United States Department of Labor
Employees' Compensation Appeals Board

C.C., Appellant	)	
and	)	**Docket No. 14-1317**
	)	**Issued: November 7, 2014**
U.S. POSTAL SERVICE, POST OFFICE, Menlo Park, CA, Employer	)	

Appearances:
Sylvia R. Johnson, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 19, 2014 appellant, through his representative, timely filed an appeal of a November 20, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP), which denied his claim for a consequential injury. 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 met his burden of proof to establish that he sustained consequential injuries occurring on July 8 and 24, 2009 causally related to a June 11, 2009 employment injury.

On appeal appellant's representative argued that as a result of falls on July 8 and 24, 2009 due to his accepted ankle injury, appellant suffered consequential back and neck injuries. His representative also contends that OWCP hearing representative erred in that she did not act as a

[1] 5 U.S.C. § 8101 *et seq.*

disinterested party in that she did not elicit further medical evidence from appellant's physician at the hearing. She further contends that not all of the evidence was considered in the proper sequence and that OWCP did not properly review the medical evidence.

FACTUAL HISTORY

On June 16, 2009 appellant, then a 52-year-old city carrier, filed a claim for a traumatic injury alleging that on June 11, 2009 he twisted his right ankle while stepping out of a Windstar vehicle while collecting mail. On June 23, 2009 OWCP accepted appellant's claim for sprain of the left ankle. Appellant stopped work on August 3, 2009. On August 11, 2009 OWCP corrected the acceptance to indicate that appellant sustained a sprain to his right ankle. It later accepted appellant's claim for tenosynovitis of the foot and ankle and other joint derangement in the ankle and foot.

Appellant was seen on July 10, 2009 by Dr. Rose Mar Quintos-Melgar, a Board-certified internist at Kaiser. Dr. Quintos-Melgar noted that she saw appellant who injured his right ankle on June 11, 2009 when he stepped on uneven ground. She indicated that appellant stopped using crutches and stated that he fell. Dr. Quintos-Melgar noted that appellant continued to have some moderate-to-moderately severe pain over the right lateral ankle. In a July 21, 2009 report, she discussed appellant's right ankle injury of June 11, 2009 and assessed appellant with right ankle sprain. In a July 29, 2009 report, Dr. Quintos-Melgar noted that she was treating appellant for sprain of the ankle that appellant stated that he had fallen several times and does not have strength of right ankle. In an August 19, 2009 attending physician's report, she indicated that appellant stated that he fell twice since the June 11, 2009 incident; once on July 8, 2009 at home while he was on crutches and the second time on July 24, 2009 while he was at Kaiser Hayward getting a medical procedure, and that appellant felt that this was all due to a weak right ankle.

On August 6, 2009 appellant filed separate claims for a consequential injury. He alleged that on July 8, 2009, while still on crutches and with an ankle brace from his accepted injury of June 11, 2009, he lost his balance and began to fall forward. He noted that in an attempt to gain his balance, he stepped down on his injured foot and fell to the ground and further injured his right ankle. In a separate claim appellant alleged that on July 24, 2009, while using his cane from his accepted injury of June 11, 2009 and his subsequent fall on crutches on July 8, 2009, he fell in Kaiser hospital and landed on his buttocks, back, left ankle and previously injured right foot.

Appellant began treatment with Dr. Larry H. Woodcox, a podiatrist, on October 1, 2009. In his initial report, Dr. Woodcox discussed appellant's June 11, 2009 employment injury. He assessed appellant with status post inversion twisting injury, right foot and ankle; post-traumatic synovitis right ankle with probable lateral impingement syndrome; complete tear anterior talofibular ligament with chronic right ankle instability; and post-traumatic synovitis, right subtalar joint (sinus tarsi syndrome). Dr. Woodcox concluded that appellant sustained a significant injury to his right foot and ankle secondary to his industrial exposure. In a December 11, 2009 report, he noted that due to appellant's chronic right ankle instability, he provided him with an ankle-foot orthrosis.

