

**United States Department of Labor
Employees' Compensation Appeals Board**

R.W., Appellant

and

**U.S. POSTAL SERVICE, NORTHERN
ILLINOIS PERFORMANCE CLUSTER,
Carol Stream, IL, Employer**

)
)
)
)
)
)
)
)
)
)

**Docket No. 11-2111
Issued: September 7, 2012**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
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 September 21, 2011 appellant, through his attorney, filed a timely appeal from the August 16, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) 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 met his burden of proof to establish that he sustained an injury on November 15, 2008 as a consequence of his accepted June 23, 2008 work injury.

FACTUAL HISTORY

On June 23, 2008 appellant, then a 51-year-old mail handler driver, filed a traumatic injury claim alleging that on June 23, 2008 he injured his knees, hands, ankles, back and neck

¹ 5 U.S.C. §§ 8101-8193.

when he slipped and fell over some forklift blades and landed on his knee and hands. He stopped work on June 24, 2008.

In a July 16, 2008 report, Dr. Eugene P. Lopez, an attending Board-certified orthopedic surgeon, diagnosed possible injury to the menisci and patellofemoral cartilage and indicated that appellant could not work.

On July 25, 2008 OWCP accepted appellant's claim for bilateral knee sprains and bilateral ankle sprains. Appellant received continuation of pay through August 7, 2008 and then received total disability compensation.

In an August 25, 2008 report, Dr. Lopez indicated that appellant continued to have recurrent effusions, pain and catching in both knees, much greater on the right than the left.

In a November 15, 2008 report, Dr. Rick Stephani, an attending Board-certified emergency medicine physician, stated that appellant claimed that on that date his knees gave out and he fell down nine wooden steps at home. Appellant did not report loss of consciousness and he denied hitting his head or back. Dr. Stephani noted that x-rays showed left knee small joint effusion, slightly inferior patella and right knee small joint effusion.

A November 17, 2008 magnetic resonance imaging (MRI) scan of appellant's left knee showed a rupture of quadriceps tendon and no menisci tears. A November 17, 2008 MRI scan of his right knee showed an acute rupture of the quadriceps tendon but no menisci tears.

In a November 18, 2008 report, Dr. Lopez indicated that he performed surgical bilateral quadriceps tendon reattachments for appellant's quadriceps tendon ruptures. He opined that the June 23, 2008 injury caused a right knee medial meniscus tear, which in turn caused appellant to fall down stairs and sustain tears of his bilateral quadriceps tendons.

In a March 23, 2009 report, Dr. David Garelick, a Board-certified orthopedic surgeon, serving as an OWCP medical adviser, noted Dr. Lopez' opinion that the June 23, 2008 injury caused a right knee medial meniscus tear, but indicated that the MRI scan reports in file, dated November 17, 2008, did not mention any menisci tears. Dr. Garelick opined that it was more probably true than not that appellant's fall and consequent quadriceps ruptures were due to his morbid obesity.²

OWCP determined that there was a conflict in the medical opinion evidence regarding the cause of appellant's November 15, 2008 fall and referred him for an impartial medical examination. Based on the impartial medical examiner's opinion, it issued a June 9, 2009 decision denying his claim that the November 15, 2008 fall was a consequence of his June 23, 2008 work injury.

After appellant submitted August 4, 2008 reports, which showed possible bilateral tears of his menisci, OWCP vacated its denial of his claim in a January 11, 2010 decision. An August 4, 2008 MRI scan test of his right knee showed post-traumatic bruising, a probable small

² Records from this period reveal that appellant weighed 365 pounds and a body mass index of 42.2.

medial meniscus tear and a benign lesion (probably an enchondroma). An August 4, 2008 MRI scan of appellant's left knee showed probable small tear of the medial and lateral menisci.

In a January 7, 2010 report, Dr. Lopez wrote that appellant "sustained work[-]related meniscal tears while waiting for approval for surgical intervention resulting in bilateral quadriceps tendon ruptures." He opined that due to appellant's multiple conditions he was totally disabled from any occupation.

In a February 3, 2010 report, Dr. Neil Ghodadra, a Board-certified orthopedic surgeon serving as an OWCP medical adviser, indicated that the August 4, 2008 MRI scan test of appellant's right knee was indicative of a medial meniscal tear attributable to the June 23, 2008 work accident. However, the tear was not the bucket handle tear which could lead to a "locked knee" sensation, which appellant described as the root cause of the fall at home on November 15, 2008. Dr. Ghodadra concluded that appellant's November 15, 2008 fall was not related to his June 23, 2008 work injury.

