United States Department of Labor
Employees' Compensation Appeals Board

D.T., Appellant	)	
and	)	**Docket No. 10-2258**
	)	**Issued: August 1, 2011**
DEPARTMENT OF JUSTICE, BUREAU OF PRISONS, Brooklyn, NY, 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 September 1, 2010 appellant filed a timely appeal from an August 2, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) which denied his consequential injury claim. Pursuant to the Federal Employees' Compensation Act[1] and 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 sustained a consequential right knee injury as a result of his accepted left knee condition.

FACTUAL HISTORY

OWCP accepted that on November 30, 2002 appellant, then a 44-year-old federal correctional supervisor, sustained a left knee sprain, torn lateral meniscus and chondromalacia patellae when he twisted his left knee as he got on the elevator at work. It granted a schedule

[1] 5 U.S.C. § 8101 *et seq.*

award for 14 percent of his left lower extremity.[2] Appellant submitted medical reports dated December 1, 2002 through June 19, 2007 regarding treatment and surgery for his left knee condition. On June 19, 2007 he underwent authorized left knee arthroscopy with quadriceps tendon repair.

On July 3, 2007 appellant informed OWCP that he sustained an injury to his right knee. In a July 3, 2007 report, Dr. Uri S. Adler, a Board-certified internist, stated that on June 29, 2007 appellant heard a pop in his right knee and felt severe pain while getting out of bed. Appellant was admitted to the hospital and diagnosed with a right quadriceps tendon rupture. On July 2, 2007 Dr. Richard Salzer, a Board-certified orthopedic surgeon, performed surgery to correct appellant's right quadriceps tendon.

Appellant submitted records from Dr. Peter Salob, a Board-certified orthopedic surgeon, dated January 24, 2007 through May 6, 2008. On April 11, 2008 Dr. Salob stated that appellant was a longstanding patient and reviewed his medical history regarding treatment for his left knee injury. Appellant underwent left knee surgery on June 19, 2007 and was placed in a cast. As a result, he used crutches and was forced to put all of his weight on his right side. Dr. Salob found that, because of the additional stress to appellant's right knee, he sustained a partial quadriceps rupture to his right knee on June 29, 2007 which required a quadriceps tendon repair on July 2, 2007.

In a May 6, 2008 report, Dr. Salob stated that appellant had been under his care for a 2002 work-related left knee injury. On June 19, 2007 appellant underwent left knee surgery and approximately two weeks later experienced significant pain and discomfort in his right knee. A magnetic resonance imaging (MRI) scan report revealed a degenerative tear of his right quadriceps tendon. Appellant underwent a right knee debridement of his quadriceps tendon and reattachment to the patella. Due to his left knee injury and subsequent surgery, he was required to bear all of his weight on his right leg. Dr. Salob explained that the additional stress to the right leg caused the partial right quadriceps rupture. He attributed appellant's right knee injury to weight bearing on his right leg while protecting his left leg. Dr. Salob recommended a repeat debridement of appellant's quadriceps tendon based on the March 11, 2008 MRI scan, which showed degeneration of the quadriceps.

On November 21, 2007 OWCP referred appellant to Dr. Andrew S. Hutter, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a December 19, 2007 report,

[2] In a June 10, 2004 report, appellant's treating physician stated that he had a 17 percent impairment of his left lower extremity. The district medical adviser disagreed, noting that an appropriate edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) was not used and advised that appellant had only 15 percent impairment. OWCP referred appellant to Dr. David Rubinfeld, a Board-certified orthopedic surgeon, for a second opinion examination. Dr. Rubinfeld found that appellant did not have any permanent impairment and had reached maximum medical improvement on August 11, 2005. He found a conflict of medical opinion and referred appellant to Dr. Menachem Epstein, a Board-certified orthopedic surgeon, for a referee medical examination. Dr. Rubinfeld concluded that appellant had a 15 percent impairment of the left lower extremity in accordance with the A.M.A., *Guides* (5th ed. 2001). Appellant disagreed with the decision and filed a request for reconsideration on March 15, 2007. By decision dated June 1, 2007, OWCP refused modification of its schedule award decision. On July 23, 2007 appellant submitted another request for reconsideration. On August 14, 2007 OWCP denied his request for reconsideration.

