

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

T.D., Appellant

and

**DEPARTMENT OF THE NAVY, MARINE
CORPS BASE, Camp LeJeune, NC, Employer**

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**Docket No. 13-1505
Issued: January 9, 2014**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 11, 2013 appellant filed a timely appeal from a May 6, 2013 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 the case.

ISSUES

The issues are: (1) whether appellant met her burden of proof to establish that she sustained consequential right knee meniscus tear causally related to her accepted left knee conditions; and (2) whether she met her burden of proof to establish that her right knee surgery is causally related to the accepted left knee conditions.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On August 25, 1999 appellant, then a 45-year-old material handler leader, filed a traumatic injury claim when she hurt her left knee while jumping off a forklift to get away from wasps. She was concerned about an allergic reaction if stung. OWCP accepted the claim for a tear of left knee lateral meniscus, internal derangement of the left knee, other internal derangement of left knee and chest wall contusion. It authorized benefits, including three surgical procedures to the left knee. By decision dated June 4, 2002, OWCP granted appellant a schedule for seven percent impairment of the left leg. By decision dated April 23, 2007, it granted her an additional schedule for 5 percent left leg impairment, for a total impairment of 12 percent.

In an August 1, 2012 report, Dr. Jeffrey Gross, a Board-certified orthopedic surgeon, noted that appellant had right knee pain with giving away. He diagnosed a tear of the medial cartilage or meniscus of right knee. Appellant was referred to Dr. Raymond Bradley, a Board-certified orthopedic surgeon, for a surgical consultation. In an August 24, 2012 treatment report, Dr. Bradley diagnosed a right medial meniscus tear and advised that surgery was indicated.

OWCP subsequently received an authorization request for right knee arthroscopic surgery.

In an August 30, 2012 letter, OWCP advised appellant that additional factual and medical evidence was needed to authorize surgery, as it did not appear to be medically necessary for treatment of the accepted conditions. Appellant was accorded 30 days to provide the requested information.

In an October 12, 2012 report of telephone call, appellant stated that she often fell as her left knee gives out. She fell in her driveway approximately one year prior and that was when she hurt her right knee. Appellant also had another surgery on her left knee, which appeared to resolve her problems.

OWCP also received progress reports from Dr. Gross dated October 18 and November 15, 2012. Dr. Gross noted that appellant was awaiting approval for right knee surgery. A June 11, 2012 magnetic resonance imaging (MRI) scan of the right knee was submitted.

On October 31, 2012 OWCP requested a medical adviser to review the evidence and determine whether the claim should be accepted for a consequential right knee medial meniscus tear and arthroscopy. In a November 5, 2012 report, Dr. H.P. Hogshead, a medical adviser, reviewed the medical evidence of record. He stated that the medical facts did not support the consequential "opposite knee" meniscal tear. Dr. Hogshead explained that the vast majority of individuals do not have a tear of the opposite knee meniscus.

In a January 30, 2013 letter, OWCP advised appellant that the medical evidence was not sufficient to authorize treatment of her right knee as it did not appear medically necessary or causally related to the accepted left knee condition. Appellant was requested to provide a

detailed narrative report from her physician explaining how her right knee condition was caused or aggravated by her accepted left knee conditions.

In a February 5, 2013 letter, Dr. Gross stated that appellant had three separate surgeries to her left knee as a result of her work-related injury of August 25, 1999. As a result, the left leg was not as strong as the right and had a tendency to give out. As a result of the left leg giving out, appellant had fallen several times. She injured her right knee and a subsequent MRI scan of the right knee revealed a torn meniscus. Treatment notes dated January 22 and April 23, 2103 were received.

In a May 1, 2013 report, Dr. Hogshead reviewed the reports of Dr. Gross and found that appellant's right knee meniscus tear was not directly caused, accelerated, aggravated or precipitated by her left knee conditions. He stated that the great majority of people who underwent arthroscopic meniscus surgery did sustain consequential injury to the opposite knee. The medical adviser stated that the medical facts did support acceptance of the claim for a consequential right knee medial meniscus tear and arthroscopy.

By decision dated May 6, 2013, OWCP denied appellant's consequential right knee injury and request for surgery. It found that insufficient opinion on a causal relationship was submitted addressing her diagnosed right knee meniscus tear and the accepted left knee conditions.

LEGAL PRECEDENT -- ISSUE 1

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.² In discussing the range of compensable consequences, once the primary injury is causally connected with the employment, then 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.³

A claimant bears the burden of proof to establish his or her claim for a consequential injury. As part of this burden, a claimant must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.⁴ Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.⁵ Rationalized medical evidence is evidence which relates a work incident, work injury or factors of employment to a claimant's condition, with stated reasons of a

² See *Albert F. Ranieri*, 55 ECAB 598, 602 (2004); A. Larson, *The Law of Workers' Compensation* § 10.01 (2000).

