

appellant underwent left leg surgery on January 30, 2013. OWCP accepted the claim for a closed fracture of the left femur. Appellant was placed on the periodic rolls and continues to receive wage-loss compensation for total disability.

In a report dated June 7, 2012, Dr. Mark Figgie, a Board-certified orthopedic surgeon, reported that appellant complained of left hip pain. He included a note dated November 13, 2012, indicating that appellant's right knee had become very painful and x-rays showed bone-on-bone changes in the medial compartment. Dr. Figgie reported that appellant was a candidate for total right knee replacement surgery. In a note dated May 10, 2013, he reported that appellant had ongoing problems with his right knee. Dr. Figgie indicated that appellant had good response to an injection in November, but that the pain was worsening to the point he wanted to have right knee surgery. He reported that he injected appellant's right knee on that date because he was bone-on-bone. An x-ray report of the right knee dated May 10, 2013, interpreted by Dr. Carolyn Sofka, a radiologist, showed osteoarthritis of the right knee with bone-on-bone apposition in the medial compartment with loss of normal valgus alignment.

In a report dated August 9, 2013, Dr. Mark Filippone, a Board-certified physiatrist, provided a history and results on examination. He noted that he did not have inpatient hospital records or diagnostic studies, but did have numerous documents provided by appellant, and appellant presented with a complex medical history. Dr. Filippone wrote that appellant had an arthritic right knee problem that preceded the January 28, 2013 employment injury, but "as a result of limping on the painful hip injured in the slip and fall appellant's right knee was now totally destroyed." He also indicated that appellant had a stroke on November 28, 2013. Dr. Filippone opined, "[T]he right knee injury is an exacerbation of prior injury" and should be accepted by OWCP.

Appellant submitted a report dated October 7, 2013 from Dr. Robert Dennis, a Board-certified orthopedic surgeon. Dr. Dennis indicated that appellant had left hip pain and anterior right knee pain. He provided a history and results on examination, and his diagnoses included "aggravation and exacerbation of preexisting right knee osteoarthritis secondary to left hip/femur injury." Dr. Dennis wrote that the fall on ice "produced aggravation of damage of arthritic changes" that were already present, and by "putting somewhat more stress on the right knee" this accelerated the damage to the knee.

OWCP prepared a statement of accepted facts and referred appellant to Dr. Lawrence Barr, an osteopath and Board-certified orthopedic surgeon. The questions posed to Dr. Barr included whether appellant continued to have any employment-related conditions, noting that Dr. Filippone had diagnosed appellant with a right knee injury. In a report dated December 23, 2013, Dr. Barr provided a history and results on examination. He diagnosed fractured left hip, degenerative joint disease of the right knee, and cerebrovascular incident. Dr. Barr wrote that "with respect to causal relationship" and the right knee, "I question causality. [Appellant] has degenerative joint disease which predated this occurrence and there is no actual trauma to the right knee." Then in response to a question as to whether any conditions present were either directly caused, aggravated, or accelerated by the January 28, 2013 injury, Dr. Barr wrote that "[t]he right knee shows that there was an exacerbation of his underlying degenerative joint disease." In response to a question asking for an explanation regarding any aggravation, he

indicated that appellant “has degenerative joint disease of his right knee. Apparently, he had problems with his knee prior to the work occurrence.”

In a report dated February 7, 2014, Dr. Filippone provided results on examination. He reported that appellant remained totally disabled. By report dated March 11, 2014, Dr. Filippone indicated that appellant remained totally disabled due to his left hip. He also noted that appellant needed right knee replacement surgery.

By letter dated March 12, 2014, OWCP requested that Dr. Filippone provide additional explanation with respect to the right knee condition. On April 15, 2014 it found a conflict in the medical evidence between Dr. Filippone and Dr. Barr over whether appellant had additional employment-related medical conditions.

OWCP selected Dr. Michael Gordon, a Board-certified orthopedic surgeon, as a referee physician. In a report dated July 28, 2014, Dr. Gordon provided a history and results on examination. He reviewed the medical evidence of record in detail. With respect to the right knee, Dr. Gordon noted that both physical examination and radiographic findings indicated advanced osteoarthritis of the right knee. He reported that review of x-rays of the right knee that were performed both before and after the January 28, 2013 incident showed complete collapse of the medial joint line with bone-on-bone, compatible with advanced osteoarthritic changes in the right knee. Dr. Gordon noted the November 13, 2012 treatment report from Dr. Figgie had reported appellant was a candidate for right total knee replacement and the surgery would be considered sometime in the next year. An injection into the knee was done on that date. He further noted that, based on the degree of osteoarthritis, and significant varus deformity noted on his examination, as well as Dr. Figgie’s preaccident examination, and radiologic studies, appellant had advanced arthritis in the right knee both before and after this accident. Dr. Gordon noted that, while a steroid injection in the knee might provide temporary relief of symptoms, the need for a right total knee arthroplasty was inevitable and was unrelated to the January 28, 2013 incident.

Appellant continued to submit treatment reports from Dr. Filippone. In a report dated October 8, 2014, Dr. Filippone indicated that appellant continued to have right knee and left hip pain. By letter dated March 20, 2015, appellant’s counsel noted that appellant had requested authorization for total knee replacement surgery but had not received a response.

By decision dated April 8, 2015, OWCP declined to expand the claim to accept a right knee condition. It found the weight of the medical evidence was represented by Dr. Gordon.

On April 15, 2015 appellant, through counsel, requested a hearing before an OWCP hearing representative. A hearing was held on July 9, 2015. Appellant asserted that right knee surgery had been put off prior to the January 28, 2013 injury, but the injury that had affected his right knee contributed to the need for surgery.

