United States Department of Labor
Employees' Compensation Appeals Board

B.M., Appellant	)	
and	)	
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, AIR MARSHAL SERVICE, Cincinnati, OH, Employer	)	**Docket No. 09-2124** **Issued: May 5, 2010**

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 August 18, 2009 appellant filed a timely appeal from an August 25, 2008 decision of the Office of Workers' Compensation Programs that denied his claim. 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 met his burden of proof to establish that he sustained a right knee condition as a consequence of his accepted left knee injury.

FACTUAL HISTORY

On May 21, 2007 appellant, then a 41-year-old federal air marshal, sustained a traumatic injury to his left knee when he caught it while exiting an airplane seat. He began modified duty.

A May 30, 2007 magnetic resonance imaging (MRI) scan of the left knee demonstrated a complete anterior cruciate ligament (ACL) and a medial meniscus tear. In a June 25, 2007

report, Dr. Keith Kenter, Board-certified in orthopedic surgery, reviewed the history of injury and reported that appellant had a prior knee arthroscopy in 1994 but had since recovered. He provided physical examination findings and diagnosed posterior capsular strain and possible ACL tear. The Office accepted left knee sprain/strain and tears to the medial meniscus and ACL of the left knee. On August 31, 2007 Dr. Angelo J. Colosimo, a Board-certified orthopedic surgeon, performed left knee surgery. Appellant was placed on the periodic compensation rolls. He returned to modified duty for four hours a day on December 4, 2007 and to full duty on January 18, 2008.

In a February 28, 2008 report, Dr. Colosimo advised that appellant was doing well in follow up of the left knee; however, he had somehow twisted his right knee. He stated that appellant had popping, locking and a feeling of giving way in the right knee. Dr. Colosimo stated that appellant had been overcompensating due to left knee weakness. Right knee examination demonstrated tenderness over the posteromedial joint line and a positive McMurray's test. An April 5, 2008 MRI scan of the right knee demonstrated a radial flap tear of the posterior horn of the posterior body of the medial meniscus and Grade 3 patellofemoral chondromalacia. On April 21, 2008 Dr. Colosimo reviewed the MRI scan findings and reiterated that the right knee condition was probably due to overcompensation for appellant's left knee injury and the time he spent rehabilitating his left knee. He requested authorization for right knee arthroscopy.

In letters dated May 9 and June 23, 2008, the Office requested that appellant provide additional information regarding his right knee condition, noting that Dr. Colosimo had reported that he twisted his right knee. It advised him of the additional evidence needed to support his claim. On July 22, 2008 appellant informed the Office that he experienced painful physical therapy for the first two months following his left knee injury and, in January 2008, his right knee became painful and would give way without warning. He stated that there was no specific incident to relate it to and that it became worse over time. Appellant attributed his right knee condition as a direct result of rehabbing his left knee.

In an August 25, 2008 decision, the Office denied appellant's claim, finding that the medical evidence failed to establish that his right knee injury was a consequence of the May 21, 2007 left knee injury.

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.[1] Regarding the range of compensable consequences of an employment-related injury, 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

[1] *Mary Poller*, 55 ECAB 483 (2004).

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. Thus, 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.[2]

A claimant bears the burden of proof to establish a claim for a consequential injury.[3] 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. 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.[4]

ANALYSIS

The Office accepted that on May 21, 2007 appellant sustained an employment-related left knee sprain/strain, and tears of the medial meniscus and ACL of the left knee. Appellant underwent surgery on August 31, 2007. The issue is whether he sustained a right knee condition as a consequence of his accepted left knee injury. The Board finds that he has not submitted sufficient medical evidence to establish his claim.

The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.[5] The record supports that appellant has positive MRI scan findings of a right knee medial meniscus tear. Dr. Colosimo advised on February 28, 2008 that appellant had right knee symptoms of popping, locking and feeling of giving way due to overcompensating for left knee weakness. He also stated that appellant had somehow twisted his right knee. On April 21, 2008 Dr. Colosimo reiterated that appellant's right knee condition was probably due to overcompensating during the time appellant spent rehabilitating his left knee. The Board finds that Dr. Colosimo's reports are insufficient to establish appellant's claim for a consequential injury. Dr. Colosimo did not provide sufficient medical rationale explaining how appellant's right knee condition meniscus tear was a result of his accepted left knee injury or physical therapy. Rather, he noted the possibility of an intervening injury in which appellant twisted the right knee. The entry in his reports was not adequately addressed by Dr. Colosimo. The Board notes that in a June 25, 2007 report, Dr. Kenter noted a previous history of knee arthroscopic surgery; however, he did not identify which knee was involved. Dr. Colosimo did

[2] A. Larson, *The Law of Workers' Compensation* § 10.01 (November 2000).

[3] *J.J.*, 60 ECAB ____ (Docket No. 09-27, issued February 10, 2009).

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

[5] *Patricia J. Glenn*, 53 ECAB 159 (2001).

not address any history of previous injury or arthroscopic surgery to either knee. Appellant merely stated that there was no specific incident regarding his right knee, but this does not clarify the twisting of the right knee noted by Dr. Colosimo, whose opinion is not based on a complete medical history. It is well established that medical opinions based on an incomplete history or which are speculative or equivocal are of diminished probative value.[6]

Appellant has not submitted sufficient medical evidence to establish that his right knee condition is a consequence of his accepted left knee injury.[7]

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that his right knee condition is a consequence of the accepted left knee injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 25, 2008 be affirmed.

Issued: May 5, 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

[6] *Cecelia M. Corley*, 56 ECAB 662 (2005).

[7] *See Conard Hightower*, 54 ECAB 796 (2003).