United States Department of Labor
Employees' Compensation Appeals Board

R.T., Appellant	)	
and	)	**Docket No. 15-1810**
	)	**Issued: June 10, 2016**
U.S. POSTAL SERVICE, POST OFFICE, Houston, TX, Employer	)	

Appearances:
Linda Humphrey, for the appellant
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 September 2, 2015 appellant, through her representative, filed a timely appeal from a June 10, 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.

ISSUE

The issue is whether appellant sustained a right knee and back injury as a consequence of her accepted left knee injury.

FACTUAL HISTORY

On July 26, 2012 appellant, then a 58-year-old city letter carrier, filed an occupational disease claim (Form CA-2) alleging a left knee condition attributable to her federal work duties.

[1] 5 U.S.C. § 8101 *et seq.*

OWCP accepted the claim for osteoarthritis of the left knee. Appellant continued to work in a limited-duty position until she stopped work to undergo left knee arthroscopic surgery.

On July 6, 2013 appellant underwent an OWCP authorized arthroscopy of the left knee, arthroscopic resection of the medial meniscus, and chondroplasty of the patella and medial femoral condyle, performed by Dr. Ian Reynolds, a Board-certified orthopedic surgeon.

In a November 13, 2013 report, Dr. James Key, a Board-certified orthopedic surgeon, advised that appellant was still experiencing left knee pain and discomfort following the July 6, 2013 surgery. He noted that the left knee had no signs of infection and was healing nicely. Dr. Key further noted that appellant's pain was exacerbated by standing and weight bearing on the knee. He assessed left leg osteoarthritis.

In a January 8, 2014 report, Dr. Key advised that appellant complained of moderate left knee discomfort. He noted that her left knee was severely damaged with cartilage loss and advised that her surgeon related that she would likely need a partial left knee replacement. Dr. Key requested standing, weight-bearing magnetic resonance imaging (MRI) scans of both knees.

In a February 5, 2014 report, Dr. Key advised that appellant was now having difficulty with her right knee because she had been using her right knee more often. He noted that the MRI scan of her right knee revealed mild-to-moderate degenerative changes, joint effusion, no fracture, and mild baker's cyst in the back of the knee joint. Dr. Key opined that her right knee was becoming symptomatic because she was using her opposing knee to compensate for her left knee condition.

In a February 28, 2014 report, Dr. Reynolds advised that appellant complained of left knee pain and was now having difficulty with the right knee. He noted that Dr. Key ordered right knee MRI scan. Examination of the left knee revealed pain in the medial aspect, swelling, and range of motion of 0 to 90 degrees. Dr. Reynolds assessed medial compartment gonarthrosis of the left knee.

OWCP authorized a May 30, 2014 partial left knee replacement performed by Dr. Reynolds.

In a September 17, 2014 report, Dr. Key advised that appellant engaged in prolonged standing, walking, sitting, driving, mounting, and dismounting from a postal vehicle, lifting, bending, stooping, pushing, and pulling for the past 30 years as a letter carrier. He opined that she developed a consequential right knee and back injury due to her altered gait, her continued work, and the initial injury. On examination Dr. Key noted moderate left knee sitting pain and 80 degrees of flexion of the knee. He assessed osteoarthritis of the left leg, derangement of the left knee, right knee strain, and lumbar strain. Dr. Key noted that appellant had a right knee MRI scan through her own insurance and would bring in a copy for review. He requested that her claim be updated to include her right knee and her low back, which became painful following her left knee surgery.

In an October 2, 2014 statement, appellant requested that OWCP expand her claim to include a consequential right knee and back condition.

On October 7, 2014 OWCP referred the record to Dr. Ronald Blum, an OWCP medical adviser, for an opinion on whether appellant sustained right knee and low back consequential injuries related to the accepted left knee injury. In an October 15, 2014 report, the medical adviser noted that *The Guides Newsletter* May/June 2012 and a journal article discuss that:

> "[T]here is no clear evidence that an injury to one lower extremity would have any significant impact on the opposite uninjured limb unless the injury resulted in major muscle damage causing partial or complete paralysis of the damaged leg and/or shortening of the injured lower extremity resulting in limb length discrepancy of more than [four] centimeters."

He opined that for that reason he did not recommend updating the accepted conditions to include the right knee. The medical adviser also opined that the medical evidence of record was not adequate to support acceptance of a low back injury.

By decision dated October 30, 2014, OWCP denied expansion of appellant's claim because medical evidence of record did not demonstrate that weakness or impairment caused by the accepted work-related injury led to a new injury.

In an October 31, 2014 report, Dr. Reynolds advised that appellant had good left knee range of motion with extension to 90 degrees, but noted that she could gain more flexion with manipulation under anesthesia. He recommended arthroscopic debridement of the left knee.

