



as well as soft tissue edema and a small popliteal cyst. On September 12, 2008 the Office accepted appellant's claim for a left knee contusion and authorized compensation benefits.

Dr. Kevin F. Hanley, a Board-certified orthopedic surgeon and Office referral physician, examined appellant on October 3, 2008 and noted that she had returned to light-duty work six hours a day. He diagnosed patellofemoral contusion of the left knee and noted that she experienced residuals of the employment-related injury. Dr. Hanley recommended physical therapy and interarticular steroids as well as a patellar alignment brace. He opined that a period of total disability to September 25, 2008 was reasonable. Dr. Hanley stated, "As far as work is concerned, I believe that she can progress to a full eight-hour day, but avoiding kneeling, squatting, prolonged standing, walking or stair climbing."

Appellant stopped work on October 9, 2008 and attributed her disability to the May 19, 2008 employment injury. Dr. Mark Avart, an attending osteopath, completed a note on October 14, 2008 stating that appellant was under his care from October 9, 2008 due to left knee pain and swelling. On October 20, 2008 he indicated that she could return to light duty on that date. On December 4, 2008 Dr. Avart, stated that appellant continued to experience pain, weakness, swelling and clicking in her left knee. He reiterated that appellant was partially disabled and required physical therapy.

On March 5, 2009 appellant stated that she fell in the shower on March 4, 2009. Her left leg buckled and she fell on the inside of her knee, which was painful, bruised and swollen. Appellant submitted a March 6, 2009 note that diagnosed left knee trauma and advised that she was unable to work from March 4 through 13, 2009. On March 12, 2009 Dr. Avart found that appellant could not work.

On March 11, 2009 appellant filed a notice of recurrence of disability commencing March 4, 2009 causally related to her May 19, 2009 employment injury. She stated that she fell in the shower while standing on her left leg, which collapsed. As a result, appellant fell landing on her left knee. She also noted that she had intermittent periods of disability due to stomach conditions beginning in October 2008.

On March 6, 2009 Dr. Valerie Tamburro, an osteopath, stated that she treated appellant due to a fall in the shower. Appellant was able to bear weight with pain and had edema and tenderness of the patella and medial condyle. On March 11, 2009 Dr. Avart diagnosed synovitis and subluxation of the patella of the left knee. He stated that appellant informed him that her left leg gave way in the shower worsening her knee pain and swelling. Dr. Avart indicated with a check mark "yes" that her diagnosed condition was caused or aggravated by employment activities. He found that appellant was totally disabled and recommended left knee surgery. Dr. Faaiza Kazmi, a Board-certified radiologist, performed an MRI scan of appellant's left knee on March 17, 2009 which demonstrated a possible tear of the lateral meniscus, minimal chondrosis, quadriceps tendinopathy as well as a popliteal cyst and a possible enchondroma. On March 19, 2009 Dr. Avart diagnosed lateral meniscus tear of the left knee and stated that appellant was scheduled for surgery on April 1, 2009. On April 8, 2009 he described her employment injury that resulted in pain, swelling, weakness and giving way of the left knee. Dr. Avart diagnosed strain with subluxing patella and possible meniscal tear. In a May 22, 2009 form report, he diagnosed subluxing patella and indicated with a checkmark "yes" that this

condition was due to appellant's accepted employment injury. He repeated these findings and conclusions on June 18, 2009.

On May 20, 2009 the Office referred appellant for a second opinion evaluation with Dr. Hanley. In a June 24, 2009 report, Dr. Hanley noted his previous examination and conclusions regarding appellant. He reviewed her recent MRI scan and stated that there were changes in the lateral meniscus, but did not believe there was a definitive meniscal tear. On physical examination, appellant did not demonstrate effusion, but had tenderness along the border of the patella with no instability of the knee. Dr. Hanley diagnosed contusion of the left knee related to appellant's employment. He stated, "I still feel that an internal derangement such as a meniscus tear does not exist. If it does exist, it is something that had occurred since I saw her last and therefore would be unrelated to work activities." Dr. Hanley found that appellant could work eight hours a day as the objective findings did not support total disability for work. He stated that surgery would be unpredictable in its benefit and that appellant did not have an internal derangement of any consequence. Dr. Hanley suggested that appellant's continued patellofemoral discomfort would not respond to surgical intervention and that symptom magnification was involved.

By decision dated July 15, 2009, the Office denied appellant's claim for recurrence of total disability beginning on March 4, 2009. It found that she failed to establish a change in her injury-related condition or a change in her light-duty job requirements.