Dr. Hutter reviewed appellant's medical treatment records, but noted that none of the recent reports were available for review. He noted that, while appellant was recovering from left knee surgery, he experienced sharp pain in his right knee and was diagnosed with a ruptured quadriceps tendon. Appellant complained of continued right knee discomfort and swelling with prolonged standing and activities.

Upon examination, Dr. Hutter observed right distal quadriceps atrophy as compared to the left. Appellant's right knee range of motion went from full extension to 135 degrees of flexion with some discomfort. His left knee had full extension to 130 degrees of flexion with mild pain and patellofemoral compression. Dr. Hutter diagnosed a torn medial meniscus of the left knee and quadriceps rupture of the left and right knee. He observed that a 2003 MRI scan report of the left knee revealed a posterior horn tear of the medial meniscus that was consistent with tendon degeneration or a small partial tear. Dr. Hutter advised that the ruptures of both the left and right quadriceps were not causally related to the initial work injury. In a work capacity evaluation form, he restricted appellant to two hours of walking, pulling, pushing and lifting and one hour of standing.[3]

On July 1, 2008 OWCP found a conflict in the medical opinion evidence between Dr. Salob and Dr. Hutter regarding whether a causal relationship existed between appellant's right knee condition and the accepted left knee injury. It referred appellant, together with a statement of accepted facts and the medical record, to Dr. Menachem Epstein, a Board-certified orthopedic surgeon, for an impartial medical examination.

In a July 27, 2008 report, Dr. Epstein noted that appellant's complaints of constant right knee pain, especially with prolonged standing, his inability to put pressure on his right foot and difficulty going up and down stairs. He reviewed appellant's medical records and provided a history of appellant's right knee injury. Dr. Epstein noted that, as a result of the June 19, 2007 left knee surgery, appellant was placed in a cast and forced to put all of his weight on his right leg. Because of the additional stress to the right knee, appellant sustained a partial right quadriceps rupture on June 29, 2007 and underwent a quadriceps tendon debridement and repair to the attachment to the patella. Upon examination of appellant's right knee, Dr. Epstein observed reduced active range of motion and stable to varus and valgus stress. Appellant's McMurray's, drawer signs and compression test were negative. He reported pain around his surgical scar and was unable to squat with his right leg. An examination of appellant's left knee revealed full range of motion with stable to varus and valgus stress. His McMurray's, drawer signs and patellar compression test were negative.

Dr. Epstein stated that he could not determine with any medical confidence that the right knee injury resulted from overuse due to the left leg injury. Instead, he believed that appellant's right knee condition was caused by preexisting tendon degeneration of the right quadriceps.

[3] By letter dated February 6, 2008, OWCP requested that the employing establishment provide appellant with a job within the restrictions outlined in Dr. Hutter's December 19, 2007 report. On February 13, 2008 it referred him to vocational rehabilitation. On March 10, 2008 appellant returned to work with modified duty as an administrative clerk. In an April 11, 2008 decision, OWCP issued a preliminary determination that an overpayment of compensation was created for the period March 18 to 15, 2008 in the amount of $1,144.52 because appellant received total disability compensation even though he returned to full-time duty. On April 29, 2008 appellant repaid the overpayment in full.

Dr. Epstein provided work restrictions which stated that appellant could work eight hours a day with only four hours of walking, twisting, operating a motor vehicle, pushing and pulling, two hours of kneeling and no lifting and squatting.

In a March 11, 2008 MRI scan report of appellant's right knee, Dr. Mark Shapiro, a Board-certified diagnostic radiologist, observed a small joint effusion and focal osseous lesions but no evidence of a tendon tear. He diagnosed extensive heterogeneous thickening involving the entire quadriceps tendon consistent with advanced tendinitis without evidence of tendon tear or rupture.

