United States Department of Labor
Employees' Compensation Appeals Board

R.H., Appellant	)	
and	)	**Docket No. 15-1785**
	)	**Issued: January 29, 2016**
U.S. POSTAL SERVICE, POST OFFICE, Cincinnati, OH, Employer	)	

Appearances:
Capp P. Taylor, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 26, 2015 appellant, through counsel, filed a timely appeal from a May 22, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP).[1] Pursuant to the Federal Employees' Compensation Act[2] (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 consequential conditions to his right ankle, left knee, and bilateral hips, and a consequential psychiatric condition causally related to his May 15, 1981 employment injury.

[1] The record contains an August 4, 2015 decision, finding that the case was not in posture for a hearing with respect to a January 27, 2015 suspension of compensation for failure to participate in vocational testing. OWCP indicated that benefits had been retroactively reinstated. Appellant did not request review of the August 4, 2015 decision. Thus, it is not before the Board on this appeal. *See* 20 C.F.R. § 501.3.

[2] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On June 21, 1981 appellant, then a 21-year-old carrier, filed a traumatic injury claim (Form CA-1) alleging that he sustained a right knee injury in the performance of duty on May 15, 1981 when he slipped on a wet lawn. OWCP initially accepted the claim for chondromalacia of the patella, status post lateral release, and partial tear of the lateral meniscus, right knee. The record indicates that appellant underwent several authorized right knee surgeries, including partial lateral meniscectomy, patellectomy, chondroplasty and debridement, manipulations, total knee replacement, and right knee fusion on the following dates: June 19, 1981, November 15, 1982, March 7 and August 6, 1983, February 28 and July 22, 1985, February 27, 1986, January 14, 1987, July 26, 1988, August 1, 1989, June 16, 1992, August 23, 1994, January 6 and March 27, 1995 (total knee replacement), October 21, 1996 (right knee fusion).[3]

Appellant received a schedule award on March 8, 1990 for 56 percent right leg permanent impairment. A schedule award for an additional 11 percent right leg permanent impairment was issued on August 31, 2007.

With respect to appellant's work history, the record indicates that he began with the employing establishment in 1979 as a clerk, then moved to a letter carrier position and in 1986 was promoted to supervisor, mails and delivery. After a series of details in the labor relations area, he was promoted in September 1990 to a labor relations assistant and then to a labor relations specialist. Appellant left the employing establishment in 1997 and, through the vocation rehabilitation program of OWCP, returned to school for a Bachelor's degree and a Master's degree and returned to work as a high school social studies teacher. He had received full-time wage-loss compensation intermittently until he began work as a teacher. Appellant's earnings were then reduced to reflect actual earnings. He worked full time from August 2000 until August 2012 at which time he began working light duty and became completely disabled in February 2013. Appellant was paid partial disability through April 6, 2013 and returned to temporary total disability on April 7, 2013.

In a report dated January 9, 2013, appellant's attending orthopedic surgeon, Dr. Thomas Mixa, noted that appellant presented for evaluation of his ongoing degenerative lumbosacral condition which was causing him difficulties with standing and ambulation. He noted that appellant had a limb length discrepancy as a result of the knee fusion, wore a shoe lift, and had a straight right knee making it difficult for him to sit, maneuver, and stand for long periods. Dr. Mixa opined that with patients who undergo knee fusions, "What happens over time is they develop arthritis in the other knee and severe lumbosacral degenerative joint disease as well as hip arthritis due to his gait disturbance and this is taking a toll on his activities." Dr. Mixa reported that appellant had multiple medical issues, with lumbosacral degenerative joint disease, chronic lumbosacral degenerative arthritis with sacroiliitis and sciatica.

[3] According to a September 15, 1982 report from Dr. Mark Siegel, a Board-certified orthopedic surgeon, appellant had injured his right knee in February 1975 while playing soccer. Dr. Siegel indicated appellant had previous right knee surgeries in 1975 and in January 1981.

On April 24, 2013 OWCP provided appellant with a notice of acceptance of additional condition of aggravation of degeneration disc disease at L5-S1.

