

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

G.L., Appellant)

and)

U.S. POSTAL SERVICE, BUSTLETON)
STATION, Philadelphia, PA, Employer)

**Docket No. 09-1280
Issued: March 12, 2010**

Appearances:

Ricardo A. Byron, 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 April 16, 2009 appellant, through his representative, filed a timely appeal from a February 10, 2009 merit decision of the Office of Workers' Compensation Programs denying his claim for a consequential injury and a March 12, 2009 merit decision terminating medical benefits. He also filed a timely appeal from a March 20, 2009 Office decision denying reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUES

The issues are: (1) whether appellant established that he sustained a right knee injury on March 31, 2003 as a consequence of his March 19, 2003 employment injury; (2) whether the Office properly terminated appellant's medical benefits effective March 12, 2009 on the grounds that he did not have residuals of his March 19, 2003 employment injury; and (3) whether the Office properly denied merit review pursuant to 5 U.S.C. § 8128(a).

On appeal, appellant contends that the medical evidence of record is unequivocal and clearly supports that he sustained a consequential injury to his right knee aggravated by physical therapy for his accepted left knee injury.

FACTUAL HISTORY

On March 21, 2003 appellant, then a 56-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that, on March 19, 2003, while delivering mail, he caught his heel on the edge of a step and twisted his left knee. The Office accepted the claim for left knee sprain. After the injury, appellant began working light duty and underwent physical therapy. He retired from the employing establishment on February 24, 2004.

In a May 22, 2003 medical authorization form, a physician stated that appellant had a new problem with his right knee and needed to see a private physician. A May 30, 2003 magnetic resonance imaging (MRI) scan of appellant's right knee revealed degenerative osteoarthritis particularly in the medial compartment. Degenerative changes of the anterior horn of the lateral meniscus suggested myxoid degeneration. The MRI scan also revealed a Baker's cyst but no ligamentous or tendonous injuries.

On August 21, 2006 appellant filed a claim for a March 31, 2003 recurrence (Form CA-2a). He stated that while undergoing therapy for his left knee injury he rode a stationary bicycle and later began limping. Appellant stated that his right knee condition was overlooked by the Office and that it might be classified as a consequential injury.¹

By letter dated October 24, 2006, the Office notified appellant of the deficiencies in his claim. It requested that he provide additional medical and factual evidence.

In a November 22, 2006 letter, appellant's representative claimed that there was no substantial evidence to refute appellant's claim that he sustained a right knee injury during physical therapy. He contended that appellant's treating physician, Dr. William C. Hamilton, a Board-certified orthopedic surgeon, established causal relationship.

By decision dated December 1, 2006, the Office denied the recurrence claim on the grounds that the factual and medical evidence did not establish that appellant sustained a recurrence of his left knee sprain.

On December 3, 2007 appellant, through his representative, requested reconsideration. He alleged that appellant's claim was for a consequential injury to the right knee and not a recurrence of his left knee injury. By letter dated October 7, 2008, appellant's representative requested an update as to the status of the reconsideration request. He submitted a second request for an update on the reconsideration request on November 12, 2008.

¹ Appellant filed a separate claim alleging that he sustained an injury on March 31, 2003 while riding an exercise bicycle under Office file number xxxxxx433. In a March 1, 2006 decision, the Office denied the claim on the grounds that the evidence did not support that he sustained a new injury in the performance of duty.

In an August 18, 2003 medical report, Dr. Hamilton stated that he was treating appellant for symptomatic degenerative arthritis of the right knee. He reported that appellant sustained an injury to his left knee at work on March 19, 2003. During physical therapy for this injury, appellant aggravated preexisting degenerative arthritis of the right knee while using a bicycle. Dr. Hamilton opined that appellant's arthritic symptoms were clearly aggravated by the physical therapy necessitated by his March 19, 2003 left knee injury.

The Office determined that a second opinion evaluation was required regarding whether appellant's right knee condition and any continuing residuals of the March 19, 2003 employment injury. It referred appellant, together with his medical record and a statement of accepted facts, to Dr. Robert Draper, a Board-certified orthopedic surgeon.