By decision dated October 6, 2008, OWCP denied appellant's claim for a consequential right knee injury on the grounds of insufficient medical evidence demonstrating that his right knee condition was causally related to the November 30, 2002 employment injury. It determined that the weight of the medical evidence was with Dr. Epstein's impartial medical examiner's report, who opined that appellant's right knee injury was caused by a preexisting tendon degeneration of the right quadriceps and not a result of appellant's November 30, 2002 employment injury.

On October 11, 2008 appellant requested an oral hearing before the Branch of Hearings and Review. In a decision dated December 18, 2008, the hearing representative remanded the October 6, 2008 denial decision finding that OWCP erroneously accorded the weight of the medical evidence to Dr. Epstein's report. It determined that a true conflict of medical opinion did not exist between Dr. Hutter and Dr. Salob because Dr. Hutter did not have all of appellant's medical reports. On remand, OWCP was instructed to provide Dr. Hutter with a copy of all the medical records of file and to request his opinion regarding whether the November 30, 2002 employment injury caused or contributed to the right knee tendon rupture and whether the June 2007 knee surgery was medically necessary to treat an employment-related condition.

On March 2, 2009 appellant underwent another second opinion examination by Dr. Hutter, who stated that he received appellant's recent medical records and provided an accurate history of injury. He twisted his leg on November 30, 2002 in the performance of duty and received medical treatment. When appellant was recovering from a June 2007 left knee injury, he felt a pop in his right knee one day when he was getting out of bed. He was diagnosed with right quadriceps tendon rupture and underwent surgical repair in July 2007, followed by additional surgery in January 2009. Dr. Hutter further noted that MRI scan reports revealed degeneration within appellant's left and right quadriceps tendon.

Upon examination of appellant's left knee, Dr. Hutter observed full range of motion of the knee with no gross instability. He noted that appellant was wearing a brace on his right knee, which limited his flexion to 30 degrees. Dr. Hutter diagnosed torn medial meniscus of the left knee and bilateral quadriceps tear. He stated that he could not correlate appellant's right knee condition to the left knee injury because appellant had degenerative changes in both quadriceps tendon, which seemed to reveal chronic degenerative changes in both quadriceps tendons unrelated to the work trauma.

In an April 24, 2009 addendum report, Dr. Hutter noted that during the March 2, 2009 examination appellant was recovering from surgery. He reiterated that he was still unable to

correlate the right knee problem to the left knee problem. Dr. Hutter stated that appellant was still actively recovering from surgery and should be kept out of work for approximately two months.

On June 16, 2009 OWCP found a conflict in the medical opinion evidence between Dr. Salob and Dr. Hutter regarding whether appellant's right knee condition was causally related to his November 30, 2002 employment injury. It referred him, together with a statement of accepted facts and the medical record, to Dr. Samuel Snyder, a Board-certified orthopedic surgeon, for an impartial medical examination.

In a November 3, 2009 independent medical examination report, Dr. Snyder stated that he reviewed appellant's medical records and conducted a thorough orthopedic examination. He provided a history of the November 30, 2002 employment injury and subsequent medical treatment. Dr. Snyder noted that the immediate medical records after the November 30, 2002 incident did not demonstrate any kind of injury to appellant's quadriceps tendons until Dr. Salob's February 13, 2003 report. He reported that appellant underwent a left knee quadriceps repair and left knee arthroscopy on June 19, 2007. While recovering from this surgery, appellant was admitted to the hospital for severe pain from a quadriceps tendon rupture and underwent right knee surgery. Dr. Snyder noted that the rheumatology consult stated that appellant had bilateral ruptures of quadriceps tendon due to tufaceous deposits and that the operative report revealed a gouty tophus with degenerative tear of the medial portion of the patella tendon at its attachment to the superior pole of the patella.

