United States Department of Labor
Employees' Compensation Appeals Board

S.A., Appellant	)	
and	)	**Docket No. 15-1268**
	)	**Issued: December 10, 2015**
U.S. POSTAL SERVICE, SAINT LOUIS NDC, Hazelwood, MO, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On May 19, 2015 appellant filed a timely appeal of a February 17, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). 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.[2]

ISSUE

The issue is whether appellant met her burden of proof to establish a consequential left ankle condition, lymphedema, and a right knee condition due to her accepted December 3, 2011 employment injury.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted new evidence with her appeal to the Board and following the February 17, 2015 decision. However, the Board may only review evidence that was in the record at the time OWCP issued its final decision. *See* 20 C.F.R. § 501.2(c)(1); *M.B.*, Docket No. 09-176 (issued September 23, 2009); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

On appeal appellant argues that the evidence establishes her consequential injury claim.[3]

FACTUAL HISTORY

On December 3, 2011 appellant, then a 47-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on that day she sustained left hip and knee conditions due to twisting her left leg in the performance of duty. OWCP accepted the claim for left lower leg joint effusion, left lateral collateral ligament knee sprain, and left lateral meniscal knee tear and authorized left knee arthroscopic surgery, which was performed on October 16, 2012.[4]

On January 13, 2013 appellant requested that OWCP expand her claim to include additional conditions as consequential injuries from her accepted left knee injury. She believed that she sustained irreversible injuries to her right knee and left ankle as the result of her accepted left knee employment injuries. With respect to the initial accepted left knee strain in February 2003, appellant contended that she had not received proper treatment for that injury and as a result her left leg and knee continued to hurt and swell daily. Next, she related that her left knee had been repeatedly injured since February 2003 as she had fallen down due to the knee giving out, from moving the wrong way, and from performing her job duties. When she injured her left knee on December 3, 2011, appellant went to physical therapy every day for approximately seven months and her knee continued to swell up and cause extreme pain. On December 14, 2012 she returned to work and her left leg and knee immediately swelled. Appellant stated that there was swelling and tremendous pain in both knees and her left ankle. As a result of the left knee surgery due to her December 3, 2011 injury, there was more strain on appellant's right knee and left ankle. In concluding, appellant alleged that the left knee injury resulted in consequential right knee and left ankle injuries including the loss of strength.

In an April 18, 2013 attending physician's report (Form CA-20), Dr. Jody T. Jachna, an attending Board-certified orthopedic surgeon, noted a February 2003 injury date. He diagnosed right knee degenerative joint disease, left ankle swelling, and left knee post meniscectomy, and degenerative joint disease. Dr. Jachna checked a box marked "yes" to the question of whether the diagnosed conditions were employment related. He opined that appellant's right knee and left ankle conditions were consequential injuries of the accepted left knee injury.

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[3] Appellant also requested a review of her schedule award claim. OWCP granted a schedule award for three percent left lower extremity permanent impairment on August 22, 2013 and it denied her request for reconsideration in a nonmerit decision dated October 24, 2013. The Board's review authority is limited to appeals which are filed within 180 days from the date of issuance of OWCP's decision. *See* 20 C.F.R. § 501.3(e). As appellant did not file her appeal until May 19, 2015, the Board lacks jurisdiction to review the decisions concerning her schedule award claim.

[4] This claim was assigned OWCP File No. xxxxxx499. On October 25, 2013 OWCP combined OWCP File No. xxxxxx499 with OWCP File No. xxxxxx614. Under OWCP File No. xxxxxx614 OWCP had accepted that appellant sustained a left knee strain as the result of a February 2003 traumatic injury. Appellant was released to full duty with no restrictions effective March 5, 2003 and she returned to work on March 12, 2003. By decision dated August 22, 2013, OWCP granted a schedule award for three percent left lower extremity. It denied appellant's request for modification in a merit decision dated October 24, 2013. In a nonmerit decision dated July 24, 2013, OWCP denied reconsideration of the August 22, 2013 decision.

In statements of accepted facts dated June 5 and July 9, 2013, OWCP related that appellant was currently working full time in a limited-duty job. It noted that she had two other accepted claims. Under OWCP File No. xxxxxx114, OWCP accepted a lumbar strain as the result of an August 5, 1997 traumatic injury and under OWCP File No. xxxxxx614 a left knee strain was accepted as the result of a February 2003 traumatic injury.

In a June 6, 2013 report, Dr. Jachna noted that since 2012 he has treated appellant for a 2003 left knee injury, which was reinjured on December 3, 2011. The reinjury on December 3, 2011 resulted in increasing instability and pain. A computerized tomography (CT) scan showed medial compartment arthritic changes with a lateral patella subluxation and loss of anterior cruciate ligament and effusion. On October 16, 2012 arthroscopic surgery with chondroplasty and meniscectomy was performed and followed by a normal postoperative course. Nonethless, the swelling continued and extended into her left leg. The swelling caused left ankle pain and aggravated her right knee. A January 15, 2013 CT scan showed bilateral chronic degenerative medial and lateral menisci degenerative joint changes incuding lateral moderately severe degenerative compartment changes. Dr. Jachna attributed appellant's right knee degenerative changes to her favoring the left knee and placing her weight on the right leg. He diagnosed left knee post-traumatic degenerative joint disease and meniscal tear; postoperative left lower extremity chronic insuffiicenty and venous stasis; and right knee degenerative joint disease.

The claim was reviewed by an OWCP medical adviser on June 28, 2013. The medical adviser noted that the prior medical records of Dr. Jachna failed to document the existence of any right knee or left ankle diagnoses or conditions.

On July 16, 2013 OWCP referred appellant to Dr. Robert Sciortino, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine whether appellant sustained any consequential injuires.