Based on Dr. Ghodadra's report, OWCP accepted that appellant sustained a right medial meniscal tear attributable to the June 23, 2008 work accident. It determined that there was a conflict in the medical opinion evidence between Dr. Lopez and Dr. Ghodadra regarding the cause of appellant's November 15, 2008 fall and referred him to Dr. Paul Belich, a Board-certified orthopedic surgeon, for an impartial medical examination and opinion on this matter.

In a March 25, 2010 report, Dr. Belich stated that the June 23, 2008 injury was a fall directly on the front of both knees. MRI scan that were done after this injury did not show a medial meniscal tear. Dr. Belich indicated that the reading of a very subtle truncation of the medial meniscus was not consistent with or equal to the reading of a grade 2 signal within the body of the meniscus which would be a finding consistent with meniscal tear. The radiologist's contention that this finding of subtle truncation of the meniscus probably represented a small tear was speculative and was not compatible with a meniscal tear. Dr. Belich stated that the finding of a very subtle truncation of the medial meniscus was usually associated with chronic degenerative wear of the meniscus and was not associated with symptomatic meniscal tears. Therefore, the assertion that appellant's meniscal tears caused him to fall down the stairs was not correct since the MRI scan tests did not show meniscal tears. Dr. Belich stated, "Certainly, patients who are morbidly obese and who have had problems with multiple joints of their body necessitating surgeries can have difficulty descending stairs and I believe that this was simply an accident at home and not related to any speculative meniscal injuries."

In an April 9, 2010 decision, OWCP denied appellant's claim for consequential injury due to the November 15, 2008 fall. It based its decision on the opinion of Dr. Belich.

OWCP authorized right knee surgery and, in an August 20, 2010 surgery report, Dr. Lopez indicated that he observed a 5 to 10 percent radial lateral meniscus tear and a complex flap posterior medial meniscus tear. Dr. Lopez performed a partial medial and lateral meniscectomy, resection of loose body and chondroplasty of lateral patellar facet and lateral and medial femoral condyles.

In a December 6, 2010 decision, OWCP set aside its April 9, 2010 decision and requested Dr. Belich to clarify his opinion, particularly with regard to whether any accepted work condition could have caused knee catching on November 15, 2008.

In a January 21, 2011 report, Dr. Belich stated that a meniscal tear is not the only reason appellant's knee buckled at the top of the stairs. Degenerative arthritis of the knee and particularly degenerative arthritis of the patellofemoral joint can cause difficulty with descending stairs and can cause buckling. Dr. Belich indicated that medical evidence from the period prior to November 15, 2008 showed that appellant had eburnated bone of the right medial femoral condyle, lateral femoral condyle and lateral patellar facet. This was the type of advanced osteoarthritis of the knee that could cause buckling and could cause him to fall down the stairs. Dr. Belich indicated that any meniscal abnormalities that are seen at the time of the recent arthroscopy conducted by Dr. Lopez were most likely due to chronic attritional wear of the menisci secondary to eburnated bone in their respective compartments. He stated, "It is obvious, therefore, that I believe that degenerative wear in [appellant's] knee particularly with eburnated bone in all three compartments of the knee is a sufficient reason for catching and locking in this morbidly obese patient's knee." Dr. Belich concluded that appellant's November 15, 2008 fall was not a consequence of his June 23, 2008 work injury.

In a January 27, 2011 decision, OWCP found that the November 15, 2008 fall and related injuries were not a consequence of his June 23, 2008 work injury. It based its decision on the opinion of Dr. Belich.

Appellant requested a telephone hearing with an OWCP hearing representative. A hearing was held on June 8, 2011 and he submitted a February 16, 2011 report, in which Dr. Lopez asserted that work-related meniscal tears caused appellant's knee to buckle on November 15, 2008.

In an August 16, 2011 decision, the hearing representative affirmed OWCP's January 27, 2011 decision. He indicated that the weight of the medical evidence continued to rest with the opinion of Dr. Belich.

LEGAL PRECEDENT

The general 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 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.³ A claimant bears the burden of proof to establish a claim for a consequential injury. As part of this burden, he must present rationalized medical opinion evidence.⁴

Section 8123(a) of FECA provides in pertinent part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee,

³ S.S., 59 ECAB 315 (2008).

