that on examination appellant had evidence of moderate reconditioning and residual atrophy of his left thigh which would be expected to improve and resolve with a course of physical therapy. Appellant exhibited some findings of symptom magnification with marked splinting and grimacing when getting on and off the examination table. Dr. Thometz reviewed the medical evidence, including the October 26, 2006 emergency room report, and concluded that appellant's October 26, 2006 fall at home did not occur as a consequence of his May 14, 2006 employment injury which was accepted for lumbar radiculopathy. He provided rationale for this opinion by explaining that, although appellant claimed that back spasms related to his employment injury caused him to fall on October 26, 2006, he did not report any back problems at the time he sought emergency care on that date. Dr. Thometz indicated that none of the medical records

[6] 5 U.S.C. § 8123(a).

[7] *William C. Bush*, 40 ECAB 1064, 1975 (1989).

[8] *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

[9] *See supra* note 8 and accompanying text.

showed a clear causal relationship between the employment-related back condition and the October 26, 2006 fall with its resultant leg injury and disability.

The Board finds that appellant has not established that his October 26, 2006 fall occurred as a consequence of his May 14, 2006 employment injury. Therefore, he has not shown that he sustained a consequential left leg injury or any resultant disability on or after October 26, 2006.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained a left leg condition and resultant disability as a consequence of his May 14, 2006 employment injury

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' November 13, 2007 decision is affirmed.

Issued: February 10, 2009
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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