In a December 15, 2008 medical report, Dr. Draper reviewed appellant's medical history. He noted that on appellant's statement his left knee condition had resolved and that he was not experiencing left knee pain. Physical examination of the right knee revealed a lack of 10 degrees of extension but flexion of 120 degrees. Anterior and posterior drawer signs and Lachman sign were negative. A spring test was positive for the right knee. Dr. Draper noted some crepitus in the right knee. Physical examination of the left knee revealed full extension and flexion of 145 degrees. Valgus and varus stress testing revealed no instability. Appellant did not demonstrate any effusion of the left knee. Dr. Draper diagnosed left knee strain and preexisting osteoarthritis of the right knee. He opined that appellant's right knee osteoarthritis existed prior to his employment injury and before he started physical therapy. Dr. Draper maintained that appellant's riding of a bicycle did not cause any exacerbation of his preexisting condition. He stated that the natural progression of the osteoarthritis of the right knee had become more symptomatic and caused right knee pain. The riding of the bicycle was coincidental but did not cause or aggravate osteoarthritis of the right knee. Dr. Draper found that appellant did not continue to experience any residuals of his employment-related left knee condition. He noted that appellant could perform any work that did not require climbing ladders but that he had retired.

Appellant, through his representative, submitted part of a June 10, 2003 medical report from Dr. Hamilton, who reported that appellant injured his left knee at work on March 19, 2003. As a result of using a bicycle during physical therapy treatment he developed right knee pain. Dr. Hamilton noted appellant's prior right knee condition in 1992 but stated that he was getting along well with his right knee until he underwent physical therapy for his left knee. He agreed that appellant's left knee had recovered and he acknowledged that his left knee felt as though it were recovered. Physical examination of the right knee demonstrated mild synovitis and a possible small infusion. There was no demonstrable instability and no meniscus signs. Appellant demonstrated full extension and flexion to 100 degrees. Radiographs of the right knee revealed degenerative arthritis, most marked on the medial joint and to a lesser extent the patellofemoral compartment. Dr. Hamilton diagnosed chronic degenerative joint disease of the right knee, aggravated by left knee physical therapy.

Appellant's representative submitted a July 28, 2003 letter from the employing establishment controverting appellant's claim of a consequential right knee condition.

By letter dated January 5, 2009, the Office requested that Dr. Draper provide a supplemental opinion addressing Dr. Hamilton's June 10, 2003 medical report. On January 16, 2009 Dr. Draper stated that the June 10, 2003 medical report did not affect his conclusions as he had already considered the events described.

By decision dated February 10, 2009, the Office denied appellant's claim for a consequential right knee injury. It found that Dr. Draper's opinion represented the weight of the medical evidence as he provided medical rationale to support his conclusions, which were based on an accurate review of appellant's history. The Office noted that Dr. Hamilton did not provide any rationale to support his opinion that appellant sustained a right knee condition during physical therapy for his left knee condition.

On February 10, 2009 the Office also proposed to terminate appellant's medical benefits on the grounds that Dr. Draper advised that the left knee condition had resolved and represented the weight of the medical evidence. It noted that appellant did not submit any current medical reports from Dr. Hamilton to establish continuing injury-related residuals. The Office advised appellant that, if he disagreed with the proposed termination, he had 30 days to submit additional evidence.

By letter dated March 4, 2009, appellant, through his representative, requested reconsideration of the February 10, 2009 decision. He claimed that Dr. Hamilton's June 10, 2003 medical report was unequivocal and contained sufficient medical rationale to support his opinion that appellant's right knee condition was caused by riding a bicycle during physical therapy for his left knee injury.

By decision dated March 12, 2009, the Office finalized the proposed termination of medical benefits effective that day. It noted that appellant did not submit any additional evidence in response to the proposed termination of benefits.

By decision dated March 20, 2009, the Office denied appellant's request for reconsideration of the February 10, 2009 decision. It found that the only evidence submitted after the decision was the March 4, 2009 letter from appellant's representative, which did not raise a substantive legal question or include new and relevant evidence.

LEGAL PRECEDENT -- ISSUE 1

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.² 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

² *S.M.*, 58 ECAB 166 (2006); *John R. Knox*, 42 ECAB 193 (1990).

or second injury, even though not employment related, is deemed, because of the chain of causation, to arise out of and in the course of employment and is compensable.³

A claimant bears the burden of proof to establish a claim for a consequential injury. As part of this burden, he or she must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.⁴ 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

In discussing the range of compensable consequences, once the primary injury is causally connected with the employment, Larson notes that, when the question is whether compensability should be extended to a subsequent injury or aggravation related in some way to the primary injury, the rules that come into play are essentially based upon the concepts of direct and natural results and of claimant's own conduct as an independent intervening cause. The basic rule is that, a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.⁶ The Board has held that, if treatment is performed as a result of an employment injury and such treatment causes further impairments, this would constitute a compensable injury.⁷

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained a left knee strain on March 19, 2003 in the performance of duty. The issue is whether appellant established that he sustained an aggravation of his preexisting right knee arthritis as a consequence of undergoing physical therapy for his employment injury. The Board finds that he has not submitted sufficient medical evidence to meet his burden of proof.

