



## **FACTUAL HISTORY**

This case has previously been before the Board. By decision dated June 21, 2011, the Board affirmed a March 23, 2010 OWCP decision, which found that appellant had not established that she has more than 25 percent left lower extremity impairment causally related to her October 3, 1999 injury.<sup>2</sup> The Board set aside a June 8, 2010 decision and remanded the case to OWCP for an impartial medical examination due to an unsolved conflict in medical opinion as to whether appellant's right knee condition developed as a consequence of her left knee injury. Appellant had previously requested a schedule award claiming impairment to both lower extremities as a result of the October 3, 1999 work injury. The facts and history as set forth in the prior decision are incorporated by reference.

OWCP referred appellant, together with a statement of accepted facts and the medical record, to Dr. Barry Snyder, a Board-certified orthopedic surgeon, for an impartial medical evaluation. In a March 20, 2012 report, Dr. Snyder stated that he evaluated her on October 3, 2011. He reviewed the history of injury, appellant's complaints, the medical record and presented findings on physical examination. Dr. Snyder listed impression of status post left knee total knee replacement, representing 21 percent lower extremity impairment and right knee osteoarthritis unrelated to the October 3, 1999 work incident or left knee injuries. Based on his review of the records and physical examination, he stated the following with regard to appellant's right knee for which she underwent a right total knee replacement:

“[Appellant] has averred the compensatory gait and increased weight-bearing onto her right lower extremity resulted in impairment of her right lower extremity. Symptoms were documented in 2005 with no antecedent injury. Much the same radiographic findings were noted for the right knee, as were noted for the left. A relevant point is that it illustrates an underlying osteoarthritic condition of both knees that was entirely independent of any traumatic event. Orthopaedic literature has objectively demonstrated degenerative joint disease of the knee can worsen after partial or complete meniscectomy. That procedure removes the ‘protective’ covering of the meniscus over the articular surface, increasing the contact forces on the articular cartilage. Therefore, it is reasonable to attribute acceleration of the degenerative joint disease of left knee that, obviously, was already present and, based on her account asymptomatic. However, that was not the case with regard to her right knee. Degenerative joint disease of the right knee is a primary disorder that was not traumatically induced. As has been noted in the record, there are no objective-based studies that demonstrative operative treatment of one knee causes any greater risk for causing or accelerating degenerative changes of the contra lateral knee. Alteration of [appellant's] gait, be it transient or prolonged, might have been painful, but she was symptomatic because of the underlying degenerative arthrosis of the knee that would not have arisen or accelerated because of the left knee injury. Interestingly, a sedentary lifestyle is

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<sup>2</sup> Docket No. 10-1938 (issued June 21, 2011). OWCP accepted the conditions of left knee contusion and torn left posterior horn of the medical meniscus. It paid appropriate benefits, including an October 2001 left knee arthroscopy and a September 2005 left knee replacement. Appellant retired under the Office of Personnel Management effective May 1, 2008. She underwent a total right knee arthroplasty February 26, 2010.

associated with increased incidence of degenerative joint disease. Therefore, within a reasonable degree of medical certainty, I agree with the previous [d]ecision that conditions referable to [appellant's] right knee are independent of the October 3, 1999 incident and any conditions of her left knee relative to it. Treatment of her right knee by total knee replacement has been appropriate, but that is an inevitable course of management relating to the primary arthritic disorder, independent of the subject incident. There is no foundation to attribute any additional lower extremity impairment to her right knee."

Dr. Snyder stated that the right lower extremity impairment was zero percent with respect to the October 3, 1999 work injury or any of its effects. He reiterated that the impairment related to the right total knee replacement was independent of the October 3, 1999 work incident or injury of her left knee. Dr. Snyder noted that appellant had complaints of back pain, but it was not recognized as impairment related to the October 3, 1999 work injury and, for the same reasons, he explained regarding the right knee, there was no neurologic impairment or impairment of her spine resulting from the October 3, 1999 work incident or its effects. He stated that several aspects of appellant's physical examination pertaining to her lumbar spine were nonanatomic responses (e.g., axial loading and simulated rotation), which suggest an element of exaggeration or embellishment of her spinal examination.

With regard to the right lower extremity, Dr. Snyder concluded that there was no evidence of impairment due to gait disturbance or to the preexisting degenerative disc disease. Furthermore, appellant's complaints of back pain were not recognized as part of the accepted conditions resulting from the October 3, 1999 work incident.

By decision dated March 22, 2012, OWCP denied appellant's claim for a consequential right knee condition as it is not causally related to the accepted October 3, 1999 employment injury.

By decision dated March 22, 2012, OWCP also denied appellant's claim for schedule award benefits for the right lower extremity as the evidence of record did not establish that the existence of a right lower extremity condition causally related to the October 3, 1999 employment injury.