OWCP referred appellant for a second opinion examination by Dr. Fred Ferderigos, a Board-certified orthopedic surgeon, with respect to his continuing disability. In a report dated October 9, 2013, Dr. Ferderigos opined that appellant remained totally disabled. He reported that appellant had a right knee fusion that limited his ability to do any walking or standing for extended periods, and that he started having problems with the right hip as well as low back pain due to the knee fusion and the abnormal gait. Dr. Ferderigos noted that appellant was not a candidate for vocational rehabilitation as he has chronic low back pain with degeneration that would be aggravated in the future with further activities. He further found that with the knee fusion, any walking or standing would aggravate appellant's lower back and right hip pain

In a report dated April 18, 2014, Dr. Mixa opined that appellant had developed increasing hip and back pain as residuals from the knee fusion surgery. He reported that appellant had a shortened right leg and altered gait and, as a result appellant's hip arthritis and lumbosacral degenerative joint disease symptoms, had become incapacitated. Dr. Mixa indicated that x-rays were pending. He submitted a July 18, 2014 report, finding long-term knee effusion with limb length discrepancy and suggested future hip arthritis, but at present the hips were stable and previous x-rays showed no significant arthritis.

On May 7, 2014 OWCP provided appellant with notification of acceptance of the condition of ankylosis (fused) right knee.

Appellant underwent a functional capacity evaluation (FCE) on September 15, 2014. Dr. Mixa reported on January 12, 2015 that appellant was to be placed on permanent disability and that appellant now suffered from left knee degenerative joint disease.

By report dated February 16, 2015, Dr. Mixa noted that appellant had a right knee fusion after his total knee replacement surgery failed. He opined, "As a result [appellant] has suffered a severe shortening of the right leg. This has caused a severe altered gait. As a result of the problems with the right leg appellant has developed degenerative arthritis of the right ankle, or the aggravation thereof, as well as an aggravation of arthritis of the left knee and aggravation of arthritis of the hips bilaterally. Also, he has developed aggravation of the lumbosacral degenerative joint disease or arthritis. The aggravation of the degenerative condition has been an ongoing process for many years." Dr. Mixa noted that the altered gait "causes additional stress on the hips and the left leg such that it would aggravate arthritic conditions as well as present aggravations of the degenerative process of the lumbar spine." He explained that when there is an altered gait over a period of time the individual's spine is "basically thrown off balance and his 'good' leg has to carry more of the burden. This results in overuse and aggravation of any underlying condition such as arthritis and degeneration."

Appellant, through counsel, submitted a March 6, 2015 letter requesting that OWCP accept the following orthopedic conditions: shortening of the right leg, arthritis of the right ankle, aggravation of arthritis of the left knee, aggravation of arthritis of the hips bilaterally, and aggravation of the lumbosacral degenerative disc disease. The Board notes that some of these conditions had already been accepted, as set forth above. He also requested that the conditions

of anxiety and depression be accepted as consequential injuries, based on an enclosed February 25, 2015 report from Dr. Wendy E. Coughlin, a clinical psychologist. In the report, Dr. Coughlin reported that appellant had been previously diagnosed with anxiety disorder and depressive disorder. She discussed the results of testing and a diagnostic interview. Dr. Coughlin reported that appellant was obsessively focused on past medical assessments that confirmed his physical disability, and his fears about the future coupled with his physical limitations, had given rise to depressive disorder.

By letter dated April 9, 2015, OWCP requested that appellant submit additional evidence in support of his request for the acceptance of additional conditions. As to orthopedic conditions, it noted deficiencies in the record including questioning the basis for Dr. Mixa's arthritis diagnoses as no diagnostic testing had occurred since 2007. OWCP also noted that the October 9, 2013 second opinion report described intact reflexes at the right ankle, reflexes on the left were 2+ and symmetrical, motor activity on the right ankle was 5/5, and motor activity on the left knee and ankle was 5/5. It set forth the definition of the terms causal relationship and aggravation and noted that rationalized medical evidence was needed to establish his claim. Regarding the request for acceptance of the psychiatric condition, OWCP requested information and evidence with respect to prior psychiatric treatment. No further response was received from appellant.

By decision dated May 22, 2015, OWCP found the evidence was insufficient to expand the accepted conditions in the case.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[4] 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.[5] 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.[6]

A claimant bears the burden of proof to establish a claim for a consequential injury.[7] 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

[4] *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

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

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

[7] *J.A.*, Docket No. 12-603 (issued October 10, 2012).

