

certified orthopedic surgeon, for a second opinion examination on March 5, 2014. Appellant alleged that while performing clinical tests, including a McMurray's test, Dr. Foster used force that was sufficient to cause significant swelling and pain in appellant's left knee. He stated he had originally filed a recurrence claim for this incident, but was told by OWCP to file a claim for a new injury.

Appellant submitted an April 17, 2014 report from Dr. David Sparks, an orthopedic surgeon, who noted that appellant reported pain and swelling since his second opinion examination. In a report dated April 24, 2014, Dr. J. Arden Blough, a Board-certified family practitioner, recorded a history including a September 24, 2012 left knee injury and a left knee arthroscopic surgery. He related that during an examination Dr. Foster placed pressure on appellant's knee while performing an orthopedic test. Appellant stated that he heard a loud popping sound, followed by pain and swelling. Dr. Blough diagnosed an acute recurrence of left knee sprain/strain, acute recurrence of left knee medial meniscus tear.

By decision dated May 14, 2014, OWCP denied appellant's claim. It stated in pertinent part:

“Specifically, your case is denied because the evidence is not sufficient to establish that the injury and/or medical condition arose during the course of employment and within the scope of compensable work factors. The reason for this finding is that you were not at work performing your work duties at the time of the alleged incident. You were attending a second opinion examination at the time of the alleged injury, which is not in the scope of your employment duties therefore the injury did not arise out of the course of your employment.”

LEGAL PRECEDENT

With respect to consequential injuries, 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 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 and natural result of a compensable primary injury.³

ANALYSIS

In the present case, the record indicates that appellant was referred to Dr. Foster for a second opinion examination on March 5, 2014, pursuant to a prior claim for compensation involving the left knee. On March 28, 2014 appellant filed a traumatic injury claim alleging that he sustained a left knee injury as a result of Dr. Foster's second opinion examination. By decision dated May 14, 2014, OWCP denied the claim, finding that appellant was not in the

² *Albert F. Ranieri*, 55 ECAB 598 (2004).

³ *See A. Larson, The Law of Workers' Compensation* § 10.01 (November 2000).

performance of duty as he was not performing his work duties at the time of the alleged incident. No citation to Board case law or other authority was provided. OWCP's decision is factually correct in that appellant was not in the performance of duty when the alleged injury occurred. The Board finds, however, that OWCP did not properly adjudicate the claim in this case. An injury which results from medical treatment for a compensable injury is in itself compensable.⁴

In the case of *D.G.*,⁵ the claimant had alleged a right shoulder injury which occurred during an examination by an OWCP referral physician. The Board held that appellant's claim that an injury occurred during a medical examination connected with his compensable claim was not in a posture for Board. After discussing the law of consequential injuries noted above, the Board found that "Any medical condition resulting from an authorized examination or treatment may form the basis of a compensation claim for impairment or disability, regardless of the compensability of the original claim."⁶

The Board has previously considered allegations of consequential injury caused by medical treatment for a claim already accepted as compensable. The Board has found that chiropractic treatment of the neck had caused a new, consequential injury.⁷ Moreover, a reaction to a myelogram required by OWCP, which caused the claimant to miss work for several days, was found by the Board to be a compensable period of disability.⁸ The Board has also remanded an appeal for further development on whether appellant had a herniated lumbar disc, and if so, whether that herniated disc was caused by appellant's participation in a work hardening program.⁹

In *D.N.*,¹⁰ the Board remanded an appeal for further development of the issue of whether appellant's claimed left shoulder injuries were the result of a surgical procedure to remove a spinal stimulator. The Board again remanded an appeal to OWCP for a determination of whether appellant developed arachnoiditis from steroid injections administered to treat right leg and lumbar conditions.¹¹

In the present case, appellant was referred for a second opinion examination and OWCP must determine whether the authorized examination caused a new injury. On return of the case record, OWCP should: (1) combine the case record with the prior left knee claim; and (2) make proper findings based on the relevant factual and medical evidence as to whether appellant

⁴ *Id.*

⁵ Docket No. 11-1074 (issued March 22, 2012).

⁶ *Id.*; see also *G.S.*, Docket No. 13-57 (issued August 26, 2013); *K.D.*, Docket No. 11-16 (issued August 16, 2011).

⁷ *D.C.*, Docket No. 07-1180 (issued December 17, 2007).

⁸ *Garre R. Davis*, 48 ECAB 612 (1997).

⁹ *Andy C. Bielun*, Docket No.03-569 (issued July 17, 2003).

¹⁰ Docket No. 09-651 (issued April 20, 2010).

¹¹ *Helen E. Zanatta*, Docket No. 00-1361 (issued April 3, 2002).

sustained a consequential left knee injury as a result of the March 5, 2014 examination. After such further development as is deemed necessary, OWCP should issue a *de novo* decision.

CONCLUSION

The Board finds the case is not in posture for decision and is remanded to OWCP for proper findings on the issues presented.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 14, 2014 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: November 13, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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