In an August 2, 2013 report, Dr. Sciortino provided a history of appellant's December 3, 2011 injury, the accepted diagnoses, and the treatment provided. He diagnosed left knee degenerative lateral meniscus tear, bilateral knee osteoarthritis, and left lower extremity chronic lymphedema. A physical examination revealed bilateral intact neurovascular extremities, bilateral intact capillary refill, bilateral palpable distal pulses, left knee intact range of motion, and full range of motion in the right knee. Dr. Sciortino reported fairly extensive pitting edema in the left leg from above the knee to the ankle and foot. In response to OWCP's question, he noted that there was evidence of a large amount of left lower extremity chronic lymphedema, but he was unclear as to the exact etiology. Dr. Sciortino elaborated that he was unsure whether this condition was caused or related to her surgery or due to the enlarged lymph nodes in the left groin. Next, he attributed appellant's left ankle condition to her chronic lympedema.

By decision dated October 24, 2013, OWCP denied appellant's request to expand her claim to include consequential injuries of lymphedema, right knee conditon, and left ankle condition. It found that the medical evidence of record clearly documents a history of left lower extremity edema as early as February 12, 2003 and continuing through at least 2007, as well as bilateral lower extremity denegerative changes as early as 2010. OWCP also found that the opinion of Dr. Sciortino constituted the weight of the medical evidence as Dr. Jachna did not provide a well rationalized and clear medical opinion on diagnosis and causation.

On November 5, 2013 counsel requested reconsideration of OWCP's October 24, 2013 decision and submitted new medical evidence.

In progress notes dated November 25, 2013, Dr. Jachna diagnosed left knee degnerative disc joint disease with lymphedema. Physical examination findings included left knee effusion, crepitus, and joint line tenderness and left leg swelling above the knee due to lymphedema.

Dr. Jachna, in progress notes dated January 9 and 16, 2014, noted that appellant was seen for her chrondoplasty with left lower extremity lymphedema, left knee degenerative joint disease status post menisectomy, and right knee concurrent injury. He reported that appellant's right knee and ankle pain had worsened due to increased usage following her left knee arthroscopy. Physical examination findings included: antalgic gait while walking; swelling in the left knee down to the ankle with prominent lymphedema changes; minimal right lower extremity lymphedema changes; right knee crepitus, effusion and joint line tenderness; and reduced left ankle range of motion with pain, swelling, and lymphedema.

Dr. Jachna, in a progress note dated March 27, 2014, related that appellant's bilateral leg lymphedema was worsening. A physical examination showed an antalgic gait and bilateral knee crepitus, joint line tenderness, and effusion as the result of increased pain.

On June 12, 2014 counsel clarified that appellant was seeking reconsideration of the decision denying her request to expand her claim to include consequential injuries.

By decision dated July 25, 2014, OWCP denied modification of the request for reconsideration.

In an August 10, 2014 report, Dr. Jachna noted physical examination findings and subjective complaints and left knee post meniscectomy arthrosis was diagnosed.

In a form dated November 4, 2014, appellant again requested reconsideration.

In progress notes dated December 18, 2014, Kathleen M. Nikodym, a physician assistant, diagnosed left knee post meniscectomy and provided physical examination findings.

By decision dated February 17, 2015, OWCP denied modification.

LEGAL PRECEDENT

The general rule regarding 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.[5] The subsequent injury is compensable if it is the direct and natural result of a compensable primary injury.[6] With respect to consequential injuries, the Board has found that, where an

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

[6] *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).

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.[7]

ANALYSIS

The Board finds that the case is not in posture for decision as to whether appellant sustained a consequential left ankle condition, lymphedema, and a right knee condition causally related to a December 3, 2011 employment injury.

In an August 2, 2013 report, Dr. Sciortino, an OWCP referral physician, provided his medical findings. He diagnosed left knee degenerative lateral meniscus tear, bilateral knee osteoarthritis, and left lower extremity chronic lymphedema. Dr. Sciortino reported intact neurovascular extremities, bilateral intact capillary refill, bilateral palpable distal pulses, left knee intact range of motion, and full range of motion in the right knee. He also found fairly extensive pitting edema from above the left knee to the ankle and foot. Dr. Sciortino expressed uncertainty as to the etiology of appellant's left lower extremity chronic lymphedema and the enlarged lymph nodes in the left groin. He was unsure whether these conditions were caused or related to her accepted conditions or the surgery. Dr. Sciortino attributed appellant's left ankle condition to her chronic lymphedema, but failed to adequately determine whether it was consequential to the accepted conditions. The Board has held that medical opinions that are speculative or equivocal in nature are of diminished probative value.[8] The Board finds that Dr. Sciortino's opinion is insufficient to determine the issue of whether these additional conditions are causally related to the accepted injuries.

Once OWCP undertakes to develop the medical aspects of a case, it has the responsibility to do so in a proper manner.[9] Given the deficiencies in Dr. Sciortino's report, the case is remanded to OWCP to secure a medical opinion that resolves the question of whether appellant sustained a consequential left ankle condition, lymphedema, and a right knee condition causally related to the accepted December 3, 2011 employment condition. Following this and such other development as deemed necessary, it shall issue a *de novo* decision.

CONCLUSION

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

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

[8] *L.R. (E.R.)*, 58 ECAB 369 (2007); *D.D.* 57 ECAB 734 (2006); *M.W.*, 57 ECAB 710 (2006); *Ceclia M. Corley*, 56 ECAB 662 (2005).

[9] *See P.K.,* Docket No. 08-2551 (issued June 2, 2009); *Peter C. Belkind*, 56 ECAB 580 (2005); *Melvin James*, 55 ECAB 662 (2005).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 17, 2015 is set aside and the case remanded for further proceedings consistent with the above opinion.

Issued: December 10, 2015
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board