By letter dated July 30, 2012, OWCP asked appellant to submit further documentation in support of his claims for consequential injuries on July 8 and 24, 2009. This included requesting further information in support of the incidents on July 8 and 24, 2009 as well as medical reports discussing these incidents and listing a medical diagnosis that was causally related to the injuries.

Appellant submitted reports by Dr. Parvez Fatteh, his treating Board-certified physiatrist. In a March 11, 2010 report, Dr. Fatteh diagnosed appellant with chronic low back pain status post sprain/strain injury and neck pain status sprain/strain injury. With regard to the history of injury, he noted that appellant fell on the job when he stepped awkward and twisted his right ankle as well as striking his neck and back against a barrier. Dr. Fatteh noted that appellant subsequently experienced worsening neck and low back pain and that he was temporarily totally disabled. Effective June 17, 2010, he added chronic pain syndrome to his diagnoses. In his June 17, 2010 report, Dr. Fatteh stated that appellant clarified that he was in the Kaiser medical facility for an evaluation unrelated to his injuries and lost his balance due to his industrial injury and thus injured his back. Appellant continued to receive treatment from Dr. Fatteh. In a November 1, 2012 report, Dr. Fatteh indicated that appellant remained disabled at least through December 1, 2012.

By decision dated November 21, 2012, OWCP denied appellant's claims for consequential injuries as the medical evidence did not demonstrate that the claimed lumbar and cervical conditions are related to the originally accepted right ankle injury of June 11, 2009.

Appellant continued to submit reports by Dr. Woodcox. In reports dated November 20, 2012 to April 11, 2013, Dr. Woodcox continued to note that appellant was status post strain-sprain of the right ankle with post-traumatic arthrofibrosis and ankle instability and status post-surgical repair with chronic right ankle arthralgia. He noted that he released appellant to return to work with the restrictions that were in place prior to his current industrial injury of June 11, 2009.

In an undated statement received by OWCP on March 19, 2013, Yolanda Guerra stated that she drove appellant to a doctor's appointment at Kaiser Hayward on July 24, 2009, that appellant was walking with the use of a cane, that appellant checked in with the medical receptionist in the hospital and a fellow nurse came into the waiting room and called appellant's name and that appellant followed the nurse and she followed appellant. She stated that the nurse was walking and talking very fast, that they wandered through the hospital and eventually were on the roof of building which had a ramp connecting to another building, that appellant stepped on the ramp and fell backwards landing on his seat and appeared to have hit his right arm on a railing on the wall. Ms. Guerra noted that appellant used the railing to get up and stated that his right ankle turned and that is why he fell. She stated that appellant indicated that his lower back, left knee and right ankle were hurting. Ms. Guerra noted that they walked another 50 feet before they reached the place where the procedure was to take place. She noted that appellant immediately sat down and appeared to be in pain as he was moaning and perspiring profusely. Ms. Guerra noted that at some point he told a medical person at the office that he had fallen down and was in extreme pain.

In a March 11, 2013 report, Dr. Fatteh noted that appellant continued to experience left knee pain, leg pain, low back pain, headaches and neck/shoulder pain. He opined that appellant

was temporarily totally disabled through at least July 1, 2013. In a July 23, 2013 summary report, Dr. Fatteh noted that he was the primary treating physician for appellant for his industrial injuries, that appellant suffered from lumbar and cervical disc injuries and chronic pain syndrome and remained totally disabled through at least July 1, 2013.