The Office determined that further development of the medical evidence was required and referred appellant to Dr. Draper for a second opinion evaluation of his right knee condition. In a December 15, 2008 medical report, Dr. Draper reviewed appellant's medical history and performed a full physical examination of the right knee revealing a positive spring test, crepitus and a lack of 10 degrees extension. He diagnosed preexisting osteoarthritis of the right knee. Dr. Draper opined that appellant's riding of a bicycle did not cause an exacerbation of his right knee arthritis. Rather, the natural progression of the osteoarthritis of the right knee became more

³ S.S., 59 ECAB ____ (Docket No. 07-579, issued January 14, 2008).

⁴ Charles W. Downey, 54 ECAB 421 (2003).

⁵ Leslie C. Moore, 52 ECAB 132 (2000).

⁶ A. Larson, *The Law of Workers' Compensation*, § 10.01 (December 2000). See Charles W. Downey, *supra* note 4.

⁷ Kathryn Haggerty, 45 ECAB 383 (1994).

symptomatic causing right knee pain. Dr. Draper maintained that the riding of the bicycle was coincidental and that it did not cause or aggravate the osteoarthritis of the right knee.

The Board finds that Dr. Draper provided a well-rationalized opinion to support his conclusion that appellant's right knee arthritis was unrelated to his actions in physical therapy. Dr. Draper's opinion was based on a complete factual and medical background and after a full physical examination.⁸

In support of his claim, appellant submitted medical reports dated June 10 and August 18, 2003 from Dr. Hamilton, his treating physician. In the June 10, 2003 medical report, Dr. Hamilton described a physical examination and reviewed radiographs of appellant's right knee. He diagnosed chronic degenerative joint disease of the right knee aggravated by physical therapy. Dr. Hamilton noted that appellant had a prior right knee condition in 1992 but that he was getting along well until he underwent physical therapy for his left knee. In the August 18, 2003 report, he stated that he was treating appellant for symptomatic degenerative arthritis of the right knee. Dr. Hamilton stated that appellant sustained an injury to his left knee at work. During physical therapy for the injury, appellant aggravated his preexisting degenerative arthritis of the right knee while using a bicycle. Dr. Hamilton opined that appellant's arthritic symptoms were clearly aggravated by physical therapy necessitated by appellant's March 19, 2003 left knee injury.

These reports are not sufficient to support appellant's claim for a consequential right knee injury. Dr. Hamilton did not describe how appellant's physical therapy would aggravate his preexisting arthritis. He did not provide a rationalized medical opinion explaining how the mechanism of riding a bicycle exacerbated appellant's right knee arthritis. The fact that riding the bicycle revealed the underlying disease is not sufficient to establish appellant's claim. Dr. Hamilton did not explain how the activity would cause the arthritis to progress. Moreover, he did not explain how he determined that appellant's arthritis was aggravated by the physical therapy as opposed to the natural progression of the degenerative disease. Thus, the Board finds that his medical reports are of diminished probative value.⁹

Appellant also submitted a May 22, 2003 medical authorization form in which a physician stated that he had a new problem with his right knee and needed to see a private physician. This form does not address the cause of his right knee condition and is therefore of diminished probative value.¹⁰ Appellant further submitted a May 30, 2003 MRI scan report revealing degenerative osteoarthritis of the right knee. As this is a diagnostic report, it does not address causation and is similarly of diminished probative value.¹¹

The Board finds that Dr. Draper's medical opinion, that appellant's right knee condition was not caused or aggravated by physical therapy, represents the weight of the medical

⁸ See *Carol S. Madsen*, 54 ECAB 331 (2003).

⁹ See *Robert Broome* 55 ECAB 339 (2004); *Linda I. Sprague*, 48 ECAB 386 (1997).

¹⁰ See *Donald T. Pippin*, 54 ECAB 631 (2003).

¹¹ See *Conrad Hightower*, 54 ECAB 796 (2003)

evidence.¹² Accordingly, appellant did not meet his burden of proof to establish that he sustained a consequential injury resulting from his March 19, 2003 employment injury.¹³

LEGAL PRECEDENT -- ISSUE 2

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.¹⁴ It may not terminate compensation without establishing that disability ceased or that it was no longer related to the employment.¹⁵ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.¹⁶ To terminate authorization for medical treatment, it must establish that an employee no longer has residuals of an employment-related condition which requires further medical treatment.¹⁷

ANALYSIS -- ISSUE 2

The Office accepted that appellant sustained a left knee sprain on March 19, 2003 in the performance of duty. The issue is whether the Office properly terminated appellant's medical benefits on March 12, 2009 on the grounds that the employment injury had resolved.

