

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

C.S., Appellant)
and) Docket No. 10-214
DEPARTMENT OF VETERANS AFFAIRS,) Issued: October 5, 2010
VETERANS ADMINISTRATION MEDICAL)
CENTER, Leavenworth, KS, Employer)

)

Appearances:

Appellant, pro se

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 October 23, 2009 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated October 8, 2009, which denied modification of the Office's February 6, 2009 decision. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met her burden of proof to establish that her neck, thoracic and right shoulder conditions are consequential to her accepted injuries.

FACTUAL HISTORY

This case has previously been before the Board.¹ In a March 26, 2007 decision, the Board found that appellant did not meet her burden of proof to establish that her L5-S1 condition

¹ Docket No. 06-1555 (issued March 26, 2007). Appellant also has a pending appeal on a separate issue in another claim under Docket No. 10-421.

or need for surgery were consequential to her accepted lumbar strain and lumbar microdisc surgery at L4-5. The facts and history contained in the prior appeal are incorporated by reference.

The record reflects that the Office accepted appellant's claim for a lumbar sprain, displacement of a lumbar intervertebral disc without myelopathy, bilateral chondromalacia patellae and bilateral tear of the lateral meniscus of the knee. In medical reports from January 2002, Dr. Mark Strehlow, Board-certified in family medicine, diagnosed a lumbar strain with a bulging disc.²

In a work status report dated October 5, 2007, Dr. S.R. Reddy Katta, a Board-certified physiatrist, advised that appellant fell on October 3, 2007 while walking at work when her knees suddenly gave away. Appellant sustained a neck, back, elbow, knee and shoulder conditions.³

On October 14, 2007 appellant requested that the Office accepted her claim for her shoulders, neck, right elbow and mid back.

In a January 20, 2008 report, an Office medical adviser determined that the medical evidence was insufficient to establish that appellant sustained injuries to her cervical spine, thoracic spine or shoulders on October 3, 2007. He noted that the medical evidence indicated that she sustained an abrasion to her right elbow and bilateral knee bruises.

In a letter dated February 9, 2008, appellant reiterated her request to expand her claim. She submitted a January 3, 2008 report from Dr. Frank P. Holladay, a Board-certified neurosurgeon, who advised that, as to her cervical and thoracic problems, the best course would be for additional diagnostic evaluation to include a cervical and thoracic MRI scan. On January 18, 2008 cervical and thoracic spine MRI scan testing was obtained by Dr. Craig Bruner, a Board-certified diagnostic radiologist, who noted mild degenerative changes in the lower cervical spine. Treatment notes from Dr. Ann Y. Lee, a Board-certified physiatrist, dated from February 4 to May 23, 2008, diagnosed left shoulder pain. In a report dated March 20, 2008, Dr. Brian Jones, a Board-certified anesthesiologist, diagnosed lumbar radiculopathy with lumbar spinal stenosis and degenerative disc disease with low back pain.

In a February 4, 2008 report, Dr. Katta diagnosed chronic low back pain from degenerative joint disease and degenerative disc disease with lumbar radiculitis. He noted that on October 3, 2007 appellant fell and sustained cervical, thoracic and lumbar sprains and a right ankle sprain. Dr. Katta also advised that she sprained her shoulders, right elbow and both knees.

On April 17, 2008 the Office accepted the claim for right elbow abrasion and bilateral knee contusions.

² In claim number xxxxx010, doubled with the present claim, appellant sustained an injury on June 9, 1998 that was accepted for left shoulder strain and impingement syndrome, aggravation of degenerative osteoarthritis, neck strain and lumbar strain. It was determined that the neck and low back strains had resolved by July 10, 1998. The case was expanded to accept a left shoulder arthroscopy.

³ The report is partially illegible.

On April 25, 2008 the Office referred appellant to Dr. Edward J. Prostic, a Board-certified orthopedic surgeon, for a second opinion regarding the extent of her work-related conditions including those sustained in the October 3, 2007 fall. In a May 12, 2008 report, Dr. Prostic diagnosed degenerative disc disease of the cervical, thoracic and lumbar spine. On examination appellant had mild loss of motion and irritability of her left rotator cuff with mild lateral epicondylitis and patellofemoral instability of both knees. Dr. Prostic did not find any abnormalities of the right shoulder. He advised that, when appellant fell on October 3, 2007, there was no evidence of permanent worsening to any other areas of her body. Dr. Prostic recommended a thyroid function test to rule out hypothyroidism as a cause of numbness and tingling of her hands and feet. He opined that surgery or injections would not alleviate any of her orthopedic complaints. Dr. Prostic recommended that appellant use gripping exercises for her elbow complaints and spinning exercises on a stationary bicycle with the seat elevated and no resistance for her knees and low back.