By decision dated September 1, 2015, the hearing representative affirmed the April 8, 2015 OWCP decision, finding that the evidence of record was insufficient to establish a right knee condition or need for surgery as employment related. She found that, referee physician,

Dr. Gordon provided a rationalized medical opinion that represented the weight of the medical evidence.

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.² In order to establish causal relationship, a physician's opinion must be based on a complete factual and medical background, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment activities.³ Medical rationale is a medically sound explanation for the opinion offered.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 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

² *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Gary L. Fowler*, 45 ECAB 365 (1994).

⁴ 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).

⁵ *Carlos A. Marrero*, 50 ECAB 117, 120 (1998); 1 A. Larson, *The Law of Workers' Compensation* § 10.01 (2002).

⁶ *Id.*

⁷ *J.A.*, Docket No. 12-0603 (issued October 10, 2012).

⁸ *Id.*

ANALYSIS

In the present case, OWCP accepted that appellant sustained closed fracture of the left femur when he fell on a snowy and icy driveway while delivering mail on January 28, 2013. Appellant now seeks to expand his claim to include his right knee and the need for total knee replacement surgery. In this regard the Board notes the medical evidence contemplates two possible bases for causal relationship with employment: (1) that the January 28, 2013 incident itself resulted in an aggravation of a right knee condition, or (2) that as a consequence of an altered gait or overuse of the right leg because of the employment injury, the right knee condition was aggravated.

The Board notes that Dr. Gordon was selected as a referee physician under 5 U.S.C. § 8123(a).⁹ For the reasons discussed below, the Board finds there was no conflict and Dr. Gordon was a second opinion physician. As a second opinion physician, his report may constitute the weight of the medical evidence.¹⁰

The medical evidence of record prior to the referral to Dr. Gordon was of diminished probative value to the issue presented. Attending physician Dr. Filippone provided an opinion on August 9, 2013 that there was an exacerbation of the right knee from the January 28, 2013 injury. He suggested this was a consequence from the “limping” due to the left leg injury, without providing further detail. The Board notes that with respect to an opinion on aggravation or exacerbation, the opinion must differentiate between the effects of the work-related injury or disease and the preexisting condition.¹¹ The physician must clearly explain the nature and extent of any aggravation, including whether temporary or permanent.¹² Dr. Filippone does not explain specifically how the “limping” or altered gait affected the underlying condition. This is particularly important in this case because appellant seeks right knee surgery, and the physician should clearly explain how the employment injury contributed to the need for surgery.

Dr. Dennis provided an October 7, 2013 report in which he wrote that the January 28, 2013 incident “produced aggravation” or preexisting right knee arthritis. He does not explain how or in what way the fall aggravated the right knee, or support his opinion with reference to the medical history and record. Dr. Dennis then indicates there was some acceleration of the condition by putting more stress on the right knee, without further explanation.

The initial second opinion physician, Dr. Barr, provided a December 23, 2013 report that is also of diminished probative value to the issue presented. He wrote that he questioned “causality” because there was preexisting degenerative changes and no direct trauma to the knee. Then Dr. Barr asserted there was an exacerbation of the right knee condition, with no explanation of the nature and extent of any exacerbation. In response to a question requesting

⁹ This section provides that when there is a disagreement between an attending physician and an OWCP physician, a third physician is selected to make an examination.

¹⁰ *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

¹¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(e) (January 2013).

¹² See *R.H.*, Docket No. 15-1785 (issued January 29, 2016).

explanation as to any aggravation, he again noted that the condition was preexisting without offering any additional explanation or rationale.

When medical reports are of diminished probative value, there is no conflict in the medical evidence on the issue.¹³ In light of the diminished probative value of the evidence, there was no conflict under 5 U.S.C. § 8123(a). As such, the referral to Dr. Gordon was as a second opinion physician. As a second opinion physician, Dr. Gordon provided the only rationalized medical opinion of record. He provided a detailed medical report dated July 28, 2014 and found the right knee condition and the need for surgery was not causally related to the January 28, 2013 employment injury. Dr. Gordon noted the pertinent medical evidence of record: that prior to the January 28, 2013 injury appellant had a severe right knee osteoarthritis as demonstrated by x-rays and was considered a candidate for total knee replacement surgery. Dr. Figgie had indicated on November 13, 2012 that x-rays showed bone-on-bone changes in the medial compartment and appellant was a candidate for total right knee replacement surgery and that he would consider the proposed surgery sometime in the next year. Based on the medical evidence and his examination he came to the reasonable conclusion that the right knee condition and need for surgery were not related to the January 28, 2013 injury.

The Board finds that Dr. Gordon represents the weight of the medical evidence. Neither Dr. Filippone nor Dr. Dennis clearly addressed the preexisting right knee condition and explain how either the incident or using the right leg after the injury had affected the right knee condition and contributed to the need for surgery that was already contemplated prior to the January 28, 2013 employment injury. Thus appellant has not met his burden of proof.

On appeal, appellant's counsel argues that Dr. Gordon did not properly resolve the issue and did not address whether the employment injury had aggravated or accelerated the condition. As discussed above, Dr. Gordon provided a detailed report and rationalized medical opinion that appellant did not have an employment-related right knee injury that contributed to the need for surgery.

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 that appellant has not established a right knee condition causally related to the January 28, 2013 employment injury.

¹³ See *Mary L. Henninger*, 52 ECAB 408 (2001).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 1, 2015 is affirmed.

Issued: July 6, 2016
Washington, DC

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

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

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board