United States Department of Labor
Employees' Compensation Appeals Board

B.P., Appellant	)	
and	)	**Docket No. 11-1036**
	)	**Issued: March 27, 2012**
DEPARTMENT OF THE INTERIOR, BUREAU OF RECLAMATION, Grand Coulee, WA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 22, 2011 appellant filed a timely appeal from an October 22, 2010 decision of the Office of Workers' Compensation Programs (OWCP) affirming the denial of appellant's claim for a consequential injury to his right hip. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

ISSUE

The issue is whether appellant sustained a consequential injury to his right hip as a result of the accepted bilateral knee injuries.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Boards notes that appellant submitted new medical evidence on appeal. The Board has no jurisdiction to review new evidence on appeal. 20 C.F.R. § 501.2(c)(1).

On appeal, appellant contends that the medical evidence establishes that his hip condition was causally related to his accepted knee injury. He argues that OWCP made several factual errors in its decisions and incorrectly gave the weight of the medical evidence to the opinion of OWCP's medical adviser who never examined him.

FACTUAL HISTORY

On July 23, 2007 appellant filed a traumatic injury claim alleging that on that date he sustained an injury to his right knee when he stepped out of the elevator and his foot got caught on the north edge of the cover plate, causing him to stumble and his right knee buckled. On October 18, 2007 OWCP accepted his claim for "other and unspecified derangement of medial meniscus, right." Previously, it had accepted two prior claims for injuries to appellant's left knee. OWCP accepted that he sustained an employment-related left knee derangement and left knee medial meniscus tear on August 23, 2003.[3] It also accepted that on January 11, 2005 appellant sustained left knee medial and lateral meniscus tears.[4] Appellant also suffered from several nonwork-related conditions including bilateral carpal tunnel syndrome, left back injury with compression of L1-2 in 1996, obesity, sleep apnea, left thumb surgery, hyperlipidemia, palate revision, hypertension, coronary artery disease and chronic obstructive pulmonary disease.

On November 2, 2007 appellant underwent an arthroscopic partial medial meniscectomy and arthroscopic chondroplasty, patella. This led to postoperative diagnoses by Dr. Mark A. Broberg, a Board-certified orthopedic surgeon: (1) right medial meniscal tear, deep radial tear producing a parrot-beak flap, posterior medial meniscus; and (2) grade 3 chondromalacia, patella. In a December 5, 2007 note, a physician's assistant indicated that appellant was now ambulating with a normal gait and had no motor or sensory deficits. He noted that appellant could return to work without any restrictions.

Appellant continued to be treated by Wendy A. Hughes, a nurse practitioner. In a January 5, 2008 report, Ms. Hughes indicated that he had continued right back, hip and knee pain. She noted that appellant has had to alter his gait for quite some time and that this likely could all be related.

In an April 30, 2008 report, Dr. Broberg noted that appellant was walking with a limp favoring the right side. He noted that appellant believed that his hip has gotten worse over the years secondary to the altered gait from the bilateral knee injuries. Dr. Broberg noted, "This is a distinct process, but may very well be aggravated because of his knees and altered gait." In an October 15, 2008 report, he stated that appellant's x-rays as well as his magnetic resonance imaging (MRI) scan are consistent with osteoarthritis that seems to be progressing fairly rapidly and that this has been going on for a little over a year. Dr. Broberg noted that eventually appellant is probably going to require total hip arthroplasty, although he believed it would be beneficial if appellant could spend a little more time losing weight, noting that this would likely help somewhat with his symptoms but more importantly postoperatively and in terms of implant longevity and perioperative complications.

[3] OWCP File No. xxxxxx680.

[4] OWCP File No. xxxxxx702.

A November 20, 2008 report by Ms. Hughes, and cosigned by Dr. Jacob Chaffee, a Board-certified family practitioner, addressed the question of possible correlation between appellant's right hip severe degenerative changes with possible avascular necrosis (AVN) being related to his bilateral knee injuries. Ms. Hughes indicated that appellant experienced an injury to his left knee that resulted in a meniscal repair and was followed by right knee injury and an increase in his weight of greater than 50 pounds over a one-year period of time with immobility. The report indicated, "At this time, we are requesting the right hip AVN and chronic pain secondary to the AVN and degenerative joint disease (DJD) to be considered directly correlated to his previous OWCP claim for knees with meniscal injury and surgical intervention and treatment for this problem as well as our encouragement of his attempts to lose weight to improve his surgical outcome."