Appellant disagreed with both March 22, 2012 decisions and requested a hearing before an OWCP hearing representative, which was held on July 13, 2012. At the hearing, her attorney argued that appellant's gait had been altered by the 1999 left knee injury which caused or aggravated her right knee condition to the point where she had to undergo a total knee replacement. Counsel argued that Dr. Snyder's report was not sufficiently rationalized and that appellant should be sent to another impartial medical specialist. The record was left open for 30 days for the submission of additional evidence.

Appellant submitted a July 1, 2012 statement of her belief that her right knee condition arose because of overcompensation due to her injured left knee. She also noted two falls related to her left knee giving out and expressed a desire to have her left claim remain open for further medical treatment. In a January 9, 2012 statement, appellant addressed a December 11, 2000 injury, when she broke her fibula, which healed with no problems.

By decision dated August 29, 2012, an OWCP hearing representative affirmed both March 22, 2012 decisions.

### **LEGAL PRECEDENT -- ISSUES 1 & 2**

A schedule award can be paid only for a condition related to an employment injury. The claimant has the burden of proving that the condition for which a schedule award is sought is causally related to his or her employment.<sup>3</sup>

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 an 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. An employee who asserts that a nonemployment-related injury was a consequence of a previous employment-related injury has the burden of proof to establish that such was the fact.<sup>4</sup>

Section 8123(a) of FECA provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.<sup>5</sup> 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.<sup>6</sup>

### **ANALYSIS -- ISSUES 1 & 2**

Appellant had requested a schedule award claiming impairment to the left and right lower extremities as a result of the October 3, 1999 work injury. The Board, in its prior decision, found an unresolved conflict in medical opinion existed as to whether her right knee condition developed as a consequence of her left knee injury and remanded the case to OWCP for referral to an impartial medical specialist. On remand, OWCP selected Dr. Snyder as the impartial medical specialist.

In a March 20, 2012 report, Dr. Snyder, selected as an impartial medical examiner, opined in part that appellant's right knee condition was not related to the October 3, 1999 accepted left knee injury. He explained that while her underlying degenerative joint disease in her left knee was accelerated by the October 3, 1999 traumatic injury, this was not the case for

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<sup>3</sup> *Veronica Williams*, 56 ECAB 367 (2005).

<sup>4</sup> *See Kathy A. Kelley*, 55 ECAB 206 (2004); *Carlos A. Marerro*, 50 ECAB 170 (1998).

<sup>5</sup> 5 U.S.C. § 8123(a).

<sup>6</sup> *L.S.*, Docket No. 12-139 (issued June 6, 2012); *Gloria J. Godfrey*, 52 ECAB 486 (2001); *Jacqueline Brasch (Ronald Brasch)*, 52 ECAB 252 (2001).

her right knee. Dr. Snyder stated that degenerative joint disease was appellant's primary diagnosis in her right knee and that it was not traumatically induced. He explained that there were no objective-based studies that demonstrate that operative treatment of one knee caused any greater risk for causing or accelerating degenerative changes of the contralateral knee. Dr. Snyder further stated that alteration of appellant's gait, be it transient or prolonged, might have been painful, but she was symptomatic because of the underlying degenerative arthrosis of her right knee, which would not have arisen or accelerated because of the left knee injury. He also noted that a sedentary lifestyle was associated with increased incidence of degenerative joint disease.

The Board finds that the special weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Snyder, the impartial medical specialist selected to resolve the conflict in the medical opinion.<sup>7</sup> Dr. Snyder opined that appellant's right knee condition was not causally related to her accepted employment-related left knee injury. He rationalized that, since appellant's right knee condition was not traumatically induced, the preexisting degenerative joint disease was not accelerated because of the alteration of her gait from the left knee injury and there were no objective-based studies which demonstrated that operative treatment on one knee placed a greater risk on the other knee for causing or accelerating degenerative changes. The Board has carefully reviewed the opinion of Dr. Snyder and finds that it has reliability, probative value and convincing quality with respect to whether appellant's right knee condition developed as a consequence of her left knee injury.

As appellant has not met her burden of proof to establish that her right knee condition developed as a consequence of her left knee injury. She also has not met her burden in establishing entitlement to a schedule award for her right lower extremity as a result of the October 3, 1999 work injury.

On appeal, counsel argued that appellant's right knee condition was contributed to by her accepted left knee injury due to her altered gait and overcompensation while walking. Counsel also asserted that Dr. Snyder's impartial medical report was unrationalized and a new impartial medical specialist should be selected. As stated, the special weight of the medical evidence, as represented by Dr. Snyder's impartial opinion, establishes that appellant's right knee condition was not causally related to his accepted employment-related left knee condition. Thus, appellant has not established a consequential right knee condition or entitlement to a schedule award based on the right knee condition as the right knee condition is not causally related to an employment injury.

### **CONCLUSION**

The Board finds that OWCP properly denied appellant's claim for a right knee consequential condition. The Board further finds that OWCP properly found that she is not entitled to a schedule award for her right lower extremity as a result of her accepted employment injury.

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<sup>7</sup> See cases cited, *supra* note 6.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 29, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 20, 2013  
Washington, DC

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

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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