



ligaments in his right knee when he was a passenger in a vehicle that was struck by another vehicle. The Office accepted his claim for right knee medial meniscus tear, right thigh contusion and localized primary osteoarthritis in the lower right leg. On August 20, 2008 it accepted that appellant sustained a recurrence on July 18, 2008. On October 16, 2008 appellant underwent an approved right total knee replacement.

Subsequent to his surgery, appellant began physical therapy on his right knee on October 23, 2008. In a February 19, 2009 physical therapy note, the physical therapist indicated that appellant was having increased low back pain. She also noted in a February 26, 2009 report that he indicated that he had increased low back pain after doing prone knee flexion stretch in the last visit.

On March 20, 2009 appellant filed a claim for recurrence as of February 23, 2009, noting that pain increased in his lower back while sitting. When asked to describe how the injury happened, he noted that, on February 24, 2009, while performing a prone knee flex by lying on his stomach using a strap like a seat belt, he was told to pull until the pain was felt in his knee and then stop. Appellant noted that he believed that the pain in his back has increased due to this exercise.

In a February 3, 2009 medical report, Dr. Andrew R. Jones, a Board-certified orthopedic surgeon, noted that appellant has made excellent early progress in severely arthritic knee, after prosthesis, with some soft tissue inflammation and synovitis remaining.

In a May 1, 2009 report, Dr. Krishna P. Bhat, a Board-certified physiatrist, noted that appellant was referred to her by Dr. Luo-Tseng, appellant's treating Board-certified physiatrist, for chronic pain management. She noted that appellant, while attending physical therapy in February 2009, had an acute increase in right hip and low back pain while performing exercises under the instructions of a therapist. Dr. Bhat listed her impressions as post lumbar laminectomy syndrome (2002); right gluteus/piriformis myofascial pain/strain; right knee injury status post knee replacement and chronic pain syndrome.

In a May 5, 2009 report, Dr. Jones stated that appellant has had worsening pain over the posterolateral hip on the right and was concerned that he may have injured his hip while doing his exercises using the Theraband behind his right shoulder and drawing this forward with his hand. He stated that he agreed with Dr. Bhat that this is likely soft tissue sprain to the hip and gluteal muscles proper and was less suspicious that it involved his arthritic spine. Dr. Jones noted that appellant did not have any obvious clinical findings or sciatica or femoral neuritis so he believed that they should continue to manage appellant's care conservatively.

By decision dated June 9, 2009, the Office denied appellant's claim for a recurrence because it found that the evidence was not sufficient to establish that his current medical condition and disability was a consequence of his employment injury.

In a June 16, 2009 report, Dr. Jones noted that Dr. Bhat has appellant off work because of his back condition. He noted mild swelling in appellant's right knee. Dr. Jones noted that appellant cannot stand on his leg or walk to make a living, noting that appellant has a lot of back pain, frequently changes position and had a recent episode with his knee as well.

On July 8, 2009 appellant requested an oral hearing.

In a July 23, 2009 report, Dr. Bhat listed appellant's impressions as right gluteus/lumbar paraspinal myofascial pain; post lumbar laminectomy syndrome; right knee injury status post total replacement and chronic pain syndrome. She noted that he had an acute low back pain exacerbation on February 24, 2009 as a result of performing his exercise. Dr. Bhat noted that the low back exacerbation, although in relation to the exercises performed for the right knee, would not have occurred if appellant did not have a history of low back injury in the past. She noted a direct correlation to increased low back pain and his history of a work-related low back injury in 1999.

At the hearing held on November 17, 2009, appellant testified that, while doing knee therapy on February 24, 2009, he was performing an exercise which required him to lie on his stomach, put a strap around his ankle and pull the strap over his right shoulder as far as he could. He noted that he was not given proper instructions and pulled too hard and bruised his back.

In a November 30, 2009 report, Dr. Bhat stated that appellant sustained an injury on February 24, 2009 while at physical therapy. She stated that he noted an increase of low back pain while performing physical therapy exercises on that date. Dr. Bhat opined that, due to appellant's acute increase in low back pain due to the activity related to his physical therapy exercises, his recent exacerbation of pain can be deemed a consequential injury.

By decision dated March 22, 2010, the hearing representative affirmed the June 9, 2009 decision denying appellant's claim for a consequential 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. 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>1</sup>

A claimant bears the burden of proof to establish a claim for a consequential injury. As part of this burden, 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

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<sup>1</sup> *Clement Jay After Buffalo*, 45 ECAB 707, 715 (1994).

be supported by medical rationale explaining the nature of the relationship of the diagnosed condition and the specific employment factors or employment injury.<sup>2</sup>

It is well established that proceedings under the Federal Employees' Compensation Act are not adversarial in nature and, while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.<sup>3</sup>

### ANALYSIS

The Office accepted that on January 16, 1981 appellant sustained a right knee medial meniscus tear, right thigh contusion and localized primary osteoarthritis in the lower right leg. It accepted a recurrence on October 23, 2008 and approved his October 16, 2008 right total knee replacement. Appellant underwent approved physical therapy treatment after his surgery. The Board notes that the evidence of record establishes that, while at physical therapy on February 19, 2009, he initially complained of increased low back pain. Appellant noted that, at the time of the low back pain, he was performing an exercise wherein he put a strap around his ankle and pulled over his right shoulder.

While none of the reports from appellant's attending physicians are completely rationalized, they are generally consistent in indicating that he sustained an injury to his back and perhaps his right hip while doing approved physical therapy exercises. These reports are sufficient to require further development of the evidence. In a May 1, 2009 report, Dr. Bhat noted that appellant had an increase in right hip and low back pain while performing exercises in February 2009 physical therapy. She specifically opined that his recent exacerbation of pain can be deemed a consequential injury that was the result of his physical therapy exercise. In a November 30, 2009 report, Dr. Bhat opined that appellant's recent exacerbation was a consequential injury in that he sustained an increase in low back pain while performing physical therapy exercises on February 24, 2009. Furthermore, Dr. Jones, in his May 5, 2009 report, noted that appellant had worsening pain over his posterolateral hip on the right and that he was concerned that appellant may have injured his hip while doing exercise using the Theraband behind his right shoulder and drawing this forward. These medical reports are not sufficiently rationalized to establish a consequential injury. However, these reports raise an uncontroverted inference between appellant's claimed back and right hip condition and his physical therapy sessions. The evidence is sufficient to require the Office to further develop the medical evidence.<sup>4</sup>

The case will be remanded to the Office for further evidentiary development regarding the issue of whether appellant sustained a work-related low back or right hip injury during

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<sup>2</sup> *Charles W. Downey*, 54 ECAB 421 (2003).

<sup>3</sup> *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

<sup>4</sup> *See Robert A. Redmond*, 40 ECAB 796, 801 (1989) (while physicians' opinions may not be completely rationalized, if they consistently maintain that there is a causal relationship between the claimant's injury and physical therapy he received for an employment-related injury, the Office must further develop the medical evidence). *See also, C.O.*, Docket No. 10-189 (issued July 15, 2010).

approved physical therapy sessions in February 2009. After such development as the Office deems necessary, an appropriate decision shall be issued.

**CONCLUSION**

The Board finds that the case is not in posture for decision regarding whether appellant sustained a low back or right hip condition as a consequence of his January 16, 1981 accepted work injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 22, 2010 decision of the Office of Workers' Compensation Programs is set aside. The case is remanded to the Office for further proceedings consistent with this decision of the Board.

Issued: February 16, 2011  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board