Upon examination of appellant's left knee, Dr. Snyder observed full extension and flexion to 150 degrees, no swelling, no redness and no instability to varus valgus stress or anterior posterior stress. The examination of the right knee revealed full extension and flexion to 130 degrees with no redness, no swelling and no varus valgus stress and stable to anterior posterior stress. Dr. Snyder agreed that appellant's left knee sprain, meniscal tear and patella chondromalacia were causally related to the November 30, 2002 employment injury, but found no evidence of a causal relationship between appellant's quadriceps tendon rupture and the November 30, 2002 employment injury. He pointed out that none of the immediate medical reports after the November 30, 2002 incident mentioned a quadriceps tendon injury. Dr. Snyder stated that the significant time interval from the date of the accident and the first documentation of a quadriceps tendon tear provided a compelling argument against a causal relationship because such a medical condition should have become immediately symptomatic. He opined that appellant's preexisting gout caused degeneration of his quadriceps tendon and spontaneous ruptures of these tendons. Dr. Snyder found no compelling evidence demonstrating that the November 30, 2002 employment injury produced either the left or right quadriceps tendon ruptures or that the right knee rupture was causally related to appellant's left knee condition.

In a March 26, 2009 report, Dr. Salob stated that appellant had been his patient since November 2002 and provided a history of appellant's injuries. He noted that, after appellant's June 19, 2007 left quadriceps tendon surgery, appellant used crutches and was putting all of his weight on his right leg. Appellant's right leg was also significantly deconditioned and began to atrophy as a result of staying in bed for significant time. Dr. Salob opined that the added stress on the right knee from the previous left knee surgery and the deconditioning of the right leg from appellant's prolonged bed rest were directly related to his right knee injury. He believed that

appellant's right quadriceps tendon tear was a direct result of appellant's previously sustained left knee injuries. Dr. Salob attached multiple scientific, peer reviewed articles discussing how unloading a limb causes atrophy and decreases the injury tolerance of the musculoskeletal system.

By decision dated August 2, 2010, OWCP denied appellant's claim on the grounds of insufficient medical evidence establishing that he developed a right knee condition as a result of his accepted November 30, 2002 left knee injury. It found that the weight of the medical evidence was with Dr. Snyder's impartial medical examiner report, which found that appellant's quadriceps tendon tear and right knee condition were not causally related to his accepted 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 attributable to the employee's own intentional conduct.[4] The Board has held that the subsequent progression of an employment-related condition "remains compensable so long as the worsening is not shown to have been produced by an independent nonindustrial cause."[5] If a member weakened by an employment injury contributes to a later fall or other injury, the subsequent injury will be compensable as a consequential injury, if the further medical complication flows from the compensable injury, *i.e.*, "so long as it is clear that the real operative factor is the progression of the compensable injury, with an exertion that in itself would not be unreasonable in the circumstances."[6]

A claimant bears the burden of proof to establish a claim for consequential injury. As part of this burden, he must present rationalized medical opinion evidence, based on a complete medical and factual background, establishing causal relationship.[7] Rationalized medical opinion evidence is medical evidence, with stated reasons of a physician, on whether there is a causal relationship between the employee's diagnosed condition and the specified employment factors or incident.[8] The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.[9]

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[4] *Clement Jay After Buffalo*, 45 ECAB 707, 715 (1994); *John R. Knox*, 42 ECAB 193, 196 (1990).

[5] *Raymond A. Nester*, 50 ECAB 173, 175 (1998); *Robert W. Meeson*, 44 ECAB 834, 839 (1993).

[6] *S.M.*, 58 ECAB 166 (2006); *Raymond A. Nester, supra* note 5.

[7] *Jennifer Atkerson*, 55 ECAB 317 (2004); *R.C.*, Docket No. 10-1789 (issued April 22, 2001).

[8] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[9] *B.B.*, 59 ECAB 234 (2007); *D.S.*, Docket No. 09-860 (issued November 2, 2009).