Appellant submitted reports dated July 22 and 30, 2009 from Dr. Avart noting her history of injury on May 19, 2008. Dr. Avart stated that as a result of banging her knee on a table, appellant had developed medial retinacular patellar sprain with resultant subluxing patella. He listed appellant's physical findings of pain, clicking, crepitus, patellofemoral hypermobility and lateral laxity as well as pin into the medial joint with effusion and popliteal pain. Dr. Avart stated that appellant had restricted motion with an unsteady antalgic painful limp. He noted appellant's treatment course and opined that she had no signs of symptom magnification or exaggeration of symptomatology. Dr. Avart stated that arthroscopic surgical intervention was reasonable, necessary and appropriate given appellant's continuing symptoms. He stated that appellant was not capable of performing her normal job. Dr. Avart stated:

"I disagree with Dr. Hanley who claims that because the MRI scan does not show definite meniscal pathology, there is no indication for surgery and clearly this is not reasonable. As we know, MRI scans are clearly not a 100 percent diagnostic and I would like to tell you that many instances that I perform surgery, find different pathology in the knee than is presented or reported on the MRI scans."

Dr. Avart concluded that surgery was appropriate and stated that it was not possible to reach a firm diagnosis until surgery was performed.

Appellant requested reconsideration on August 25, 2009. She submitted notes and reports from a physical therapist. Appellant also submitted a report dated February 13, 2009 from Dr. P.S. Kavanaugh, a chiropractor. Dr. Paul Marchetto, an orthopedic surgeon, examined appellant on July 31, 2009 and noted appellant's history of injury on May 19, 2008. He performed a physical examination finding full range of motion, poor quadriceps tone, poor knee

alignment, but normal ligaments. Dr. Marchetto stated that appellant's patella examination was positive, with positive patella grind and tender medial facet. He diagnosed a patellofemoral problem that was nonoperative. Dr. Marchetto recommended modification of exercises, orthotics and a patellofemoral brace.

By decision dated November 6, 2009, the Office denied modification of the July 15, 2009 decision finding that the medical evidence submitted did not establish a change in the nature and extent of appellant's light-duty job requirements.

### **LEGAL PRECEDENT**

A recurrence of disability is defined as a spontaneous change in a medical condition which had resulted from a previous injury or illness without an injury or new exposure to the work environment that caused the illness. This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn.<sup>1</sup> The Office's procedure manual provides that a recurrence of disability also includes worsening of disability due to an accepted consequential injury.<sup>2</sup>

It is an accepted principle of worker's 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. As is noted by *Larson* in his treatise on workers' compensation, once the work-connected character of any injury has been 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 and so long as it is clear that the real operative factor is the progression of the compensable injury, associated with an exertion that in itself would not be unreasonable under the circumstances.<sup>3</sup>

### **ANALYSIS**

The Office accepted that appellant sustained a left knee contusion on May 19, 2008. Appellant underwent an MRI scan on June 27, 2008 and Dr. Kazmi, a Board-certified radiologist, interpreted the results as demonstrating no evidence of meniscal tear, but intrameniscal degeneration of the posterior horn of the medial meniscus as well as soft tissue edema and a small popliteal cyst. She returned to light-duty work in September 2008. Appellant filed a notice of recurrence of disability on March 11, 2009 alleging that on March 4, 2009 she sustained a recurrence of total disability due to a worsening of her left knee condition. She reported that on March 4, 2009 she fell in the shower when her left knee collapsed and she landed on her left knee. Appellant alleged that as a result of this fall her left knee condition

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<sup>1</sup> 20 C.F.R. § 10.5(x).

<sup>2</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b) (May 1997).

<sup>3</sup> *Clement Jay After Buffalo*, 45 ECAB 707, 715 (1994).

worsened and she became totally disabled. She submitted a March 17, 2009 MRI scan which Dr. Faaiza Kazmi, a Board-certified radiologist, found demonstrated a possible tear of the lateral meniscus, minimal chondrosis, quadriceps tendinopathy as well as a popliteal cyst and a possible enchondroma. Appellant attending physician Dr. Avert, an osteopath, found that her left knee condition had changed and now included a meniscal tear. The Office second opinion physician, Dr. Hanley, a Board-certified orthopedic surgeon, stated on June 24, 2009 that if there was a new meniscal tear, then this injury occurred after his October 3, 2008 examination of appellant and therefore the condition was not related to her employment injury of May 19, 2008.

The Board finds that this case is not in posture for a decision. The Office did not adjudicate whether appellant sustained a consequential injury on March 4, 2009. Appellant described a new traumatic incident which she contends caused and contributed to her disability on and after March 4, 2009, the fall in the shower at her home. The Office did not develop the medical evidence to determine whether appellant's fall on March 4, 2009 occurred as a consequence of her accepted left knee contusion or an intervening nonemployment-related injury such that any disability arising from this incident would not be related to appellant's employment. Dr. Hanley, who had examined appellant on October 8, 2008 was not asked to address this issue when appellant was referred back to him on May 20, 2009.

On remand, the Office should further develop appellant's claim for disability on and after March 4, 2009 to determine whether or not she sustained a consequential injury on that date. After such development as it deems necessary the Office should issue an appropriate decision on appellant's claim for compensation.

### **CONCLUSION**

The Board finds that this case is not in posture for decision on whether appellant's disability commencing March 4, 2009 is causally related to her May 19, 2008 injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 6, 2009 decision of the Office of Workers' Compensation Programs be set aside. The case is remanded for further development consistent with this decision of the Board.

Issued: October 22, 2010  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board