



## **FACTUAL HISTORY**

The Office accepted that on March 23, 2004 appellant, then a 58-year-old claims examiner, sustained a torn medial cartilage or meniscus of the right knee while in the performance of duty.<sup>1</sup> On May 3, 2006 she underwent right total knee replacement surgery. On October 4, 2006 appellant underwent left total knee replacement surgery to treat her rheumatoid arthritis.

On July 19, 2007 appellant filed a claim for a schedule award. On October 27, 2007 Dr. Daniel D. Zimmerman, an Office medical adviser, reviewed her medical records. He requested that the Office obtain all of appellant's medical records commencing with the date of her rheumatoid arthritis diagnosis for his review before he could determine the extent of any permanent impairment.

In reports dated August 15, 2002 to November 26, 2007, Dr. Nancy M. Shasteen, an attending Board-certified rheumatologist, advised that appellant had bilateral erosive rheumatoid arthritis. Diagnostic tests dated May 15, 2002 to November 26, 2007 addressed appellant's bilateral knee and feet condition, including degenerative changes in her left knee.

On December 30, 2007 Dr. Zimmerman reviewed appellant's medical records. He recommended that the Office accept that the March 23, 2004 employment injury aggravated her preexisting degeneration of the right knee and authorize her right total knee replacement surgery. Dr. Zimmerman advised that appellant's claim for rheumatoid arthritis of the left knee and surgery not be accepted as the diagnosed condition was systemic in nature and not causally related to the accepted employment-related injury.

By letter dated April 9, 2008, the Office authorized appellant's May 3, 2006 right total knee replacement surgery.<sup>2</sup>

In an April 30, 2008 report, Dr. Larry D. Iversen, an attending Board-certified orthopedic surgeon, reviewed a history of appellant's March 23, 2004 employment injury and her medical records. He advised that her left knee rheumatoid arthritis or degenerative arthritis was accelerated by the accepted employment condition, which resulted in her October 4, 2006 left knee surgery.

On October 6, 2008 the Office found a conflict in the medical opinion between Dr. Iversen and the Office medical adviser regarding whether appellant's left knee degenerative condition and surgery were due to her March 23, 2004 employment injury.

By letter dated October 6, 2008, the Office referred appellant, together with the case record and a statement of accepted facts, to Dr. Lance N. Brigham, a Board-certified orthopedic surgeon, for an impartial medical examination. In an October 27, 2008 report, Dr. Brigham

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<sup>1</sup> The record reflects that appellant tripped over an electrical cord on March 23, 2004 and fell.

<sup>2</sup> In a May 23, 2008 decision, the Office granted appellant a schedule award for 37 percent impairment of the right lower extremity.

reviewed a history of the March 23, 2004 employment injury medical treatment, social background and medical records. On physical examination, he reported essentially normal findings, noting that although appellant found it difficult to walk on her tiptoes and heels due to ankle pain, she could stand on her toes and heels without problems. Appellant had a history of falling to the floor on both knees due to the March 23, 2004 employment-related injuries. She also had a history of rheumatoid arthritis unrelated to her employment-related condition. Dr. Brigham advised that appellant was status post bilateral total knee replacement secondary to rheumatoid arthritis and probable secondary osteoarthritis. He noted that there were no subjective complaints related to appellant's right or left knee replacements, which demonstrated excellent results. Dr. Brigham found that appellant's left knee condition was not caused by her March 23, 2004 employment injuries. He stated that she failed to timely report her injury and did not file a claim of injury until December 13, 2004. Appellant complained of discomfort to both knees as early as May 5, 2004 to Dr. Nancy M. Shasteen, her rheumatologist. She was seen for significant systemic rheumatoid arthritis of multiple different joints. Appellant first mentioned the accepted March 23, 2004 employment incident during an evaluation by Dr. Andres Munk, a Board-certified orthopedic surgeon, on January 3, 2005. Additional medical records did not mention the employment incident or specifically identify a left knee injury. Dr. Brigham advised that the March 23, 2004 incident resulted in a contusion to the left knee with a possible torn meniscus but did not cause or accelerate the rheumatoid arthritis condition which necessitated her left total knee replacement surgery. The medical treatment records established that appellant's arthritis condition was poorly controlled for erosive arthritis and that Dr. Shasteen was doing the best she could to control the disease process with medication. The medical records also showed that after the March 23, 2004 employment injury there was no change in her pain medication or activity level.

By decision dated December 2, 2008, the Office denied authorization of the October 4, 2006 surgery, finding that the medical evidence was insufficient to establish that the March 23, 2004 fall at work necessitated the left knee total replacement.

On December 6, 2008 appellant requested an oral hearing before an Office hearing representative.

In a July 21, 2009 decision, an Office hearing representative set aside the December 2, 2008 decision and remanded the case to the Office for further development. The hearing representative found that Dr. Brigham's medical opinion was not based on an accurate factual background as the statement of accepted facts he reviewed did not reflect that appellant actually fell on her knees on March 23, 2004. He stated that the case should again be referred to Dr. Brigham for review to determine the causal relationship between her left knee condition and resultant surgery and her March 23, 2004 employment injuries.