If there is a disagreement between the physician making the examination for the United States and the physician of an employee, the Secretary shall appoint a third physician (known as a referee physician or impartial medical specialist) who shall make an examination.[10] In cases where OWCP has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[11]

ANALYSIS

Appellant alleges that on June 29, 2007 he sustained a right knee quadriceps tendon tear as a consequence of his accepted November 30, 2002 injury. Dr. Salob, appellant's attending physician, opined that appellant's right knee condition was directly related to his accepted left knee condition. Dr. Hutter, an OWCP referral physician, determined that appellant's right knee condition was due to a degenerative condition and was not causally related to appellant's November 30, 2002 left knee injury. OWCP found a conflict of medical opinion regarding whether appellant's right knee condition resulted from the November 30, 2002 left knee injury. It referred appellant to Dr. Snyder, a Board-certified orthopedic surgeon, selected as the impartial medical examiner, pursuant to 5 U.S.C. § 8123(a).

In a November 3, 2009 report, Dr. Snyder reviewed the medical evidence of record, examined appellant and found that his quadriceps tendon tears were not causally related to the November 30, 2002 left knee injury. On examination of the right knee, he observed full extension and flexion to 130 degrees with no redness and swelling. The right knee was stable to varus valgus stress and anterior posterior stress. The examination of appellant's left knee revealed full extension and flexion to 150 degrees, no swelling, no redness and no instability to varus valgus stress or anterior posterior stress. Dr. Snyder further reported that there was no evidence in the immediate medical record after the November 30, 2002 employment injury to establish a quadriceps tendon injury. He explained that the significant time interval from the injury date and the first record of a quadriceps tendon tear of the left knee was a compelling argument against causal relationship because the condition should have become immediately symptomatic. Dr. Snyder opined that the bilateral tendon ruptures in 2007 resulted from appellant's preexisting gout, which caused a degeneration of his quadriceps tendon and spontaneous ruptures.

The Board finds that the special weight of the medical evidence rests with the opinion of Dr. Snyder. A reasoned opinion from a referee examiner is entitled to special weight.[12] The Board finds that Dr. Snyder provided a well-rationalized opinion based on a complete factual background, review of the statement of accepted facts and the medical record and findings on physical examination. Dr. Snyder found that appellant did not sustain a right knee condition as a

[10] 5 U.S.C. § 8123(a); *see R.S.*, Docket No. 10-1704 (issued May 13, 2011); *S.T.*, Docket No. 08-1675 (issued May 4, 2009).

[11] *Gloria J. Godfrey*, 52 ECAB 486 (2001); *B.P.*, Docket No. 08-1457 (issued February 2, 2009).

[12] *Id*.

result of his November 30, 2002 employment injury. His opinion is entitled to special weight and represents the weight of the medical evidence.

The medical evidence appellant subsequently submitted is insufficient to overcome the weight accorded Dr. Snyder regarding whether appellant sustained a right knee condition as a consequence of the November 30, 2002 employment injury. In a March 26, 2009 report, Dr. Salob reiterated his prior opinion that appellant's right knee condition was directly related to his left knee injury because of the additional stress and weight put on his right leg. Reports from a physician who was on one side of a medical conflict that an impartial specialist resolved, are generally insufficient to overcome the weight accorded to the report of the impartial medical examiner or to create a new conflict.[13] As appellant has failed to provide rationalized medical opinion evidence establishing that he sustained a consequential right knee injury as a result of his left knee condition, he has failed to meet his burden of proof in this case.[14]

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has failed to establish that he sustained a right knee condition as a consequence of his November 30, 2002 left knee injury.

[13] *I.J., supra* note 8; *Barbara J. Warren*, 51 ECAB 413 (2000).

[14] *See R.S., supra* note 10; *C.S.*, Docket No. 10-214 (issued October 5, 2010).

ORDER

IT IS HEREBY ORDERED THAT the August 2, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 1, 2011
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