Subsequently, appellant's representative requested an oral hearing before an OWCP hearing representative. At the hearing held on August 29, 2013, his attorney indicated that she did not stipulate to the facts as set forth by the hearing representative. Dr. Fatteh testified that, when he first saw appellant, he gave a history of originally falling and stepping awkwardly and twisting his right ankle, striking both his neck and his back against a barrier, and then he reported subsequent worsening neck and low back pain. He stated that to his knowledge the ankle problems resulted in falls. Dr. Fatteh noted that he was not treating the ankle. He testified that he saw appellant on March 11, 2010 for the first time at which appellant complained of constant low back pain that increased with bending and prolonged sitting. Dr. Fatteh noted that appellant also reported constant neck pain and stiffness and as a result of the pain he was having difficulty sleeping. He noted that, on examination, appellant exhibited tightness suggestive of muscle spasms both in upper back and lower back musculature, and he demonstrated range of motion limitations of both the cervical and lumbar spine. Dr. Fatteh diagnosed chronic low back pain, status post sprain/strain injury and chronic neck pain, status post sprain/strain injury. He opined that appellant still had limitations with regard to his back and neck. Appellant's representative argued that appellant fell on July 8, 2009 but did not complain of back pain until he fell on July 24, 2009 at Kaiser. She also argued that appellant also fell on other occasions. Appellant testified that on July 8, 2009 he was attempting to take out the garbage and when he stepped down to the grass his ankle gave way and he fell down. He noted that he reported it to Dr. Quintos-Melgar at Kaiser, but that they did not have a good relationship, so she released him to Dr. Woodcox. On July 24, 2010 appellant went to have a colonoscopy at Kaiser and when his friend and him were walking to the place to have the colonoscopy, his ankle gave way and he fell against the rail and hit his shoulder, back, neck and head. He also discussed other falls.

By decision dated November 20, 2013, OWCP hearing representative affirmed the November 21, 2012 decision.

LEGAL PRECEDENT

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] Regarding the range of compensable consequence of an employment-related injury Larson notes that, when the question is whether compensability should be extended to a subsequent injury or aggravation related in some ways to the primary injury, the rules that come into play are essentially based upon the concepts of direct and natural results and of the claimant's own conduct as an independent intervening cause. The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct

[2] *L.W.*, Docket No. 14-162 (issued April 7, 2014); *Mary Poller*, 55 ECAB 483 (2004).

and natural result of a compensable primary injury. Thus, once the work-connected character of any condition is 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.[3]

A claimant bears the burden of proof to establish a claim for a consequential injury.[4] As part of this burden, he or she must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship. Rationalized medical evidence is evidence which relates a work incident or factors of employment to a claimant's condition, with stated reasons of a physician. The opinion 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 factors or employment injury.[5]

ANALYSIS

OWCP accepted appellant's claim for sprain to his right ankle; tenosynovitis of the foot and ankle; and other joint derangement in the ankle and foot. The issue is whether appellant sustained further injuries as a consequence of the accepted right ankle injury of June 11, 2009. The Board finds that appellant did not establish that he sustained consequential injuries on July 8 and 24, 2009 causally related to the accepted right ankle injury of June 11, 2009.

Initially, the Board finds that appellant did not establish that he fell on July 8 and 24, 2009. Appellant alleged that he fell on July 8, 2009 while at home. He also alleged that he fell at Kaiser on July 24, 2009 when undergoing a colonoscopy. An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.[6] An employee has not met his or her burden of proof of establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.[7] However, an employee's statement alleging that an injury occurred at a given time and in a given place is of great probative value and will stand unless refuted by strong or persuasive evidence.[8]

In the instant case, there were no witnesses to appellant's July 8, 2009 fall. Appellant saw Dr. Quintos-Melgar on July 10, 2009, two days later, and there is no mention in her report of any fall.

[3] A. Larson, *The Law of Workers' Compensation* § 10.01.

[4] *William C. Thomas*, 45 ECAB 591 (1994).

[5] *See Anna C. Leanza*, 48 ECAB 115, 1996); *see also M.P.*, Docket No. 14-542 (issued June 17, 2014).

[6] *V.J.*, Docket No. 13-1460 (issued January 7, 2014).

[7] *Tia L. Love*, 40 ECAB 586, 590 (1989); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

[8] *D.B.*, 58 ECAB 464, 466-67 (2007); *Robert A. Gregory*, 40 ECAB 478, 483 (1989).