In an August 26, 2009 report, Dr. Brigham reviewed the history of appellant's March 23, 2004 employment injury and medical treatment. He noted that she tripped over a typewriter cord and fell on both knees. Appellant related to him that there was no pain to either knee. She could walk about one-half mile and performed an exercycle routine three days a week for one-half hour to 45 minutes. Appellant did not take any pain medication. She denied any swelling except for an occasional little lump above the left patella. Appellant's hands were still quite painful and she took Enbrel. On physical examination, Dr. Brigham reported essentially normal findings with

the exception of her gait pattern which revealed a slight limp on the left side secondary to posterior tibial tendinitis that was being treated with a walking boot. He advised that appellant sustained a sprain of the left knee and subsequent bone bruise as demonstrated by a December 3, 2004 magnetic resonance imaging (MRI) scan that was due to the March 23, 2004 injury. In September 2003, prior to the fall at work, appellant complained of effusions of the left knee and in November 2003 she complained of pain with range of motion without a large amount of effusion. Dr. Brigham noted that there was no mention of the March 23, 2004 injury until the January 3, 2005 evaluation performed by Dr. Andres Munk, a Board-certified orthopedic surgeon.<sup>3</sup> He further noted that Dr. Munk's report did not mention any left knee complaints. The first mention of appellant's left knee problem was in May 2004 when it was found to be tender with no fluid noted. Dr. Brigham stated that the lack of any medical documentation of an injury sustained on March 23, 2004 until nine months later denoted no significant injury to appellant's left knee other than a sprain. He noted that she had episodes of swelling of the knee which were compatible with her rheumatoid arthritis condition but her primary problem was degenerative arthritis of the left knee which required surgery. Appellant's arthritis was unrelated to the fall at work not aggravated by her accepted injury. Dr. Brigham concluded that her left total knee replacement surgery was solely due to the changes resulting from her rheumatoid and degenerative arthritis.

By letter dated September 17, 2009, the Office accepted appellant's claim for contusion and sprain of the left knee. On September 17, 2009 it also issued a decision denying authorization for the October 4, 2006 left total knee replacement surgery. The Office found that Dr. Brigham's August 26, 2009 medical opinion was entitled to special weight accorded an impartial medical specialist and established that authorization for the surgery should not be granted.

### **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.<sup>4</sup> 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 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

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<sup>3</sup> The Board notes that Dr. Shasteen referred appellant to Dr. Munk for consultation.

<sup>4</sup> *Albert F. Ranieri*, 55 ECAB 598 (2004).

so long as the worsening is not shown to have been produced by an independent nonindustrial cause.<sup>5</sup>

A claimant bears the burden of proof to establish a claim for a consequential injury.<sup>6</sup> 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.<sup>7</sup>

If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician (known as a referee physician or impartial medical specialist) who shall make an examination.<sup>8</sup> 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.<sup>9</sup>

### ANALYSIS

Appellant's physician, Dr. Iversen, opined that appellant's left knee degenerative rheumatoid arthritis was accelerated by her March 23, 2004 employment-related injury which necessitated the left total knee replacement surgery of October 4, 2006. Dr. Zimmerman, the Office medical adviser, found that the diagnosed left knee conditions were not causally related to the employment injury and advised against authorization of the October 4, 2006 surgery. The Office determined that a conflict of medical opinion arose as to whether the fall at work contributed to the need for surgery. It properly referred her to Dr. Brigham, a Board-certified orthopedic surgeon, selected as the impartial medical examiner.

The Board finds that the special weight of the medical evidence rests with the opinion of Dr. Brigham. In an August 26, 2009 report, Dr. Brigham examined appellant, reviewed the medical evidence of record and found that she had significant left knee rheumatoid and degenerative arthritis which necessitated the left total knee replacement surgery. He found that the March 23, 2004 employment injury did not contribute to the need for surgery. On physical examination, Dr. Brigham reported essentially normal findings noting, that her gait pattern revealed a limp on the left side secondary to posterior tibial tendinitis that was being treated with a walking boot. He advised that appellant sustained a left knee sprain with a bone bruise based on a December 3, 2004 MRI scan that was due to the fall at work, which the Office accepted.

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<sup>5</sup> A. Larson, *The Law of Workers' Compensation* § 10.01 (November 2000).

<sup>6</sup> *J.J.*, 60 ECAB \_\_\_\_ (Docket No. 09-27, issued February 10, 2009).

<sup>7</sup> *Charles W. Downey*, 54 ECAB 421 (2003).

<sup>8</sup> 5 U.S.C. § 8123(a); *see S.T.*, 60 ECAB \_\_\_\_ (Docket No. 08-1675, issued May 4, 2009).

<sup>9</sup> *B.P.*, 60 ECAB \_\_\_\_ (Docket No. 08-1457, issued February 2, 2009); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

Dr. Brigham found that her rheumatoid arthritis was not related to her injury at work and that the medical records revealed treatment for erosive arthritis affecting primarily her right knee, that was poorly controlled. He noted that the first mention of appellant's left knee problem was in May 2004 when the knee was found to be tender with no fluid noted. Dr. Brigham stated that the lack of medical documentation pertaining to the left knee indicated no significant injury to her left knee other than a sprain. He further stated that appellant's episodes of swelling of the knee were compatible with her rheumatoid arthritis and her primary problem was degenerative arthritis of the left knee, which necessitated the October 4, 2006 surgery with no employment relationship.

As noted, a reasoned opinion from a referee examiner is entitled to special weight.<sup>10</sup> The Board finds that Dr. Brigham provided a well-rationalized opinion based on a complete background, his review of the accepted facts and the medical record and his examination findings. Dr. Brigham's opinion that appellant did not sustain rheumatoid and degenerative arthritis which necessitated her left total knee replacement surgery causally related to her March 23, 2004 employment injuries is entitled to special weight and represents the weight of the evidence.<sup>11</sup>

### **CONCLUSION**

The Board finds that appellant has failed to establish that she sustained rheumatoid and degenerative arthritis of her left knee for which she underwent surgery as a consequence of her March 23, 2004 employment injuries.

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 17, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 27, 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