United States Department of Labor
Employees' Compensation Appeals Board

V.J., Appellant	)	
and	)	**Docket No. 10-41**
	)	**Issued: December 10, 2010**
U.S. POSTAL SERVICE, POST OFFICE, St. Louis, MO, Employer	)	

Appearances:
Appellant, pro se
No appearance, for the Director

Oral Argument May 19, 2010

DECISION AND ORDER

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

JURISDICTION

On September 25, 2009 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated September 26, 2008 and a nonmerit decision dated July 2, 2009. Under 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 sustained a consequential injury on July 9, 2007 due to her accepted bilateral knee conditions.

FACTUAL HISTORY

This case was previously before the Board. The Office accepted appellant's occupational disease claim for aggravation of degenerative joint disease of both knees and for a Bakers' cyst and synovitis of the left knee. Appellant underwent surgery on November 18, 1998 and April 21, 1999. She received compensation for total disability. In a September 25, 2001 decision, the Office terminated appellant's compensation on the grounds that she refused an offer of suitable work. This was affirmed in a September 12, 2002 decision of an Office hearing

representative. The Office subsequently denied modification in decisions dated January 30 and May 14, 2003 and April 23, 2004. In a September 13, 2005 decision, the Board affirmed the termination of benefits.[1] The facts of the case as set forth in the Board's prior decision are incorporated by reference.

On October 15, 2007 appellant requested that the Office accept consequential injuries to her left elbow, forearm and shoulder. In statements to the record, she advised that her knee buckled on July 9, 2007 while she was at home, causing her to fall. Appellant stated that she was walking into her kitchen when she fell, striking her left elbow against a counter. Thereafter, the pain progressed from her left forearm to her left shoulder. As her knee was painful, appellant used her arms for support.

Appellant submitted a July 31, 2007 magnetic resonance imaging (MRI) scan of her left elbow. It noted swelling with extensive edema within the proximal radius and a large joint effusion with a signal consistent with synovitis. There was tendinopathy with a partial tear of the common extensor tendons, specifically involving the extensor carpi radialis brevis. The proximal attachment to the radial collateral ligament also appeared torn and there was a partial tear at its distal attachment upon the sublime tubercle.

By letter dated October 25, 2007, the Office requested that appellant submit additional factual and medical evidence in support of her claim. It asked for a detailed description regarding how her injury occurred and what she was doing at the time. The Office inquired as to any witnesses to the injury. It also asked appellant to submit a comprehensive medical report from a treating physician describing her symptoms, a diagnosis and an opinion as to how her condition was causally related to her federal employment.

On November 24, 2007 appellant reiterated that her injury occurred while she was entering her kitchen. Her knee buckled and, to keep from falling to the floor, she fell toward a kitchen counter and landed on her left elbow. Appellant stated that, due to ongoing left knee pain, she frequently leaned on her arms and body for support, which exacerbated her left shoulder and forearm pain. She submitted a handwritten July 17, 2007 treatment note from Dr. Carter P. Fenton, an osteopath, who listed that she fell on July 9, 2007 and was seen for complaints involving her left elbow and upper extremity.

In a December 22, 2007 report, Dr. Fenton stated that appellant had ongoing problems with her left shoulder, elbow, wrist and hand due to the stress she applied to the upper extremity while balancing or lifting herself from chairs and using walkers and canes. He noted that she fell on July 9, 2007 when her leg gave out and she landed on her left arm and shoulder. Dr. Fenton related that appellant experienced swelling and loss of motion in her left elbow, in addition to pain and loss of function in her left shoulder. He reviewed the left shoulder MRI scan of July 12, 2007, which showed no full thickness rotator cuff tear; moderate tendinopathy of the supraspinatus and subscapularis and trace subacromial-subdeltoidal bursitis. Dr. Fenton reviewed a July 31, 2007 left elbow MRI scan. He concluded that appellant's injuries were a consequence of her original knee injury. Dr. Fenton noted that she was undergoing ongoing treatment and surgical intervention was likely.

[1] Docket No. 04-1852 (issued September 13, 2005).