With regard to the alleged July 24, 2009 fall while at Kaiser, appellant saw Dr. Quintos-Melgar on July 29, 2009 and she did indicate at that time that appellant stated that he had fallen several times but did not list specific dates or describe specific instances. She also submitted a witness statement by Ms. Guerra on March 19, 2013, but this witness statement was submitted almost four years after the fall. The Board further notes that there is no contemporaneous medical report indicating that appellant was even at Kaiser on July 24, 2009. Although appellant's colonoscopy may not be relevant to the medical issues in this case, it would be relevant to proving that he was at Kaiser on the stated date. Also, if appellant fell while at Kaiser, it would be presumed that some report would have been taken by Kaiser with regard to the fall. These inconsistencies cast significant doubt as to whether appellant actually fell on these dates.

Even had appellant established that he fell on these dates, the medical evidence is insufficient to establish that he sustained a consequential injury. Dr. Quintos-Melgar never indicated that the alleged falls resulted in any aggravation of his injury. Dr. Woodcox also did not indicate that appellant's injury was worsened by the falls; in fact, he does not mention the alleged falls. Dr. Fatteh does indicate that appellant sustained injuries to his back and neck. He testified that to his knowledge appellant's ankle problems led to falls. Furthermore, in his medical reports, including the June 17, 2010 report, Dr. Fatteh stated that appellant lost his balance while at Kaiser due to the ankle injury and thus injured his back. Initially, the Board notes that in his initial report of March 11, 2010 and in his testimony at the hearing, Dr. Fatteh indicated that appellant told him that he fell on the job when he stepped awkwardly and twisted his right ankle as well as struck his neck and back against a barrier. There is no indication prior to that time that appellant struck his neck and back against a barrier when he fell at work. In his claim form, appellant indicated that he twisted his right ankle while stepping out of a vehicle during the collection of mail. Accordingly, Dr. Fatteh failed to have an accurate history of appellant's employment injury. Furthermore, he indicates that appellant injured his back when he fell at Kaiser, but he does not explain the basis for this opinion. Dr. Fatteh does not discuss any medical evidence close in time to the alleged falls that would indicate a causal relation. It appears that he reached his conclusion solely based on appellant's statement and not based on any independent evaluation. If appellant sustained such a substantial injury as a result of these alleged falls in July 2009, it would follow that there would be some record of treatment for these falls prior to Dr. Fatteh's March 11, 2010 examination of appellant.

With regard to specific arguments made by appellant's representative, the Board does note that appellant filed his claims for the falls of July 8 and 24, 2009 on August 6, 2009. However, this does not change the fact that there is no rationalized medical evidence supporting that these alleged falls resulted in any worsening of appellant's underlying condition. There is also no evidence that OWCP considered evidence out of any appropriate sequence. Finally, OWCP hearing representative did not err in not asking Dr. Fatteh questions at the hearing. Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While OWCP shares responsibility in the development of the evidence to see that justice is done, it is still appellant's burden of proof to submit the evidence necessary to establish his claim.[9]

[9] *Phillip L. Barnes*, 55 ECAB 426 (2004).

The Board has reviewed the medical evidence and appellant has not provided a rationalized opinion that appellant's alleged falls of July 8 and 24, 2009 caused any further injury to appellant. The generalized statements by Dr. Fatteh do not raise an uncontroverted inference between appellant's condition and the identified employment factors sufficient to require further development of the medical evidence and case record by OWCP.[10]

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 to 10.607.

CONCLUSION

Appellant has not met his burden of proof to establish that he sustained consequential injuries occurring on July 8 and 24, 2009, causally related to the June 11, 2009 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 20, 2013 is affirmed.

Issued: November 7, 2014
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

[10] *See B.S.*, Docket No. 13-920 (issued July 9, 2013); *John J. Carlone*, 41 ECAB 354 (1989).