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.[8] Medical rationale is a medically sound explanation for the opinion offered.[9]

ANALYSIS

In the present case, appellant seeks to expand the accepted conditions from his May 15, 1981 employment injury. Currently, the accepted conditions are: right knee chondromalacia of the patella; partial tear of the lateral meniscus; right knee; right knee ankyloses; and aggravation of L5-S1 degenerative disc disease.

Dr. Mixa provided a February 16, 2015 report opining that appellant had additional conditions resulting from his 1996 right knee fusion. In this regard, the Board notes that Dr. Mixa indicated that appellant had a leg length discrepancy after the surgery,[10] but there remain questions regarding the arthritis diagnoses for the right ankle, left knee, and bilateral hips and any causal relationship between these conditions and the employment injury. Dr. Mixa has opined that an altered gait, resulting from the accepted limb length discrepancy, resulted in aggravation of right ankle, left knee, and bilateral hip arthritis. However, as OWCP noted in its April 9, 2015 letter, no diagnostic testing reports had been submitted to the record since 2007. Dr. Mixa specifically indicated in his July 18, 2014 report that x-rays did not show hip arthritis. The record contains no explanation as to the basis for the diagnosis of hip arthritis, or right ankle and left knee arthritis, in his February 16, 2015 report.

In addition, Dr. Mixa did not adequately explain how the altered gait caused or aggravated arthritic conditions. A physician must clearly explain from a medical and physiological point of view how an altered gait results in a consequential injury.[11] Dr. Mixa refers to additional stress on the left leg, or good leg, from the altered gait, but fails to explain how such stress on the left leg affected the right ankle, or the hips. As to the left knee arthritis, even if the diagnosis were established, there must be some explanation as to the nature and extent and any aggravation. The explanation should be clear as to how the knee was affected and whether the aggravation was temporary or permanent. OWCP scheduled a second opinion examination with Dr. Fred Ferderigos. The medical opinion of Dr. Ferderigos of October 9, 2013, was primarily to identify appellant's disability status due to the accepted condition of post-right knee fusion. He noted severe lumbar pain with degenerative changes of the lumbar spine aggravated by the work injury of May 15, 1981 and the resultant right knee fusion. Following this second opinion examination OWCP accepted the consequential condition of degenerative disc disease. The second opinion report confirms that appellant had begun to have problems with the right hip due to the knee fusion, but the report does not provide a firm medical diagnosis

[8] *Id.*

[9] *See Ronald D. James, Sr.*, Docket No. 03-1700 (issued August 27, 2003); *Kenneth J. Deerman*, 34 ECAB 641 (1983) (the evidence must convince the adjudicator that the conclusion drawn is rational, sound and logical).

[10] OWCP subsequently accepted an unequal leg length.

[11] *See, e.g., M.P.*, Docket No. 14-1289 (issued September 26, 2014).

or provide rationale as to why and how the right hip condition was related to the May 15, 1981 injury. Moreover, Dr. Ferderigos conducted a physical examination which documented intact reflexes and 5/5 motor activity on the right ankle and 5/5 motor activity on the left knee. These findings are not supportive of consequential conditions beyond those previously accepted by OWCP.

As to any additional psychiatric conditions, the evidence is insufficient to establish a consequential injury. Appellant did not respond to the April 9, 2015 request for additional evidence or information relating to prior psychiatric treatment. Furthermore, Dr. Coughlin's report fails to provide a rationalized medical opinion setting forth a diagnosis casually related to the employment injury.

It is appellant's burden of proof to establish any additional diagnosed conditions as employment related.[12] The Board finds that appellant failed to meet his burden of proof to establish any additional conditions resulting from his May 15, 1981 employment injury.

On appeal, appellant's counsel argues that Dr. Mixa's report is sufficient to establish consequential injuries. For the reasons discussed above, the Board finds that the evidence is deficient and fails to meet appellant's burden of proof.

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 appellant did not meet his burden of proof to establish consequential conditions to his right knee, left ankle, and bilateral hips and a consequential psychiatric condition casually related to his May 15, 1981 employment injury.

[12] *See Jaja K. Asaramo*, 55 ECAB 104 (2004).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 22, 2015 is affirmed.

Issued: January 29, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board