By memorandum dated January 7, 2009, OWCP asked its medical adviser to comment on Dr. Broberg's request that it add right hip AVN and chronic pain secondary to the AVN and DJD to be considered directly correlated to appellant's OWCP accepted right knee medial meniscus derangement condition. In a January 16, 2009 report, OWCP's medical adviser stated that the diagnosis of AVN had not been established, noting that he agreed with Dr. Broberg that the findings of the hip MRI scan arthrogram could be explained entirely by osteoarthritis DJD. He further stated that, since the hip is an unconstrained joint, there is no reason to believe that an altered gait would significantly affect the development of either AVN or DJD. Dr. Broberg further noted that appellant had fully recovered from his right knee surgery by the time he saw Ms. Hughes on December 5, 2007 and that he had a normal gait at that time, noting that he developed both a limp and pain in his right knee later, and therefore it was more likely that his limp developed as a result of his unrelated hip pathology rather than being the cause of it. He also rejected the theory that appellant's right hip pathology is due in part to weight gain resulting from inactivity caused by the accepted injury, noting that appellant was released to full duty one month after his knee surgery and had a preexisting history of obesity. Dr. Broberg stated that the only cause of weight gain is excessive food intake which is entirely under the control of the individual. He stated that there is no scientific data to support the theory that either AVN or DJD of the hip is caused by abnormal gait, noting that the most common cause of DJD is probably genetic and that obesity is also a major cause with regard to weight-bearing joints and is most likely the cause in this case.

In a March 9, 2009 report, Dr. Miguel A. Schmitz, a Board-certified orthopedic surgeon, assessed appellant with postmeniscectomy medial compartment osteoarthrosis. He noted that appellant's knee condition appeared to be attributable to the history of having to have a knee arthroscopy with a partial medial menisectomy. Dr. Schmitz also noted that appellant's right hip/groin hurts a fair amount. He noted that this occurred approximately one month after he injured his right knee. Dr. Schmitz listed his assessment as "right hip DJD; AVN; question of whether this is related to the right knee or not."

In a March 20, 2009 decision, OWCP denied appellant's claim for a right hip condition as he had not met the requirements for establishing that his condition was caused by factors of his federal employment.

On March 31, 2009 appellant requested an oral hearing before an OWCP hearing representative. By decision dated June 24, 2009, OWCP's Branch of Hearings and Review

denied his request for a hearing, noting that it was untimely filed. Appellant appealed to the Board. By an April 13, 2010 decision, the Board set aside the June 24, 2009 decision, finding that his request for an oral hearing was timely filed and thus he was entitled to an oral hearing as a matter of right.[5]

On remand, a hearing was held on August 9, 2010. At the hearing, appellant testified that he believed that his hip problems were due to his altered gait caused by the injuries to his knees because it put more weight on the hip. He noted that he injured his left knee for the first time in 1998 and reinjured it in 2005 and that during this time he walked with an altered gait or limp. Appellant also testified that, while he was waiting for knee surgery in 2005, several times his knee gave out and he landed on his hip. He noted that years ago he had an injury when he got crushed, but that injury never impaired him. Appellant noted that he never had any job accidents to his right hip and that he never had problems with left hip. He noted that he was still having problems with his right hip.

By decision dated October 22, 2010, the hearing representative affirmed the denial of appellant's claim for a right hip condition consequential to the accepted right knee injury. Additionally, the hearing representative found that appellant's right hip condition was not consequential to his accepted left knee injuries.

LEGAL PRECEDENT

The basic rule respecting consequential injuries is 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 likewise arises out of the employment, unless it is the result of an independent, intervening cause. 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, industrial cause.[6]

A claimant bears the burden of proof to establish a claim for a consequential injury. As part of this burden, the claimant must present rationalized medical opinion evidence based on a complete factual and medical background showing causal relationship.[7]

An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a casual relationship.[8]

[5] Docket No. 09-1842 (issued April 13, 2010).

