

FACTUAL HISTORY

This case was previously before the Board. By decision dated June 7, 2010, the Board vacated a June 8, 2009 OWCP decision which denied appellant's reconsideration request on the basis that it was untimely filed and did not establish clear evidence of error.² The Board found that she had timely requested reconsideration and remanded the case to OWCP to review the evidence under the proper standard of review. The findings of fact from the prior decision are incorporated by reference.³

On September 18, 2007 appellant filed a recurrence for a right ankle fracture which occurred on August 25, 2007. She also alleged that her left knee had broken cartilage due to the excess stress she place on it because of the injured right knee.

By decision dated April 30, 2008, OWCP denied appellant's claim for a consequential right ankle fracture and left knee condition.

In a March 26, 2009 letter, appellant requested reconsideration of OWCP's April 30, 2008 decision. She indicated that on August 25, 2007 while going down stairs at her home, her right knee had buckled, causing her to fall and break her right ankle. Appellant was unable to avoid falling because of the broken cartilage in the left knee. She stated that her medical record contained documentation of numerous falls when her right knee buckled. Appellant contended that the physician's assistant who examined her after her August 25, 2007 fall, a Lisa Iseminger, no longer worked at the medical clinic and the current physician's assistant, Christina Prauner, a nurse practitioner, and Dr. Steven C. Kumagai, a Board-certified orthopedic surgeon, stated that Ms. Iseminger had provided poor documentation with regards to her injury.

Appellant submitted diagnostic studies dated March 18, 2008 to June 10, 2010; lab testing of September 4, 2008 and June 25, 2009; and treatment notes, work restriction notes and CA-7 forms dated June 10, 2001 to August 27, 2007 from Ms. Prauner.

In an August 27, 2007 report, Dr. Kumagai reported that appellant was walking down her basement steps when her right knee gave out causing her to fall down several steps and twist her right ankle. He noted that her knee had been giving out, causing her falling episodes. Dr. Kumagai noted that the x-rays showed a nondisplaced right medial malleolar fracture. Appellant was to remain nonweightbearing for six to eight weeks. On September 2, 2008 Dr. Kumagai noted that she had increased left knee pain over the weekend. He ordered an aspiration and steroid shot, but appellant left before the knee could be aspirated. In a September 4, 2008 report, Dr. Kumagai reported she had effusion in her left knee and was in

² Docket No. 09-2128 (issued June 7, 2010).

³ On December 6, 1995 appellant, then a 42-year-old rural mail carrier, injured her right knee when she slipped and fell while working. OWCP accepted the conditions of right medical meniscus tear and aggravation of right knee degenerative joint disease. It paid benefits, including arthroscopic surgeries and right knee extensor reconstruction. Appellant returned to limited duty September 2002 and full-time regular duty on April 3, 2003. OWCP accepted a recurrence of disability beginning August 14, 2003 and she was placed back on limited-duty work. By decision dated February 25, 2005, it reduced appellant's compensation to zero finding that her actual earnings as a modified general clerk fairly and reasonably represented her wage-earning capacity.

quite a bit of pain. X-rays showed appellant had maintained joint space in her left knee, with moderate degenerative changes in all three compartments. Appellant also had changes consistent with a previous anterior cruciate ligament reconstruction in her right knee and had maintained joint space. Dr. Kumagai noted that Dr. Lori K. Reed, a Board-certified orthopedic surgeon, placed appellant in a cam boot that appellant believed was traumatic for her left knee. He noted that left knee surgery was a future option.

In an August 15, 2008 report, Dr. Reed reported that appellant sustained a right ankle fracture on August 25, 2007 which was treated nonoperatively with a cam boot and crutches. She advised that appellant had bad knees and the boot worsened her knee pain. Appellant continued to experience pain and swelling in her ankle. She presented findings on examination and noted the x-rays obtained that day revealed some mild ankle arthritis with a small amount of valgus tilt to her ankle. A computerized tomography scan of May 7, 2008 revealed degenerative changes along the anterior aspect of her ankle with subchondral cysts and osteophytes. Dr. Reed diagnosed mild post-traumatic right ankle arthritis.

By decision dated July 16, 2010, OWCP denied modification of its prior decision.