In a July 10, 2007 report, Dr. Emil A. DiFilippo advised that appellant recently experienced pain in the area of her left elbow; he noted that she had been having pain in the elbow for the past month. He indicated in a July 30, 2007 report, that she also had some lesser pain about the deltoid area and the left shoulder, with some paresthesias down her left arm and the area of the second, third and fifth fingers. Dr. DiFilippo advised that appellant had limited flexibility in her left elbow. He diagnosed rheumatoid arthritis with limited flexibility of the left elbow and possible synovitis of left elbow, in addition to possible rotator cuff tendinitis. Dr. DiFilippo scheduled appellant for an MRI scan of the left elbow and an MRI scan of her left shoulder. He advised that she had rotator cuff tendinitis of the left shoulder and prescribed a course of physical therapy. Dr. DiFilippo noted on examination that appellant still had limited flexibility of the left elbow, with flexion measured at only 45 to 50 degrees. He administered a cortisone injection in the left elbow.

In a decision dated February 21, 2008, the Office denied a claim based on consequential injuries to appellant's left arm and left shoulder on July 9, 2007, finding that she failed to establish fact of injury. It stated that she did not provide a date when the incident allegedly occurred or identify which knee gave out. The Office noted that none of the factual and medical evidence of record beginning July 9, 2007 mentioned that appellant sustained a fall at her home until her October 15, 2007 statement. It further found that she did not submit a medical report establishing that she sustained an injury due to the fall at her home until December 22, 2007, the date of Dr. Fenton's report.

On June 27, 2008 appellant requested reconsideration. In an August 27, 2007 report, Dr. Heidi Prather, an osteopath, stated that appellant had recently fallen and injured her left elbow. Appellant had a possible fracture or ligamentous injury. Dr. Prather advised that x-rays of the left elbow showed a possible left radial head fracture.

In an October 25, 2007 report, Dr. Leo A. Whiteside, a Board-certified orthopedic surgeon, stated that, at the time of appellant's left knee surgery, her knee had worn down to the subchondral bone in all weight-bearing areas. He advised that all joint surfaces in the knee except for that of the patella were removed with one quarter to three quarter inch bone thickness and were replaced with metal components and screws. Dr. Whiteside reasserted that restrictions for appellant's left knee were still in force and were considered permanent postoperative restrictions.

By decision dated September 26, 2008, the Office denied modification of the February 21, 2008 decision.

On May 21, 2009 appellant requested reconsideration of the September 26, 2008 decision.

In a May 4, 2009 report, Dr. Prather stated that she had treated appellant for multiple complaints of left lower extremity and knee pain related to a complex regional pain syndrome following left knee arthroplasty. She opined that appellant's left shoulder and left elbow pain were related to overuse injuries because she had to use crutches, canes or a wheelchair for ambulation due to left lower extremity disorder. Dr. Prather advised that appellant's problems were linked because of the disability of her left lower extremity.

Appellant submitted handwritten notes from Dr. Whiteside dated February 2 and May 13, 2009, which summarized medical treatment. In the February 2, 2009 report, Dr. Whiteside stated that she tripped and bumped her left elbow on a kitchen counter in July 2007. Appellant also submitted a laboratory report of March 3, 2009.

In a July 2, 2009 decision, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.[2]

LEGAL PRECEDENT

It is an accepted principle of workers' compensation law and the Board has so recognized 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.[3] A second, nonindustrial injury is compensable if it is the direct and natural result of an earlier compensable injury. Where an accident is sustained as a consequence of a disabling residual of a previous industrial injury, it is compensable because of the chain of causation.[4]

The Board has held that a claimant is not entitled to further compensation benefits for a consequential injury if the Office has terminated her compensation benefits for the original injury due to the claimant's failure to accept suitable work.[5] However, section 8106(c) does not serve as a bar to receipt of further medical benefits.[6]

ANALYSIS

The Board finds that appellant did not establish that she sustained a consequential injury to her left arm on July 9, 2007.

The Office accepted appellant's occupational disease claim for aggravation of degenerative joint disease to both knees and a Bakers' cyst and synovitis of the left knee. The Board previously affirmed the termination of her monetary compensation benefits based on a refusal of suitable work.

On October 15, 2007 appellant requested that the Office accept injuries to her left elbow, forearm and shoulder. She related that on July 9, 2007 while at home, her knee buckled and she

[2] The Board notes that the decision actually conducted a merit review as the evidence from Dr. Prather was addressed on the merits with regard to whether it established that the fall at home caused injury to appellant's left arm.

[3] *John R. Knox*, 42 ECAB 193 (1990).

[4] *S.M.*, 58 ECAB 166 (2006).

[5] *Armando D. Rodriguez*, 46 ECAB 721 (1995); *see also Merlind K. Cannon*, 46 ECAB 581 (1995).

