

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

M.P., Appellant

and

**DEPARTMENT OF THE AIR FORCE, TINKER
AIR FORCE BASE, OK, Employer**

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**Docket No. 14-1289
Issued: September 26, 2014**

Appearances:
Richard A. Daniels, 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 15, 2014 appellant, through his representative, filed a timely appeal from the December 18, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP), which denied his consequential injury claim. 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's accepted right knee injury on September 21, 2007 caused a consequential back injury.

FACTUAL HISTORY

On September 21, 2007 appellant, a 32-year-old sheet metal mechanic (aircraft), sustained a traumatic injury in the performance of duty while squatting. OWCP accepted his

¹ 5 U.S.C. § 8101 *et seq.*

claim for a torn right medial meniscus. On June 2, 2009 appellant underwent an arthroscopic partial meniscectomy.

Dr. Anthony L. Cruse, the attending orthopedic surgeon, saw appellant on July 29, 2009 and noted that “he does better.” Findings were negative. Appellant stated that he was ready to return to full duty.

Dr. Cruse followed up on August 25, 2009. Appellant stated that “he is doing all right.” Findings were again negative. Dr. Cruse released appellant from care.

On February 1, 2010 Dr. John W. Ellis, the attending Board-certified family physician, related appellant’s history. After noting the right knee surgery, he commented that, due to an altered gait from the injury, appellant started to have problems with his lower back. “He states that the last couple of months it has gotten worse.” A magnetic resonance imaging scan (MRI) showed no herniation but did show a small left paracentral disc protrusion at L4-5 and a small contained midline disc protrusion at L5-S1. Dr. Ellis offered the following on the cause of injury:

“It is my medical opinion, based upon my examination of the employee, review of available medical records, my education, training, experience and upon reasonable medical certainty, that the injuries, impairments and disabilities set forth in my diagnosis and findings arose out of and in the course of the employee’s employment and that said employment and work duties contributed to, aggravated and caused this employee’s said injuries, disabilities and impairments.”

Appellant claimed compensation for total disability beginning August 2, 2009.

An OWCP medical adviser found insufficient evidence in the medical record to warrant the acceptance of disc protrusions or other lumbar conditions. He noted that the attending surgeon made no mention of any back complaints at the time of initial presentation for treatment. Further, Dr. Ellis’ comment about gait disturbance appeared in conflict with the attending surgeon’s specific right knee physical examination findings, which were in close temporal proximity.

In a decision dated March 2, 2011, OWCP denied appellant’s wage-loss claim.

On April 28, 2011 Dr. Ellis advised that when he first saw appellant on April 28, 2008, he had no symptoms or complaints regarding his back. It was his opinion that appellant’s current back symptoms and complaints were entirely related to the right knee. “The patient has had to walk with an altered gait for so long prior to his surgery and even after his surgery that his back complaints and problems are related to his right knee injury.”

An OWCP hearing representative affirmed the denial of appellant’s wage-loss claim. She noted that although it was the strong belief of appellant’s representative that appellant’s back condition was related to his injury-related altered gait, the issue was whether appellant had provided evidence of his total disability beginning August 2, 2009, and that his surgeon had released him to full duty on July 29, 2009.

On May 15, 2013 OWCP reviewed the merits of appellant's case and denied his lumbar injury claim on the grounds that the medical evidence was insufficient to establish that his lumbar condition was causally related to the September 21, 2007 work injury.

In a decision dated December 18, 2013, an OWCP hearing representative affirmed. She noted that appellant began complaining about low back pain in April 2009, and the medical records indicated that he believed this was due to his altered gait following the right knee injury. There was no mention of an altered gait in any of the medical records prior to April 2009. Dr. Ellis opined that the work injury caused or contributed the disc protrusions at L4-5 and L5-S1, but he did not discuss how he arrived at this conclusion. No other treating physician reported an altered gait or any objective findings to support that appellant's right knee condition was sufficient to cause an altered gait or contribute to a lumbar condition.

On appeal, appellant's representative argues that Dr. Ellis' February 1, 2010 opinion, reiterated on April 28, 2011, is a well-reasoned opinion supported by sound medical rationale. He adds that, if the opinion of OWCP's medical adviser carried any weight, it would create a conflict.

LEGAL PRECEDENT

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.² A claimant seeking benefits under FECA has the burden of proof to establish the essential elements of his claim by the weight of the evidence,³ including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is causally related to that employment injury.⁴

Causal relationship is a medical issue,⁵ and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant,⁶ must be one of reasonable medical certainty,⁷ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.⁸

² 5 U.S.C. § 8102(a).

³ *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

⁴ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁶ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁷ *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁸ *See William E. Enright*, 31 ECAB 426, 430 (1980).

