United States Department of Labor
Employees' Compensation Appeals Board

W.B., Appellant	)	
and	)	**Docket No. 12-1896**
	)	**Issued: March 26, 2013**
U.S. POSTAL SERVICE, POST OFFICE, San Francisco, CA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 13, 2012 appellant filed a timely appeal from the August 22, 2012 merit decision of the Office of Workers' Compensation Programs. 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.

ISSUE

The issue is whether appellant established that she sustained a back condition as a consequence of her accepted injury.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On March 18, 2003 appellant, then a 49-year-old human resources specialist, filed a traumatic injury claim alleging that she sustained bilateral knee injuries while loading case files onto library carts in the performance of duty. OWCP accepted the claim for bilateral tears of the medial and lateral menisci and chondromalacia of both knees. OWCP authorized surgeries on the right and left knees, which occurred in December 2004 and May 2009, as well as subsequent total knee replacement and revision surgeries. Appellant received compensation for lost wages.

On May 4, 2010 appellant requested that her claim be expanded to include a lower and upper back condition. She alleged that, due to her knee condition, she had a persistent limp, which aggravated her back condition.

Appellant submitted reports from Dr. Daniel Burkhead, a Board-certified physiatrist, from August 3, 2006 through February 16, 2010. Dr. Burkhead noted her history of lower back pain secondary to lumbar disc degeneration. On October 12, 2009 he stated that appellant was experiencing extreme bilateral knee pain, resulting in a limp that "throws her back off." On January 18, 2010 Dr. Burkhead diagnosed lumbar disc bulge; lumbar/thoracic radiculopathy; lumbar disc dessication; degenerative joint disease/arthritis NOS/lower leg and thoracic spine pain. He noted that a December 27, 2007 magnetic resonance imaging (MRI) scan revealed disc protrusion at T4-T5. On February 16, 2010 Dr. Burkhead noted increased lower back pain, which was exacerbated by appellant's limp.

Appellant submitted a November 20, 2009 report from Dr. Randall Yee, a Board-certified osteopath specializing in orthopedic surgery, who treated her for diagnosed knee conditions. Dr. Yee noted that she had an antalgic gait secondary to her continuing knee pain. He opined that appellant symptoms in her lumbar spine were related to her knee pain, since she "changed her gait and this has made her symptoms worse in her back now at this time." Dr. Yee diagnosed degenerative joint disease of the bilateral knees and low back pain with radicular symptoms secondary to her accepted injury.

By decision dated June 8, 2010, OWCP denied appellant's request to expand her claim, finding that the medical evidence of record was insufficient to establish a causal relationship between her diagnosed back condition and the accepted injury.

In a report dated June 9, 2010, Dr. Burkhead noted appellant's complaints of low and midback pain and indicated that she walked with an antalgic gait. He provided examination findings, which included tenderness over the paraspinal musculature in the cervical spine and over the thoracic spinous processes. Active range of motion was limited with discomfort. Dr. Burkhead diagnosed lumbar disc bulge; lumbar/thoracic radiculopathy; lumbar disc dessication; degenerative joint disease/arthritis NOS/lower leg; and thoracic spine pain and cervicalgia.

In a June 18, 2010 report, Dr. Yee stated that appellant was experiencing pain in her lower back and knees. He diagnosed lumbar spine degenerative joint disease, which he opined was aggravated by her knee injury.

On February 21, 2011 appellant requested reconsideration.

In a report dated November 24, 2010, Dr. Burkhead provided examination findings, including tenderness over the paraspinal musculature in the cervical spine and over the thoracic spinous processes. Spurling's maneuver produced pain radiating into the right trapezius. Active range of motion was limited with discomfort. A November 4, 2009 MRI scan revealed significant disc protrusion at the T4-T5 region. Dr. Burkhead repeated his June 9, 2010 diagnoses, stating that appellant's condition had worsened between 2006 and 2007 as evidenced by MRI scan. He attributed the worsening of appellant's lumbosacral condition to her chronic limping, which in turn resulted from her bilateral knee condition. Dr. Burkhead explained that the bracing required for extended periods of time due to the knee injuries and subsequent surgeries could have caused prolonged limping which would place stress on the extremities as well as the thoracic and lumbosacral spine.

In a decision dated May 25, 2011, OWCP denied modification of its prior decision on the grounds that the medical evidence was insufficient to establish a causal relationship between the diagnosed back conditions and the accepted injury.

On May 21, 2012 appellant again requested reconsideration.

In a June 9, 2011 report, Dr. Jaswinder S. Grover, a Board-certified orthopedic surgeon, stated that there was evidence of spinal stenosis, disc compromise, most significant at L4-5, which he believed was the primary source of her back pain and lower extremity radiculitis. He noted that appellant ambulated with a forward fixed posture.

On June 10, 2011 Dr. Yee opined to a reasonable degree of medical certainty that appellant's symptoms and pain relating to her upper and lower back were causally related to her knee injury. He explained that walking with an antalgic gait exacerbated her condition.

In a December 19, 2011 report, Dr. John B. Siegler, a Board-certified physiatrist, provided a history of injury and treatment, examination findings and a diagnosis of spinal stenosis at L3-L4. He stated that appellant's knee pain correlated with her altered gait and indicated that it was "suggestive that the altered gait is the primary etiology for her [back] complaints." Dr. Siegler recommended exploring whether "facet mediated pain was explained by altered gait and the imbalance and repetitive stress on the facet joint leading to chronic capsular stress and pain through the facet joint."

On January 16, 2012 Dr. Burkhead diagnosed lumbar disc bulge; lumbar/thoracic radiculitis; lumbar disc dessication; disc degeneration disease; thoracic spine pain; cervicalgia and carpal tunnel syndrome. He reviewed a copy of Dr. Siegler's report, which attributed appellant's lower back pain to her gait abnormality.