By decision dated November 21, 2014, OWCP denied expansion of appellant's claim because the medical evidence of record did not demonstrate that weakness or impairment caused by the accepted work-related injury led to a new injury.[2]

In a December 24, 2014 report, Dr. Louis Train, a Board-certified family medicine practitioner, advised that appellant injured her left knee at work requiring a partial left knee replacement. He noted that her right knee had become "disabling painful" following the injury and opined that her damaged right knee was due to trauma and overloading the right knee as a consequence to the injured left knee joint. Dr. Train noted that appellant's right knee pain was aggravated by climbing in and out of chairs, climbing up and down curbs, and climbing in and out of her postal van. He explained that he had her demonstrate how she would climb, which revealed that she put her full weight on her right knee and would delicately lower her left foot onto the floor to minimize pain in the left knee. Dr. Train noted that putting appellant's full weight on the right knee caused her to fully extend her knee, as opposed to partially bending the right knee to allow for shock absorber action. All in all, he opined that following her injury she put too much of her body weight onto the right knee when climbing in order to protect the severely injured left knee.

With respect to the back, Dr. Train noted that appellant's left leg appeared one inch shorter than the right leg because the left knee was slightly bent and unable to fully straighten. He opined that this deformity to the left leg caused an abnormality of posture which stressed the

[2] OWCP reissued the October 30, 2014 decision on November 21, 2014 became the October 30, 2014 decision was sent without appeal rights.

left sacroiliac joint causing consequential sacroiliitis. Dr. Train diagnosed osteoarthritis of the left lower extremity and bilateral knee derangement.

OWCP authorized another arthroscopy of the left knee on January 9, 2015 including removal of scar tissue, and manipulation of the left knee under anesthesia.

On March 12, 2015 OWCP received a request for reconsideration.

By decision dated June 10, 2015, OWCP denied modification of its prior decision because there was no clear evidence that the right knee was a consequential injury of the accepted left knee condition. It advised that Dr. Train's December 24, 2014 report suggested that appellant's right knee condition was more likely a new occupational injury as opposed to a consequential injury of the left knee.

LEGAL PRECEDENT

The general rule respecting consequential injuries is that, when the primary injury is shown to have arisen out of and in the course of employment, every natural occurrence 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.[3] The subsequent injury is compensable if it is the direct and natural result of a compensable primary injury.[4] With respect to consequential injuries, the Board has stated that, where an 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.[5] A claimant bears the burden of proof to establish the claim for consequential injury.[6]

Causal relationship is a medical issue that must be established by rationalized medical opinion evidence.[7] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 factors identified by the claimant.[8] The weight of medical evidence is determined by its reliability, its

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

[4] *Id*.; *Carlos A. Marrero*, 50 ECAB 117 (1998); A. Larson, *The Law of Workers' Compensation* § 10.01 (2005).

[5] *Kathy A. Kelley*, 55 ECAB 206 (2004); *see also C.S.*, Docket No. 11-1875 (issued August 27, 2012).

[6] *S.P.*, Docket No. 14-900 (issued August 8, 2014).

[7] *Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005).

[8] *Leslie C. Moore*, 52 ECAB 132 (2000).

probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.[9]

ANALYSIS

OWCP accepted that appellant sustained left leg osteoarthritis due to factors of her employment. It authorized left knee arthroscopies, partial left knee replacement, and manipulation of the left knee under anesthesia. Appellant alleged a consequential injury to her right knee and back as a result of her accepted left knee injury. However, OWCP denied her claim because it determined that she had not submitted a rationalized medical report sufficient to establish that the accepted left knee injury caused consequential right knee and back injuries.

The Board finds that Dr. Train's report is sufficiently rationalized to require further development of the record. The Board notes that an employee who claims benefits under FECA has the burden of proof to establish the essential elements of his or her claim. The claimant has the burden of establishing by the weight of reliable, probative, and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment. As part of this burden, the claimant must present rationalized medical opinion evidence based upon a complete and accurate factual and medical background establishing causal relationship.[10] However, it is well established that proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.[11]

In the instant case, Dr. Train described how the mechanism of climbing resulted in right knee and back injuries. In his December 24, 2014 report, he, attributed appellant's right knee pain to trauma and overloading the right knee as a consequence to the injured left knee joint. Dr. Train explained that he had her demonstrate how she would climb which revealed that she put her full weight on her right knee. He noted that putting appellant's full weight on the right knee caused her to fully extend her right knee, as opposed to partially bending the right knee to allow for proper shock absorber action. Dr. Train opined that, following her accepted injury, she put too much body weight onto the right knee when climbing in order to protect the severely injured left knee. With respect to the back, he noted that appellant's left leg appeared one inch shorter than the right leg because the left knee was slightly bent. Dr. Train opined that this deformity to the left leg caused an abnormality of posture which stressed the left sacroiliac joint causing sacroiliitis. This medical report is sufficiently rationalized to warrant further development of the evidence.[12]

[9] *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

[10] *See Virginia Richard, claiming as executrix of the estate of Lionel F. Richard*, 53 ECAB 430 (2002); *see also Brian E. Flescher*, 40 ECAB 532, 536 (1989); *Ronald K. White*, 37 ECAB 176, 178 (1985).

[11] *See Richard E. Simpson*, 55 ECAB 490 (2004).

[12] *See John J. Carlone*, 41 ECAB 354 (1989).

On remand, OWCP should refer appellant to an appropriate Board-certified specialist for a second opinion evaluation. After this and such further development as OWCP deems necessary, a *de novo* decision shall be issued.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the June 10, 2015 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: June 10, 2016
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