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 attributable to the employee's own intentional conduct.⁹

ANALYSIS

OWCP accepts that on September 21, 2007 appellant tore his right medial meniscus in the performance of duty, for which he underwent an arthroscopic meniscectomy on June 2, 2009. Appellant claims that this knee injury and surgery caused an altered gait, which in turned caused a low back injury that totally disabled him from work beginning August 2, 2009. He therefore carries the burden of proof to establish the element of causal relationship.

The Board has reviewed the medical record and can find only two reports that provide an affirmative support for appellant's consequential injury claim. The first is the February 1, 2010 report from Dr. Ellis, the attending family physician. In relating appellant's history, Dr. Ellis commented that, due to an altered gait from the injury, appellant began to have problems with his lower back, which worsened over the last couple of months. It is not clear to the Board whether Dr. Ellis was simply reporting what appellant had told him.

Dr. Ellis described the small disc protrusions seen on the MRI scan of appellant's lumbar spine and included a statement of opinion on cause of injury, which expressed his medical opinion that the employee's diagnoses and findings arose out of and in the course of employment. However, there is nothing specific to appellant in this statement. It does not address appellant by name or identify his injury or refer to any particular medical record or finding or diagnosis. It does not explain from a medical or physiological point of view how an altered gait caused or aggravated the small disc protrusions found on the MRI scan or otherwise caused total disability for work beginning August 2, 2009.

Medical conclusions unsupported by rationale are of little probative value.¹⁰

The second such opinion in the record is also from Dr. Ellis date April 28, 2011. On that date, Dr. Ellis addressed appellant's claim more directly. It was his opinion, he reported, that appellant's current back symptoms and complaints were entirely related to the right knee. "The patient has had to walk with an altered gait for so long prior to his surgery and even after his surgery that his back complaints and problems are related to his right knee injury."

Although this is supportive of appellant's claim, it still fails to provide sufficient medical rationale to establish causal relationship. Dr. Ellis did not offer a diagnosis for appellant's low back complaints and problems. If he meant the small left paracentral disc protrusion at L4-5 and the small contained midline disc protrusion at L5-S1, he did not explain how an altered gait could biomechanically affect these protrusions, or what evidence there was beyond appellant's subjective complaints that demonstrated an aggravation of these protrusions.

⁹ *John R. Knox*, 42 ECAB 193 (1990); *Lee A. Holle*, 7 ECAB 448 (1955).

¹⁰ *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).

OWCP observed that the medical record made no mention of an altered gait prior to April 2009, and that Dr. Cruse, the attending surgeon who saw appellant that year, made no mention of low back symptoms or complaints. The Board notes that appellant was improving when he saw Dr. Cruse on July 29, 2009. A physical examination of his right knee was negative, and appellant stated he was ready to start back to full duty. Further, when appellant saw Dr. Cruse on August 25, 2009, approximately three weeks after he claimed his low back condition had totally disabled him for work and advised that he was doing all right. His right knee findings were once again negative, and Dr. Cruse released him from further care.

Dr. Ellis failed to address the relevant facts in his medical opinions. He did not reconcile this opinion with the rest of the medical evidence of record, including the benign examination findings reported by Dr. Cruse and appellant's representations that he was doing all right and was ready to start back to full duty.

Medical conclusions based on inaccurate or incomplete histories are of little probative value.¹¹

The Board finds that Dr. Ellis' opinion on causal relationship lacks sufficient probative value to establish the critical element of causal relationship. Accordingly, the Board finds that appellant has not met his burden to establish that his accepted right knee injury on September 21, 2007 caused a consequential low back injury. The Board will therefore affirm OWCP's December 18, 2013 decision denying his claim.

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.

Appellant's representative asserts that Dr. Ellis' February 1, 2010 opinion, reiterated on April 28, 2011, is a well-reasoned opinion supported by sound medical rationale. As explained above, the Board rejects such assertion. OWCP's medical adviser did not rebut Dr. Ellis' professional opinion. Rather he reviewed the record before him and advised OWCP, consistent with the Board's finding on appeal, that there is insufficient medical support for OWCP to expand its acceptance of appellant's case.

CONCLUSION

The Board finds that appellant has not met his burden to establish that his accepted right knee injury on September 21, 2007 caused a consequential low back injury.

¹¹ *James A. Wyrick*, 31 ECAB 1805 (1980) (physician's report was entitled to little probative value because the history was both inaccurate and incomplete). See generally *Melvina Jackson*, 38 ECAB 443, 450 (1987) (addressing factors that bear on the probative value of medical opinions).

ORDER

IT IS HEREBY ORDERED THAT the December 18, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 26, 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