

2006 Office decision denying appellant's claim for a consequential right knee injury.¹ On July 27, 2005 the Office referred appellant to Dr. William D. Emper, a Board-certified orthopedic surgeon, to resolve the conflict in the medical opinion evidence between Dr. Peter F. Sharkey, a treating Board-certified orthopedic surgeon, and Dr. Robert Franklin Draper, Jr., a second opinion Board-certified orthopedic surgeon. The Board found that there was an unresolved conflict in the medical opinion evidence as the Office failed to follow established procedures in its selection of Dr. Emper, the impartial medical examiner, and remanded the case to the Office to resolve the conflict in the medical opinion evidence. The facts and the circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference.²

Following the Board's decision, the Office referred appellant to Dr. Paul Maluso, a Board-certified orthopedic surgeon, together with the case file and a statement of accepted facts to resolve the conflict in the medical opinion evidence between Dr. Sharkey and Dr. Draper, as to whether appellant sustained a consequential right knee injury. In a report dated August 30, 2007, Dr. Maluso concluded that appellant's right knee condition was unrelated to his accepted July 7, 1993 employment injury. In support of this conclusion, he stated:

"It is my opinion that just shifting the weight from the left knee to the right knee would not cause any condition in the right knee. According to the records of Dr. Leinberry, he did have an injury to his right knee when his right knee gave out around November 2004. It is my opinion that the right knee giving out would not be related to the industrial accident of July 1993. Without any specific injury to the right knee and just a history of some increased weight bearing because of favoring or overcompensating, it is my opinion that the treatment to the right knee would not be related to the accident of July 7, 1993."

By decision dated September 18, 2007, the Office denied appellant's claim for a right knee consequential injury. It found the opinion of Dr. Maluso, the impartial medical examiner, constituted the weight of the evidence that appellant did not sustain a consequential right knee injury.

In a letter dated September 21, 2007, appellant's counsel requested an oral hearing before an Office hearing representative, which was held on January 10, 2008. At the oral hearing and in letters dated January 10 and 20, 2008, appellant's counsel contended that the Office failed to

¹ Docket No. 06-1540 (issued June 5, 2007).

² On July 9, 1993 appellant, then a 36-year-old materials handler assistant supervisor, filed a traumatic injury claim alleging that on July 7, 1993 he hit his left knee on the frame of a fork truck. The Office accepted the claim for left knee sprain, left knee internal derangement and left knee popliteal cyst and authorized left knee arthroscopic surgery and lateral medial meniscus debridement, which was performed on November 18, 1994. On July 19, 1995 it authorized a second left knee arthroscopic surgery, which was performed on September 11, 1995. Appellant stopped work on July 10, 1993 and was placed on the periodic rolls for temporary total disability by letter dated January 11, 1995. He returned to light duty on April 17, 1995 and was placed on the short-term periodic rolls effective October 15, 1995. Appellant returned to light-duty work four hours per day on December 11, 1995 and full duty effective April 15, 1996. By decision dated February 4, 1997, the Office issued appellant a schedule award for a 22 percent impairment of the left lower extremity. By letter dated June 27, 2003, it placed appellant on the periodic rolls for temporary total disability.

inform Dr. Maluso regarding the proper standard of causation for consequential injuries under the Act.

By decision dated March 20, 2008, an Office hearing representative affirmed the denial of appellant's claim that he sustained a consequential right knee injury. The Office hearing representative rejected appellant's argument that the Office failed to provide Dr. Maluso with information on the proper standard of causation for consequential injuries under the Act.

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. 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. However, a claimant bears the burden of proof to establish his claim for a consequential injury and as part of this burden, 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.³ Such opinion of the physician must be one of reasonable medical certainty and must be supported by medical reasoning explaining the nature of the relationship between the diagnosed condition and the employment.⁴

Section 8123(a) of the Federal Employees' Compensation Act provides in pertinent part that, 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.⁵ Where a case is referred to an impartial medical examiner for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background must be given special weight.⁶

ANALYSIS

The Office accepted the claim for left knee sprain, left knee internal derangement and left knee popliteal cyst. On July 27, 2005 it referred appellant to Dr. Maluso, a Board-certified orthopedic surgeon, to resolve the conflict in the medical opinion evidence between Dr. Sharkey, appellant's treating physician, and Dr. Draper, an Office second opinion specialist, on the issue of whether appellant sustained a consequential right knee injury.

³ *Charles W. Downey*, 54 ECAB 421 (2003).

⁴ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁵ 5 U.S.C. § 8123(a); *R.C.*, 58 ECAB ____ (Docket No. 06-1676, issued December 26, 2006); *Darlene R. Kennedy*, 57 ECAB 414 (2006).

⁶ *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

The opinion of Dr. Maluso, the impartial medical examiner, requires clarification and elaboration on the issue of consequential injury. He limited his discussion to two sentences as to why appellant did not sustain a consequential right knee injury. As noted above a consequential injury requires only that the right knee condition is a natural consequence flowing from the left knee injury. It is unclear whether Dr. Maluso understood the standard used by the Office in determining consequential injuries under the Act. His comments indicate that he believed that since appellant did not sustain a right knee injury due to the July 7, 1993 employment injury that any right knee condition is unrelated to the accepted employment. In addition, Dr. Maluso does not provide any medical rationale explaining his conclusion that appellant did not sustain a consequential right knee injury. He merely noted that appellant's history of overcompensating or favoring his right knee with more weight would not indicate that the right knee condition was causally related to the July 7, 1993 employment injury. However, as the Board has held, medical opinion not fortified by medical rationale is of little probative value.⁷ As Dr. Maluso's conclusion that appellant's right knee injury was not employment related is not supported by medical rationale, it is not sufficient to resolve the issue. Thus, the Board finds Dr. Maluso's report is not well rationalized as he has failed to provide any supporting rationale for his conclusion that appellant's right knee condition is not employment related.⁸ Consequently, his report is not afforded the special weight of the medical evidence attributable to an impartial medical examiner. The impartial medical examiner must therefore provide a well-reasoned opinion to resolve this issue.⁹

The Board will set aside the Office's March 20, 2008 decisions and remand the case for a supplemental report from the impartial medical examiner. Following such further development of the evidence, as may be necessary, the Office shall issue an appropriate final decision on the issues of consequential injury and additional impairment.

CONCLUSION

The Board finds that this case is not in posture for decision. The medical evidence requires further development as the conflict in medical opinion remains unresolved.

⁷ *S.D.*, 58 ECAB ___ (Docket No. 07-1120, issued September 24, 2007).

⁸ *E.A.*, 58 ECAB ___ (Docket No. 07-1145, issued September 7, 2007) (a rationalized opinion is an opinion based on a complete factual and medical background of the claimant, is of reasonable medical certainty, and is supported by medical rationale explaining the nature of the relationship between the diagnosed condition and employment factors).

⁹ In a situation where the Office secures an opinion from an impartial medical examiner for the purpose of resolving a conflict in the medical evidence and the opinion from such specialist requires clarification or elaboration, the Office has the responsibility to secure a supplemental report from the specialist for the purpose of correcting the defect in the original opinion. *Giuseppe Aversa*, 55 ECAB 164, 168 (2003); *Harold Travis*, 30 ECAB 1071, 1078 (1979).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs' hearing representative dated March 20, 2008 and the September 18, 2007 are set aside. The case is remanded for further action consistent with this opinion.

Issued: March 9, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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