# United States Department of Labor
# Employees' Compensation Appeals Board

| | | |
|---|---|---|
| **P.J., Appellant** | ) | |
| **and** | ) | **Docket No. 17-0570** |
| | ) | **Issued: October 26, 2017** |
| **U.S. POSTAL SERVICE, POST OFFICE, Elkins Park, PA, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

### ***JURISDICTION***

On January 17, 2017 appellant filed a timely appeal from an October 25, 2016 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 to consider the merits of the case.

### ***ISSUE***

The issue is whether appellant has met his burden of proof to establish a consequential right elbow fracture as a result of his accepted right knee conditions.

[1] 5 U.S.C. § 8101 *et seq.*

## ***FACTUAL HISTORY***

This case has previously been before the Board.[2] The facts of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On April 9, 2011 appellant, then a 43-year-old letter carrier, stepped awkwardly on a stair with his right foot and twisted his right knee. Dr. David E. Reinhardt, an osteopath, examined appellant on April 12, 2011 and noted that he twisted his right knee when walking down steps. He diagnosed right knee strain and sprain as well as probable meniscus tear. OWCP accepted his claim for tear of the medial meniscus and sprain of the right knee on May 4, 2011. An April 20, 2011 magnetic resonance imaging (MRI) scan showed a truncated posterior horn and body of the medial meniscus and mild cartilage loss. On May 19, 2011 appellant underwent an authorized right knee arthroscopy with synovectomy, chondroplasty, and partial medial meniscectomy.

OWCP accepted that appellant had a recurrence of his lumbar sprain as a consequence of his right knee injury. It also accepted aggravation of lumbar sprain on August 8, 2011 and degeneration of lumbar or lumbosacral disc. OWCP entered appellant on the periodic rolls on November 8, 2011.

In June 2013, OWCP proposed to terminate appellant's wage-loss compensation and medical benefits, effective August 6, 2013. It accepted that appellant had a temporary aggravation of his preexisting back condition which had ceased by May 14, 2012. OWCP also found that his accepted right knee conditions had resolved by May 30, 2013 the date of an examination by second opinion physician, Dr. Robert Allen Smith, a Board-certified orthopedic surgeon.

OWCP found a conflict of medical opinion evidence between Dr. Reinhardt and Dr. Smith regarding whether appellant was capable of performing full-duty work. In a SOAF dated October 3, 2013 it indicated that appellant stepped awkwardly down on a step on April 9, 2011 and twisted his right knee. It advised that the claim was accepted for medical meniscus tear on the right and right knee sprain. OWCP noted that appellant discontinued physical therapy on June 30, 2011 due to complaints of increased back pain. The SOAF noted that OWCP accepted a temporary aggravation of lumbar degenerative disc disease resolved on January 20, 2013. OWCP referred appellant for an impartial medical examination with Dr. Barry Snyder, a Board-certified orthopedic surgeon.

Appellant returned to part-time work on October 10, 2013.

In a February 3, 2014 report, Dr. Snyder opined following his independent examination that, "Any current limitations relate to preexisting degenerative disease, independent of the April 9, 2011 incident." He concluded that appellant could return to full duty with no restrictions.

[2] Docket No. 15-0253 (issued May 22, 2015).

On February 26, 2014 OWCP terminated appellant's wage-loss compensation and medical benefits, effective February 27, 2014 based on Dr. Snyder's report. Appellant requested an oral hearing before an OWCP hearing representative on March 7, 2014.

Counsel submitted argument on September 11, 2014 and asserted that the accepted conditions were never properly determined. His arguments included that Dr. Snyder's report was not based on the SOAF. During the oral hearing held on September 12, 2014, counsel asserted that OWCP failed to properly adjudicate appellant's claim for aggravation of his preexisting degenerative disc disease and that Dr. Snyder did not base his opinion on the SOAF. Appellant testified and noted that his knee did not just give out as noted by Dr. Snyder, but that he stepped down on stairs and twisted his knee.

By decision dated November 3, 2014, an OWCP hearing representative found that Dr. Snyder's report was entitled to the special weight of the medical evidence and established that appellant no longer had residuals of or disability due to his accepted April 9, 2011 work injury.

Appellant appealed to the Board on November 10, 2014. In its May 22, 2015 decision, the Board found that the conflict in the medical evidence remained unresolved as Dr. Snyder disregarded the SOAF such that his report was not entitled to the special weight of the medical evidence.[3]

Appellant underwent a right knee MRI scan on June 10, 2015 which demonstrated a small chronic-appearing osteochondral lesion of the articular surface of the medial femoral condyle. There was no evidence of a meniscal or ligament tear. Appellant had interval healing of the medial collateral ligament. He underwent an electromyogram (EMG) which demonstrated chronic bilateral L5 and L4 radiculopathies.