On May 30, 2008 the Office requested that Dr. Prostic clarify his opinion. In a June 3, 2008 supplemental report, Dr. Prostic advised that the degenerative disc disease of the cervical and thoracic spine was unrelated to the work-related injuries of June 9, 1998, January 7, 2002 or October 3, 2007. He also found that appellant's mild left lateral epicondylitis did not appear related to any of the three work-related accidents. Dr. Prostic explained that the irritability of the left rotator cuff was contributed to by the June 9, 1998 accident and the patellofemoral instability to both knees was caused or contributed to by the October 3, 2007 work-related incident.

By decision dated June 30, 2008, the Office found that appellant's cervical, thoracic and shoulder conditions were not related to her accepted injuries.

By letter dated November 30, 2008, appellant requested reconsideration. On July 14, 2008 Dr. Katta opined that appellant had chronic cervical, thoracic and lumbosacral sprain from a fall in October 2007. He advised that she also sprained her right ankle. Dr. Katta noted that appellant had chronic low back pain from degenerative disc disease and degenerative joint disease of the lumbar vertebrae with lumbar radiculitis and degenerative joint disease of both knees with tendinitis in the medial aspect of the knees and reflex sympathetic dystrophy in both lower extremities. In reports dated September 15 and November 17, 2008, he reiterated his opinion that appellant had chronic cervical, thoracic and lumbosacral sprains from the fall in October 2007.

In an August 20, 2008 report, Dr. Alexandra Strong, a Board-certified orthopedic surgeon, diagnosed bilateral knee pain. In reports dated from April to September 18, 2008, Dr. Lee diagnosed left shoulder pain, neck pain, history of fibromyalgia, thoracic pain and mid-thoracic back pain. On September 15, 2008 she noted that appellant presented for follow up for thoracic back pain. Dr. Lee indicated that appellant had recently vacationed in Cabo, Mexico, and recommended continuing therapy for four more weeks. In reports dated November 17 and December 19, 2008, Dr. Mark A. Greenfield, a Board-certified anesthesiologist, diagnosed cervical radiculopathy.

By decision dated February 6, 2009, the Office denied modification of its prior decision.

On April 20 and June 1, 2009 appellant requested reconsideration. She submitted additional reports from Dr. Katta from June 15 and October 5, 2009. Dr. Katta treated appellant and reiterated that she had chronic low back pain due to degenerative joint disease and degenerative disc disease of the lumbar vertebrae with lumbar radiculitis. In an August 19, 2009 report, he again advised that appellant had chronic low back pain from degenerative joint disease and degenerative disc disease of lumbar vertebra with left lumbar radiculitis with increased pain since the fall at work on July 8, 2009. Appellant also submitted several diagnostic tests and physical therapy reports.

On September 1, 2009 the Office referred appellant, together with a statement of accepted facts, and the medical record to Dr. Garth Russell, a Board-certified orthopedic surgeon, for an impartial medical evaluation. It found a conflict in medical opinion between Dr. Katta and the Office medical adviser pertaining to the causal relationship of the claimed consequential medical conditions to her accepted injuries.⁴

In a September 9, 2009 report, Dr. Katta diagnosed chronic lower back pain from degenerative disc disease and degenerative joint disease of the lumbar vertebrae with left lumbar radiculitis and left trochanteric bursitis. He advised that appellant's MRI scan did not reveal any significant new problems but that it showed multilevel degenerative disc disease without any herniation or spinal stenosis.

In a September 24, 2009 report, Dr. Russell reviewed appellant's history of injury and medical treatment. He noted appellant's work-related injury to her left shoulder on June 9, 1998 when she was bumped in the elevator, nonwork-related slip and fall on ice in January 2002 which involved a low back injury and a nonwork-related bike accident at appellant's home on September 6, 2002, in which her legs gave out after riding her bicycle.⁵ On examination the neck had spasm in the upper trapezius muscles, particularly on the left. On range of motion, the neck revealed normal range of motion with 60 degrees of rotation to the right and left and 20 degrees of hyperextension with 50 degrees of forward flexion and 30 degrees lateral deviation. Dr. Russell determined that appellant had normal motion in her right and left shoulders. The thoracic and lumbar spine had mild muscle spasm and excessive lordosis in the lumbar area. Dr. Russell reviewed diagnostic testing of the cervical spine and noted degenerative disc disease associated with genetics and the natural aging process. He opined that the injury to appellant's left shoulder was secondary to her job-related injuries. Regarding her back, neck, upper back and knees, Dr. Russell determined that these conditions resulted from the fall from her bicycle on September 6, 2002, which was not job related. He explained that the presence of a lumbar strain which was more than six months old would not have any relation to the injuries to her back, knees or neck. Appellant had chondromalacia and degenerative changes in her knees and spine which contributed to the pain in her neck, her upper and lower back, as well as in her hips and

⁴ The Office initially referred appellant to another physician for the impartial examination. Appellant was referred to Dr. Russell after the first selected physician cancelled two scheduled appointments and indicated to the Office that he did not wish to examine appellant.