The Office referred appellant to Dr. Draper for a second opinion evaluation regarding whether he continued to experience any residuals of his employment-related left knee condition. In a December 15, 2008 medical report, Dr. Draper relayed appellant's claims that his left knee condition had resolved and that he did not have left knee pain. Physical examination revealed full extension and flexion of 145 degrees, no instability during valgus and varus stress testing and negative anterior drawer, posterior drawer and Lachman signs. Dr. Draper opined that appellant did not continue to experience any residuals of his employment-related left knee condition. His medical report was comprehensive, well rationalized and based on a complete and accurate medical history. Thus, the Board finds that Dr. Draper's report constitutes the weight of the medical evidence.¹⁸

Appellant did not submit any medical evidence to support that he continued to experience residuals of his employment-related left knee condition. Rather, his treating physician, Dr. Hamilton, stated in a June 10, 2003 medical report that the left knee condition had recovered and that even appellant conceded that his left knee felt as if it were recovered. This evidence

¹² See *Charles W. Downey*, *supra* note 4.

¹³ See *Margarette B. Rogler*, 43 ECAB 1034 (1992).

¹⁴ *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Fermin G. Olascoaga*, 13 ECAB 102, 104 (1961).

¹⁵ *J.M.*, 58 ECAB 478 (2007); *Anna M. Blaine*, 26 ECAB 351 (1975).

¹⁶ *T.P.*, 58 ECAB 524 (2007); *Larry Warner*, 43 ECAB 1027 (1992).

¹⁷ *T.P.*, *supra* note 16; *Furman G. Peake*, 41 ECAB 361, 364 (1990).

¹⁸ See *John E. Cannon*, 55 ECAB 585 (2004).

supports Dr. Draper's conclusion that appellant did not continue to experience residuals of his left knee condition.

The Board finds that the medical evidence of record establishes that appellant's employment-related left knee condition had resolved prior to March 12, 2009. Therefore, the Office properly terminated appellant's medical benefits.¹⁹

LEGAL PRECEDENT -- ISSUE 3

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,²⁰ the Office's regulations provide that the evidence or argument submitted by a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.²¹ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.²² When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.²³

ANALYSIS -- ISSUE 3

The issue is whether appellant, in support of his reconsideration request, submitted relevant and pertinent evidence, advanced a relevant legal argument not previously considered or showed that the Office erroneously interpreted a specific point of law.

The only evidence submitted after the February 10, 2009 decision is a March 4, 2009 letter from appellant's representative, who argued that Dr. Hamilton's June 10, 2003 medical report was sufficient to support appellant's claim for a right knee consequential injury. The Office previously reviewed Dr. Hamilton's medical report in the February 10, 2009 decision and determined that it was not sufficient to meet appellant's burden of proof in establishing his consequential injury claim. As this argument was previously considered by the Office, it is not a sufficient basis for reopening appellant's claim.²⁴ Appellant did not otherwise show that the Office erroneously interpreted a specific point of law or submit relevant and pertinent new

¹⁹ See *B.T.*, 60 ECAB ____ (Docket No. 08-1885, issued June 3, 2009); *Eddie Franklin*, 51 ECAB 223 (1999).

²⁰ 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

²¹ 20 C.F.R. § 10.606(b)(2).

²² *Id.* at § 10.607(a).

²³ *Id.* at § 10.608(b).

²⁴ See *Y.S.*, 60 ECAB ____ (Docket No. 08-440, issued March 16, 2009).

evidence. Therefore, the Board finds that the Office properly declined to reopen appellant's case for merit review.²⁵

CONCLUSION

The Board finds that appellant did not establish that he sustained a right knee injury on March 31, 2003 as a consequence of his March 19, 2003 employment injury. The Board further finds that the Office properly terminated appellant's medical benefits effective March 12, 2009 on the grounds that he did not continue to experience any residuals from his March 19, 2003 employment injury. Finally, the Board finds that the Office properly denied merit review pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the March 20, March 12 and February 10, 2009 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 12, 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

²⁵ See *J.M.*, 60 ECAB ___ (Docket No. 09-218, issued July 24, 2009).