Dr. Amy Fitzsimmons, a Board-certified physiatrist, examined appellant on June 16, 2015 and noted that his right knee was "going out" a few months previously and that he was having pain in his right knee. Appellant called for an appointment, but fell and broke his right elbow prior to examination. Dr. Fitzsimmons diagnosed lumbosacral radiculopathy and possible posterior tibial tendinitis.

On July 21, 2015 appellant filed a notice of recurrence claim (Form CA-2a) alleging that on May 11, 2015 he stopped work due to his April 9, 2011 work injury. He asserted that he had a recurrence on May 10, 2015. Appellant alleged that prior May 10, 2015 his right knee had been collapsing and causing pain. On May 10, 2015 his right knee "gave out" and he fell breaking his elbow. Appellant's supervisor noted that appellant was performing limited-duty work using a van and a mail cart. He asserted that appellant fell in his private residence.

Dr. Bruno, a Board-certified neurosurgeon, completed a report on August 3, 2015 and noted that appellant reported on May 10, 2015 his right knee gave out and jolted his back. Appellant fell and fractured his right elbow. Dr. Bruno indicated that appellant sought treatment

[3] *Supra* note 2.

of his lower extremities and elbow with other physicians and that his chief complaint was low back pain with no radiation. He found that there was no change in appellant's back condition.

In a letter dated October 15, 2015, OWCP noted that appellant was claiming a consequential injury as a result of his accepted injuries. It requested additional medical evidence addressing his condition and disability on May 10, 2015.

On August 21, 2005 Dr. Reinhardt examined appellant due to increased knee pain. He reported that, two weeks prior, while walking at work, appellant had a sudden onset of increased medial knee pain. Dr. Reinhardt diagnosed flare of medial knee pain and synovitis, right knee. He performed a right knee injection.

Appellant responded to OWCP's developmental questionnaire on October 29, 2015. He noted that prior to his recurrence he was experiencing weakness in his right knee and his knee was "giving out." Appellant telephoned Dr. Reinhardt to make an appointment on Friday, May 8, 2015, and on Sunday, May 10, 2015 appellant's right knee gave out and he fell to the ground breaking his elbow. He sustained a right radial head fracture. Appellant did not work from May 10 through June 22, 2015 and returned to full-time work on June 23, 2015. He asserted that his right knee instability caused his fall on May 10, 2015 and that he sustained a consequential injury.

In a report dated November 6, 2015, Dr. Reinhardt noted that he examined appellant on May 11, 2015. He reported that appellant stopped work due to an injury to his right elbow. Dr. Reinhardt opined that the injury to appellant's right elbow was related to his prior work injury involving his right knee. He noted in the weeks prior to the fall, appellant was having right knee recurrent weakness which caused his knee to give way. Dr. Reinhardt diagnosed an acute, impacted, and nondisplaced radial head fracture of the right elbow. He noted: "It is my medical opinion as a result of [appellant's] previous work-related injury of his knee, which was causing weakness and subjectively giving way symptoms, caused [appellant] to fall on May 10, 2015 in his driveway. As a result of his previous work-related injury and right knee pathology, he fell, fracturing his right elbow." Dr. Reinhardt reported that right knee MRI scans showed degenerative joint disease in the medical compartment and osteochondral cartilage injuries. He noted that he had previously suggested bracing for symptoms of right knee stability. Dr. Reinhardt concluded that appellant had never recovered from his injury-related right knee condition which waxed and waned.

In a December 2, 2015 decision, OWCP denied appellant's recurrence claim, finding that the evidence submitted established the diagnosis of patella alta, a genetic abnormality predisposing him to patellofemoral stability, which existed before the April 9, 2011 work injury according to Dr. Snyder. It found that Dr. Reinhardt's report was insufficient to establish the consequential injury claim as he did not address appellant's patella alta as a cause of the May 10, 2015 fall.

Appellant requested an oral hearing before an OWCP hearing representative on December 16, 2015. He explained his disagreement with the December 2, 2015 decision and asserted that Dr. Snyder's report had been discredited. Appellant alleged that he had no preexisting right knee condition. He submitted a December 8, 2015 note from Dr. Bruno finding

that appellant's low back pain was stable. On March 14, 2016 Dr. Bruno examined appellant for his lumbar degenerative joint disease and spondylolisthesis.