³ See *Charles W. Downey*, 54 ECAB 421-23 (2003).

⁴ *Id.*

⁵ See *Steven S. Saleh*, 55 ECAB 169, 172 (2003).

physician.⁶ The opinion of the physician must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship of the diagnosed condition and the specific employment injury.⁷

LEGAL PRECEDENT -- ISSUE 2

Section 8103(a) of FECA provides for the furnishing of services, appliances and supplies prescribed or recommended by a qualified physician who OWCP, under authority delegated by the Secretary of Labor, considers likely to cure, give relief, reduce the degree or the period of disability or aid in lessening the amount of monthly compensation.⁸ While OWCP is obligated to pay for treatment of employment-related conditions, the employee has the burden of establishing that the expenditure is incurred for treatment of the effects of an employment-related injury or condition.⁹ To be entitled to reimbursement of medical expenses, a claimant has the burden of establishing that the expenditures were incurred for treatment of the effects of an employment-related injury or condition. Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.¹⁰ In order for a surgical procedure to be authorized, a claimant must submit evidence to show that the surgery is for a condition causally related to an employment injury and that it is medically warranted. Both of these criteria must be met in order for OWCP to authorize payment.¹¹

ANALYSIS -- ISSUES 1 & 2

OWCP accepted appellant's claim for tear of left knee lateral meniscus, internal derangement of the left knee, other internal derangement of left knee and chest wall contusion. It authorized three surgical repairs of the left knee. Appellant claimed that her left knee often gave out causing her to fall and develop a right knee meniscal tear as a consequence of her left knee conditions. She requested surgical authorization. Appellant bears the burden of proof to establish her claim for a consequential injury and authorization for right knee arthroscopic surgery. The Board finds that she has not submitted sufficient medical evidence to establish her additional right knee condition and surgical procedure as a consequence of her accepted left knee employment injury.

Dr. Gross failed to provide a full or a work history of the accepted August 25, 1999 employment injury or relate how the accepted left knee condition caused the right knee condition. On February 5, 2013 he briefly addressed causal relation to the accepted left knee condition by generally stating that appellant's left knee was weak and gave out. As a result of a fall on an unidentified date, appellant injured her right knee. Diagnostic testing established a

⁶ See *Charles W. Downey*, *supra* note 3.

⁷ *Id.*

⁸ 5 U.S.C. § 8103; see *L.D.*, 59 ECAB 648 (2008).

⁹ *Kennett O. Collins, Jr.*, 55 ECAB 648 (2004).

¹⁰ *M.B.*, 58 ECAB 588 (2007).

¹¹ See also *J.H.*, Docket No. 12-1950 (issued February 13, 2013); *R.C.*, 58 ECAB 238 (2006).

torn right medial meniscus. However, Dr. Gross failed to explain with an accurate history or objective evidence how the left knee condition caused the alleged falls. The Board has held that a medical opinion not supported by medical rationale is of little probative value.¹² Without more detail and an explanation of how appellant's right knee tear was due to the accepted left knee conditions, Dr. Gross' reports are insufficient to meet appellant's burden of proof.

Similarly, Dr. Bradley's August 25, 2012 treatment report regarding appellant's right medial meniscus tear and need for surgery is insufficient to establish causal relationship. He failed to provide any opinion on the issue of whether the right medial meniscus tear was caused or contributed to by the August 25, 1999 employment injury. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value.¹³ Dr. Bradley's report is insufficient to establish a consequential injury or causal relationship to the accepted left knee conditions to authorize the requested surgery.

The Board finds that there is insufficient rationalized medical evidence of record to establish that appellant's right knee condition and need for surgery is a consequence of her accepted employment injury. Appellant did not meet her burden of proof to establish either a consequential injury or authorization for medical treatment for her right knee condition. Furthermore, an OWCP medical adviser reviewed the medical record and stated that the great majority of people who undergo arthroscopic meniscus surgery do not undergo consequential injury to the opposite knee and the medical facts did not support the expansion of the claim to include consequential right knee medial meniscus tear and right knee arthroscopy in this case.

On appeal, appellant contended that her right knee injury was due to a fall that was caused by her left knee giving way without warning. She also stated that further delay in her right knee surgery would cause a risk of more left knee damage. The Board finds that appellant did not submit sufficiently medical evidence to establish her claim.

The Board notes that appellant submitted new evidence on appeal and after issuance of the May 6, 2013 decision. The Board lacks jurisdiction to review evidence for the first time on appeal.¹⁴ 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 sustain an additional right knee condition as a consequence of her August 25, 1999 employment injury or establish that her need for right knee surgery was causally related to the accepted employment injury.

¹² *Caroline Thomas*, 51 ECAB 451 (2000).

¹³ See *K.W.*, 59 ECAB 271 (2007); *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael E. Smith*, 50 ECAB 313 (1999).

¹⁴ 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the May 6, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 9, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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