⁴ *Charles W. Downey*, 54 ECAB 421 (2003).

the Secretary shall appoint a third physician who shall make an examination.”⁵ In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁶

ANALYSIS

OWCP accepted that, due to a June 23, 2008 fall, appellant sustained bilateral knee sprains, bilateral ankle sprains and a right medial meniscal tear. Appellant fell at home on November 15, 2008 and claimed that this fall and related injuries were a consequence of the June 23, 2008 work injuries. OWCP denied his claim based on the opinion of Dr. Belich, a Board-certified orthopedic surgeon who served as an impartial medical specialist.

OWCP properly determined that there was a conflict in the medical opinion between Dr. Lopez, an attending Board-certified orthopedic surgeon, and Dr. Ghodadra, a Board-certified orthopedic surgeon acting as an OWCP referral physician, on the issue of whether appellant sustained a consequential injury.⁷ In order to resolve the conflict, it properly referred appellant, pursuant to section 8123(a) of FECA, to Dr. Belich for an impartial medical examination and an opinion on the matter.⁸

The Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Belich, the impartial medical specialist selected to resolve the conflict in the medical opinion.⁹ The reports of Dr. Belich establish that appellant did not sustain a consequential injury when he fell at home on November 15, 2008.

In a March 25, 2010 report, Dr. Belich discussed the MRI scan tests of record and noted that they did not clearly show that meniscal tears existed after appellant’s June 23, 2008 work injury. He provided an opinion that appellant’s November 15, 2008 fall at home was not due to a work-related condition and stated, “Certainly, patients who are morbidly obese and who have had problems with multiple joints of their body necessitating surgeries can have difficulty descending stairs and I believe that this was simply an accident at home and not related to any speculative meniscal injuries.”

In a January 21, 2011 report, Dr. Belich indicated that, even if one accepts that appellant’s MRI scan test showed a meniscal tear, such a condition was not the only reason that his knees might have buckled on November 15, 2008. Degenerative arthritis of the knee and

⁵ 5 U.S.C. § 8123(a).

⁶ *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

⁷ In a January 7, 2010 report, Dr. Lopez indicated that appellant sustained work-related meniscal tears, which caused the November 15, 2008 fall resulting in bilateral quadriceps tendon ruptures. In contrast, Dr. Ghodadra indicated on February 3, 2010 that appellant’s November 15, 2008 fall was not work related.

⁸ *See supra* note 5.

⁹ *See supra* note 6.

particularly degenerative arthritis of the patellofemoral joint can cause difficulty with descending stairs and can cause buckling. Dr. Belich indicated that medical evidence from the period prior to November 15, 2008 showed that appellant had eburnated bone of the right medial femoral condyle, lateral femoral condyle and lateral patellar facet. He stated, "It is obvious, therefore, that I believe that degenerative wear in [appellant's] knee particularly with eburnated bone in all three compartments of the knee is a sufficient reason for catching and locking in this morbidly obese patient's knee." Dr. Belich concluded that appellant's November 15, 2008 fall was not a consequence of his June 23, 2008 work injury but rather was due to his nonwork-related degenerative condition and morbid obesity.

The Board has carefully reviewed the opinion of Dr. Belich and notes that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue of the present case. Dr. Belich provided a thorough factual and medical history and accurately summarized the relevant medical evidence.¹⁰ He provided medical rationale for his opinion by explaining that appellant's fall at home on November 15, 2008 was not related to his June 23, 2008 work injuries but rather was related to nonwork factors such as preexisting osteoarthritis of the knee and morbid obesity.¹¹

For these reasons, appellant did not show that the November 15, 2008 fall and related injuries were a consequence of his accepted June 23, 2008 work injury.

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 did not meet his burden of proof to establish that he sustained an injury on November 15, 2008 as a consequence of his accepted June 23, 2008 work injury.

¹⁰ See *Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

¹¹ Appellant submitted a February 16, 2011 report in which Dr. Lopez continued to assert that work-related meniscal tears caused appellant's knee to buckle on November 15, 2008. However, as Dr. Lopez was on one side of the conflict, his additional report is essentially duplicative of his stated opinion and is insufficient to give rise to a new conflict. See *Richard O'Brien*, 53 ECAB 234 (2001).

ORDER

IT IS HEREBY ORDERED THAT the August 16, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 7, 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