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.⁴ 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 the 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 so long as the worsening is not shown to have been produced by an independent nonindustrial cause.⁵

A claimant bears the burden of proof to establish a claim for a consequential injury.⁶ 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

⁴ *Albert F. Ranieri*, 55 ECAB 598 (2004).

⁵ A. Larson, *The Law of Workers Compensation*, § 10.01 (November 2000).

⁶ *J.J.*, Docket No. 09-27 (issued February 10, 2009).

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.⁷

ANALYSIS

OWCP accepted that on December 6, 1995 appellant sustained right medial meniscus tear and aggravation of right knee degenerative joint disease and authorized several surgeries. Appellant filed a notice of recurrence requesting expansion of her claim to include an August 25, 2007 right ankle fracture and a consequential left knee condition. She stated that on August 25, 2007 while going down stairs at her home, her right knee buckled, causing her to fall and break her right ankle. Appellant was also unable to avoid falling because of the broken cartilage in the left knee. She alleged that she fell due to buckling of her right knee and that historically her right knee had given way.

The Board finds that there is insufficient medical opinion attributing appellant's right ankle fracture to the December 6, 1995 employment injury or explaining how the fall that caused the ankle fracture was a consequence of the conditions related to the December 6, 1995 work injury. Neither Dr. Reed nor Dr. Kumagai offered any opinion that the right ankle fracture of August 25, 2007 was due to residuals of the accepted injury. While Dr. Kumagai stated that appellant's right knee had been giving out, he did not provide any specific opinion addressing how the right ankle fracture was attributable to the accepted right knee condition. In the absence of well-rationalized medical opinion evidence explaining the nature of the relationship between the diagnosed condition and residuals of the employment injury, appellant did not meet her burden of proof.

Regarding the claimed consequential left knee condition, appellant stated that she favored her right knee that led to her left knee condition. However, she did not submit sufficient medical opinion from a physician who, on the basis of a complete and accurate factual and medical history, concluded that her left knee condition was caused or aggravated by residuals of her accepted injury. Dr. Kumagai and Dr. Reed noted appellant's left knee condition but neither physician provided a well-rationalized opinion explaining how her left knee condition was causally related to the accepted employment injuries to her right knee. Dr. Kumagai noted appellant's belief that being placed in a cam boot was traumatic for her left knee; but he did not offer a specific opinion regarding how appellant's left knee condition was a consequence of her accepted conditions. Similarly, Dr. Reed stated that appellant's use of a cam boot worsened her knee pain but Dr. Reed did not explain how a left knee condition resulted from the accepted right knee condition or the treatment of the right knee condition. Thus, their reports are insufficient to establish appellant's claim.

Appellant submitted notes and reports from Ms. Prauner, a nurse practitioner. However, the reports of a nurse practitioner are not considered medical evidence as a nurse practitioner is not a physician under FECA.⁸ As Ms. Prauner's reports do not constitute probative medical

⁷ *Charles W. Downey*, 54 ECAB 421 (2003).

⁸ *Sean O'Connell*, 56 ECAB 195 (2004). See 5 U.S.C. § 8101(2).

evidence, they are insufficient to establish the claim.⁹ The remainder of the medical evidence, including x-ray and Magnetic resonance imaging reports and lab testing, is insufficient to establish the claim as it fails to address causal relationship between any diagnosed condition and appellant's accepted conditions.

Appellant argues on appeal that OWCP's July 16, 2010 decision was contrary to fact and law. However, it is her burden of proof to submit the necessary medical evidence to establish a new or consequential injury. As noted above, appellant has not met her burden of proof as the medical evidence submitted is insufficient to establish a consequential relationship between her accepted work-related conditions and her claimed right ankle fracture and left knee condition.

Appellant may submit additional evidence, together with a formal written request for reconsideration, to OWCP within one year of the Board's merit decision pursuant to 5 U.S.C. § 8128(a).

CONCLUSION

The Board finds that appellant has failed to establish that she sustained a right ankle fracture and left knee condition as a consequence of her December 6, 1995 employment injuries.

⁹ See *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board held that medical opinion, in general, can only be given by a qualified physician).

ORDER

IT IS HEREBY ORDERED THAT the July 16, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 8, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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