[6] *C.P.*, Docket No. 11-201 (issued September 27, 2011); *see also Kathy A. Kelley*, 55 ECAB 206 (2004).

[7] *M.C.*, Docket No. 09-392 (issued October 9, 2009).

[8] *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

ANALYSIS

OWCP accepted appellant's claim for derangement of right medial meniscus. Appellant had prior claims accepted for left knee derangement, left knee medial meniscus tear and lateral meniscus tear. He was released to return to work in December 2007, but now asserts that he suffered from a consequential injury to his right hip causally related to the accepted employment injuries. The Board finds that appellant submitted insufficient medical evidence to establish that he suffered a consequential injury.

The Board finds that the opinions of appellant's treating orthopedic surgeon, Dr. Broberg, are speculative and not sufficiently rationalized to support that appellant sustained a consequential injury to his right hip as a result of the accepted bilateral knee injuries. In his April 30, 2008 report, Dr. Broberg noted that appellant was walking with a limp favoring the right side. He noted that appellant believed that his hip had gotten worse over the years secondary to the lateral gait from the bilateral knee injuries and opined that this "is a distinct process, but may very well be aggravated because of his knees and altered gait." Dr. Broberg's opinion that appellant's condition "may very well be aggravated" is speculative and not sufficient to establish appellant's claim. He indicated that there was more than one possible cause of appellant's present condition.[9] Furthermore, Dr. Broberg based his equivocal opinion of causal relationship in part on appellant's belief that his right hip condition was causally related to the accepted employment injuries. An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish a casual relationship.[10]

Dr. Chaffee cosigned a November 20, 2008 report by Ms. Hughes wherein they requested that right hip AVN and chronic pain secondary to AVN and DJD be considered directly correlated his prior OWCP claim for knees with meniscal injury and surgical intervention. However, this opinion is also based in large part on appellant's assertions of a relationship between his accepted bilateral knee injuries and the right hip pain due to AVN and DJD. This report contains no medical rationale for the opinion of causal relationship. Medical conclusions unsupported by rationale are of little probative value.[11]

Dr. Schmitz also did not give a definitive opinion on the issue of causal relationship, noting only that there remained a question as to whether appellant's right hip DJD and AVN was related to his right knee. The Board notes that, although appellant submitted notes by Ms. Hughes and by a physician's assistant, they are not considered physicians under FECA.[12]

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[9] *See Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions which are speculative or equivocal in character have little probative value).

[10] *A.B.*, Docket No. 08-1823 (issued August 3, 2009); *Philip L. Barnes*, 55 ECAB 426 (2004).

[11] *E.M.*, Docket No. 11-1106 (issued December 28, 2011); *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).

[12] 5 U.S.C. § 8101(2); *Richard E. Simpson*, 57 ECAB 68 (2006); *Sedi L. Graham*, 57 ECAB 494 (2006).

Causal relationship is a medical issue which must be resolved by competent medical opinion.[13] The reports from laypersons, such as nurses and physician's assistants, are of no relevance to the issue of causal relationship.[14]

The opinion of the OWCP medical adviser does not support appellant's claim. He provided medical rationale explaining that as the hip is an unconstrained joint, he saw no reason to believe that an altered gait would significantly affect the development of either AVN or DJD. The medical adviser further stated that appellant had a normal gait and had fully recovered from his knee surgery by December 5, 2007, so that any limp and pain developed as a result of his unrelated hip pathology rather than being the cause of it.

As appellant failed to submit sufficient probative medical evidence to establish that his right hip condition was a result of the accepted bilateral knee injuries, he has failed to establish the requisite causal relationship and OWCP properly denied his claim.[15]

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 failed to establish that he sustained a consequential injury to his right hip as a result of the accepted bilateral injuries.

[13] *Carol A. Lyles*, 57 ECAB 265 (2005).

[14] *Joseph A. Brown*, 55 ECAB 542 (2004).

[15] *D.J.*, Docket No. 08-1066 (issued November 12, 2008).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 22, 2010 is affirmed.

Issued: March 27, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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