By decision dated August 22, 2012, OWCP denied modification of its May 25, 2011 decision.

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.[2] The subsequent injury is compensable if it is the direct and natural result of a compensable primary injury.[3] With respect to consequential injuries, the Board has stated that, where an injury is sustained as a consequence of an impairment residual to an employment injury, the new or second injury, even though nonemployment related, is deemed, because of the chain of causation to arise out of and in the course of employment and is compensable.[4]

ANALYSIS

OWCP accepted appellant's claim for bilateral tears of the medial and lateral menisci and chondromalacia of both knees. Appellant claimed that she developed a back condition, including an exacerbation of her diagnosed degenerative disc disease, as a consequence of her accepted knee conditions. The Board finds that this case is not in posture for a decision.

Dr. Burkhead began treating appellant in 2006. Over a period of six years, he provided a history of her knee injury and treatment, noting her history of lower back pain secondary to lumbar disc degeneration, and diagnosed lumbar disc bulge; lumbar/thoracic radiculopathy; lumbar disc dessication and degenerative joint disease. On October 12, 2009 Dr. Burkhead stated that appellant was experiencing extreme bilateral knee pain, resulting in a limp that threw her back off. On February 16, 2010 he noted increased lower back pain, which was exacerbated by her limp. Again, on June 9, 2010, Dr. Burkhead reported that appellant walked with an antalgic gait. He provided examination findings, which included tenderness over the paraspinal musculature in the cervical spine, and over the thoracic spinous processes and limited active range of motion and reiterated his previous diagnoses. On November 24, 2010 Dr. Burkhead provided examination findings, repeated his diagnoses and discussed the results of a November 4, 2009 MRI scan, which revealed significant disc protrusion at the T4-T5 region. He opined that appellant's lumbosacral condition had worsened due to her chronic limping, which in turn resulted from her bilateral knee condition. Dr. Burkhead explained that the bracing required for extended periods of time due to the knee injuries and subsequent surgeries could have caused prolonged limping which would place stress on the extremities as well as the thoracic and lumbosacral spine. His reports consistently attributed appellant's deteriorating back condition to her antalgic gate resulting from her knee injury.

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[2] *Albert F. Ranieri*, 55 ECAB 598 (2004).

[3] *S.M.*, 58 ECAB 166 (2006); *Debra L. Dillworth*, 57 ECAB 516 (2006); *Carlos A. Marrero*, 50 ECAB 117 (1998); A. Larson, *The Law of Workers' Compensation* § 10.01 (2005).

[4] *L.S.*, Docket No. 08-1270 (issued July 2, 2009); *Kathy A. Kelley*, 55 ECAB 206 (2004).

On November 20, 2009 Dr. Yee, who treated appellant for her accepted knee injury, noted that she had an antalgic gait secondary to her continuing knee pain. He opined that her lumbar spine symptoms were related to her knee pain, which had required her to change her gait. Dr. Yee diagnosed degenerative joint disease of the bilateral knees and low back pain with radicular symptoms secondary to her accepted injury. On June 18, 2010 he diagnosed lumbar spine degenerative joint disease, which he opined was aggravated by appellant's knee injury. In a June 10, 2011 report, Dr. Yee opined to a reasonable degree of medical certainty that her symptoms and pain relating to her upper and lower back were causally related to her knee injury. He explained that walking with an antalgic gait exacerbated appellant's condition.

On December 19, 2011 Dr. Siegler provided a history of injury and treatment, examination findings and a diagnosis of spinal stenosis at L3-L4. He stated that appellant's knee pain correlated with her altered gait and indicated that it was "suggestive that the altered gait is the primary etiology for her [back] complaints." Dr. Siegler recommended exploring whether "facet mediated pain was explained by altered gait and the imbalance and repetitive stress on the facet joint leading to chronic capsular stress and pain through the facet joint." On June 9, 2011 Dr. Grover diagnosed spinal stenosis, which he opined was the primary source of appellant's back pain and lower extremity radiculitis, noting that she ambulated with a forward fixed posture.

While none of appellant's treating physicians have provided a fully-rationalized report, they have all consistently maintained that appellant's employment-related knee injuries caused or exacerbated a diagnosed back condition. This evidence, moreover, is not contradicted by any substantial medical evidence of record, nor did the claims examiner seek review of an OWCP medical adviser.[5] While the reports are not sufficient to meet appellant's burden of proof, they raise an uncontroverted inference of causal relationship between her accepted knee conditions and her diagnosed back conditions sufficient to require further development of the medical evidence.[6]

It is well established that proceedings under FECA are not adversarial in nature. While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.[7] On remand, OWCP should refer appellant to an appropriate Board-certified specialist for a rationalized opinion as to whether appellant has a consequential back condition causally related to her accepted injury. After such further development as deemed necessary, OWCP shall issue a decision.

[5] The procedure manual notes that, as to consequential injuries, the claims examiner may seek further clarification from the claimant's physician if needed, or refer the case for review by the district medical adviser or to a second opinion examiner, prior to adjudicating the claim for a consequential condition. *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.7(a) (January 2013).

[6] *See E.J.*, Docket No. 09-1481 (issued February 19, 2010); *see also John J. Carlone*, 41 ECAB 354 (1989).

[7] *R.B.*, Docket No. 08-1662 (issued December 18, 2008); *A.A.*, 59 ECAB 726 (2008); *Donald R. Gervasi*, 57 ECAB 281 (2005).

CONCLUSION

The Board finds that the case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the August 22, 2012 decision of the Office of Workers' Compensation Programs be set aside. The case is remanded for further development consistent with this decision.

Issued: March 26, 2013
Washington, DC

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

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

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