[6] *See Stephen R. Lubin*, 43 ECAB 564, (1992); *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment*, Chapter 2.814.9(b)(2) (December 1993).

fell while walking to her kitchen. In the fall, appellant's left elbow struck a kitchen counter. While she did not originally identify which knee buckled while she was at home, a fact on which the Office denied her claim on February 21, 2008; the Board notes that she subsequently clarified that it was her left knee, for which she underwent several surgical procedures. The Board finds that appellant's allegation is not refuted by any strong or persuasive evidence.[7] The Board will modify the Office's determination that she did not establish the incident at home on July 9, 2007.

The medical evidence of record is not sufficient to establish that the fall at home caused injury to appellant's left upper extremity. The Board notes that she was seen on July 10, 2007 by Dr. DiFilippo. Rather than, addressing the July 9, 2007 incident, his contemporaneous treatment note related a history that appellant had recently experienced pain in her left elbow for the prior month. Dr. DiFilippo found good range of motion of the left shoulder and limited flexibility of the left elbow. He advised that x-rays were negative. Dr. DiFilippo diagnosed known rheumatoid arthritis with limited flexibility of the left elbow, possible synovitis and rotator cuff tendinitis and prescribed physical therapy. He obtained diagnostic studies.

On July 19, 2007 Dr. DiFilippo advised that an MRI scan of the left shoulder was obtained that showed some wear of the rotator cuff, without evidence of tear. On July 30, 2007 he diagnosed rotator cuff tendinitis, administered an injection and prescribed physical therapy. Dr. DiFilippo noted that an MRI scan of the elbow would be obtained. The subsequent July 31, 2007 scan of the elbow showed swelling and extensive edema, reactive or possible stress related. There was joint effusion consistent with synovitis. Several tendon and ligaments tears were also diagnosed. The reports of Dr. DiFilippo addressed his medical treatment of appellant's left upper extremity without adequate documentation of the July 9, 2007 incident at home. Rather, he attributed a month-long history of left elbow complaints and he attributed his findings on diagnostic testing to her known rheumatoid arthritis. Dr. DiFilippo's reports are not sufficient to establish that appellant sustained injury to her left elbow or shoulder due to the fall at home.

An August 27, 2007 report from Dr. Prather noted that appellant had recently fallen and had sustained a possible fracture, which was not supported by the diagnostic studies obtained by Dr. DiFilippo. Further, Dr. Prather attributed the left upper extremity complaints to overuse due to appellant supporting her weight while using crutches, canes or a wheelchair. These reports are not sufficient to establish that the July 9, 2007 incident caused or contributed to her left upper extremity condition. Similarly, Dr. Whiteside noted a history in 2009 that appellant had bumped her left elbow on a kitchen counter in July 2007; but he did not attribute any findings related to her left arm to that incident. He failed to provide a rationalized medical opinion addressing how bumping her left elbow caused or contributed to the conditions found on diagnostic study. Rather, Dr. Whiteside primarily addressed appellant's left knee condition, for which she underwent surgery. Dr. Fenton provided a partially legible handwritten treatment note of July 17, 2007, which listed that she had fallen on July 9, 2007. He treated appellant's left elbow but did not address the issue of causal relation. Dr. Fenton's December 22, 2007 report did not explain how the incident at home would cause or contribute to her left upper arm conditions. He stated that appellant's injuries "would be considered a consequence of her original knee injury and are part of

[7] An employee's statement alleging that an injury occurred at a given time and in a given manner is of probative value and will stand unless refuted by strong evidence to the contrary. *See Constance G. Patterson*, 41 ECAB 206 (1989); *Thelma S. Buffington*, 34 ECAB 104 (1982).

its sequaelae"; however, this opinion lacks an adequate review of her medical history or explanation as to how the conditions present on diagnostic study were caused or contributed to by the fall at home. Dr. Fenton reviewed the MRI scans, which listed tendinopathy and bursitis of the shoulder and edema, tendinopathy and synovitis of the left elbow. He did not provide an explanation as to how these conditions would be precipitated by appellant bumping her left elbow against a counter in the incident at home. The medical evidence of record is not sufficient to establish that she sustained a consequential injury to her left upper extremity.

CONCLUSION

The Board finds that appellant did not establish that she sustained injuries to her left upper extremity on July 9, 2007, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the September 26, 2008 decision of the Office of Workers' Compensation Programs is affirmed, as modified.[8]

Issued: December 10, 2010
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

[8] In light of the Board's decision to remand the September 26, 2008 decision to remand for further development, the Office's July 2, 2009 nonmerit decision need not be considered.