⁵ A September 6, 2002 treatment note from Dr. Strehlow indicated that appellant rode her bike around the block the previous evening. Appellant related that, when she dismounted from the bike, her legs gave out and she landed on her left knee. Dr. Strehlow assessed left knee contusion and bilateral leg weakness.

knees. Dr. Russell advised this would occur with activities of daily living and normal motion and which were not due to her employment.

By decision dated October 8, 2009, the Office denied modification of its February 6, 2009 decision. It found that the report of Dr. Russell was entitled to receive special weight.

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.⁶ The subsequent injury is compensable if it is the direct and natural result of a compensable primary injury.⁷ 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.⁸

The Federal Employees' Compensation Act⁹ provides that, if there is disagreement between the physician making the examination for the Office and the employee's physician, the Office shall appoint a third physician who shall make an examination.¹⁰ In cases where the Office has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.¹¹

ANALYSIS

The Office accepted that appellant sustained a lumbar sprain, displacement of lumbar intervertebral disc without myelopathy, bilateral chondromalacia patellae bilateral, tears of the lateral meniscus of both knees, right elbow abrasion and bilateral knee contusions. Appellant contends that she also sustained consequential neck, thoracic and right shoulder conditions due to her accepted injuries. She submitted reports from Dr. Katta supporting that these conditions were work related while Dr. Prostic, an Office referral physician, found her conditions were not work related. To resolve the conflict in medical opinion, the Office properly referred her to Dr. Russell, a Board-certified orthopedic surgeon.

⁶ *Albert F. Ranieri*, 55 ECAB 598 (2004).

⁷ *Id.*; *Carlos A. Marrero*, 50 ECAB 117 (1998); A. Larson, *The Law of Workers' Compensation* § 10.01 (2005).

⁸ *Kathy A. Kelley*, 55 ECAB 206 (2004). A claimant bears the burden of proof to establish a claim for a consequential injury. *J.J.*, 60 ECAB ____ (Docket No. 09-27, issued February 10, 2009).

⁹ 5 U.S.C. §§ 8101-8193, 8123(a).

¹⁰ *Id.* at § 8123(a); *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

¹¹ *Gloria J. Godfrey*, 52 ECAB 486 (2001); *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

In a September 24, 2009 report, Dr. Russell set forth findings on examination and reviewed the medical record, including results of prior diagnostic testing. He noted that appellant sustained a nonwork-related slip and fall on ice in January 2002 which caused a low back injury and a nonwork-related bike accident at her home on September 6, 2002. On examination Dr. Russell found that appellant had normal motion in her right shoulder. He noted that the left shoulder had lost some range of motion which he attributed to the previously accepted June 9, 1998 incident. Dr. Russell reviewed diagnostic testing of the cervical spine and noted that appellant had degenerative disc disease associated with genetics and the natural aging process. Regarding her back, neck, upper back and knees, he opined that these occurred following the fall from her bicycle on September 6, 2002, which was not job related. Dr. Russell explained that the presence of a lumbar strain which was more than six months old would not have any relation to the injuries to appellant's back, knees or neck. He advised that she had continued chondromalacia and degenerative changes with her knees and spines, and would continue to have pain in her neck, her upper and lower back, as well as in her hips and knees. However, Dr. Russell explained that this was due to activities of daily living and normal motion and would not be due to her employment-related injuries. He found no basis on which to attribute the claimed neck, thoracic and right shoulder conditions to appellant's employment injuries.

The Board finds that the report of Dr. Russell is well rationalized and based upon a proper factual background such that it is entitled to special weight. The Office properly relied on his medical opinion to find that appellant's neck, thoracic and right shoulder conditions were not due to her employment-related injuries.

On appeal, appellant noted that the Office medical adviser stated that there was a causal relationship between her bilateral knee condition and her accepted low back conditions. The Board notes that these conditions are accepted. As noted, appellant has not met her burden of proof to establish that the neck, thoracic and right shoulder conditions are a consequence of her accepted conditions.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that her claim should be expanded to include a consequential neck, thoracic and right shoulder condition.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 8, 2009 is affirmed.

Issued: October 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