Appellant testified at the oral hearing on August 10, 2016 and described his April 9, 2011 work injury. He noted that he returned to modified duties with limitations. On May 10, 2015 appellant's right knee gave out and he fell to the ground and broke his elbow. He asserted that there was no history of his knee giving out prior to April 2011. Appellant noted that Dr. Bruno did not treat his knee, and that he saw him only for his back. OWCP's hearing representative afforded appellant 30 days to submit additional evidence. No additional evidence was received within the time allotted.

By decision dated October 25, 2016, OWCP's hearing representative affirmed the December 2, 2015 decision finding that there was no rationalized medical opinion evidence establishing appellant's claim.

## ***LEGAL PRECEDENT***

Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.[4] To establish causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background supporting causal relationship.[5] Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence. A medical report is of limited probative value on a given medical question if it is unsupported by medical rationale.[6] Medical rationale includes a physician's detailed opinion on the issue of whether there is causal relationship between the claimant's diagnosed condition and the implicated employment activity. The opinion of the physician must be based on a complete factual and medical background of the claim, 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 specific employment activity or factors identified by the claimant.[7] Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[8]

In discussing the range of compensable consequences, once the primary injury is causally connected with the employment, Larson notes that, when the question is whether compensability should be extended to a subsequent injury or aggravation related in some way to the primary

[4] *C.W.*, Docket No. 16-0858 (issued April 3, 2017); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[5] *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

[6] *T.F.*, 58 ECAB 128 (2006).

[7] *A.D.*, 58 ECAB 149 (2006).

[8] *A.C.*, Docket No. 08-1453 (issued November 18, 2008).

injury, the rules that come into play are essentially based upon the concepts of direct and natural results and of the claimant's own conduct as an independent intervening cause. 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.[9]

## ***ANALYSIS***

The Board finds that appellant has not met his burden of proof to establish a consequential right elbow injury as a result of his accepted right knee conditions.

OWCP accepted that appellant sustained tear of the medial meniscus and sprain of the right knee as well as aggravation of lumbar sprain and degeneration of lumbar or lumbosacral disc due to his April 9, 2011 employment injury. Appellant fell on May 10, 2015 and alleged that he sustained a right elbow fracture as a consequence of his April 9, 2011 employment injuries. He attributed his fall to "giving way" of his right knee. Appellant has the burden of proof to establish that his May 10, 2015 fall and right elbow fracture were causally related to his accepted April 9, 2011employment injuries.[10] The Board finds that the medical evidence of record is insufficient to establish a consequential injury.

In support of his claim, appellant submitted reports from Drs. Fitzsimmons and Bruno which diagnosed right elbow fracture on May 10, 2015 as a result of appellant's right knee was "going out." Neither of these reports offered any explanation of why appellant's right knee "gave out" or attributed the collapse of his right knee to his accepted conditions of tear of the medial meniscus and sprain of the right knee. Drs. Fitzsimmons and Bruno failed to provide an unequivocal, rationalized explanation as to how appellant's diagnosed elbow fracture was a consequence of the April 9, 2011 employment injury.[11] These physicians did not explain how appellant's accepted meniscal tear and right knee sprain could have consequently caused his right knee to collapse resulting in a fall and broken right elbow. The Board has found that medical evidence is of limited probative value if it contains a conclusion regarding causal relationship, but does not offer any rationalized medical explanation on the issue of causal relationship.[12]

Appellant also submitted a report dated November 6, 2015 from Dr. Reinhardt. Dr. Reinhardt reported that he examined appellant on May 11, 2015 due to the injury to appellant's right elbow which was related to his prior April 9, 2011 work-related injury involving his right knee. He indicated that appellant had experienced recurrent weakness in his right knee which caused his knee to give way. Dr. Reinhardt diagnosed an acute, impacted, and nondisplaced radial head fracture of the right elbow. He opined, "It is my medical opinion as a result of [appellant's] previous work-related injury of his knee, which was causing weakness and subjectively giving way symptoms, caused [appellant] to fall on May 10, 2015 in his driveway.

[9] Larson, *The Law of Workers' Compensation* § 1300; *K.S.*, Docket No. 16-0404 (issued April 11, 2016).

[10] *C.W.*, *supra* note 4.

[11] *Id.*

[12] *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

As a result of his previous work-related injury and right knee pathology, he fell, fracturing his right elbow." The Board has found that rationalized medical opinion evidence must relate specific employment factors identified by the claimant to the claimant's condition, with medical rationale explaining how the employment factors physiologically caused the diagnosed condition.[13] The Board has also found that a mere conclusion without the necessary rationale is insufficient to meet a claimant's burden of proof.[14] Dr. Reinhardt did not explain how appellant's accepted conditions of meniscal tear and sprain caused weakness and subjective symptoms of giving way of the right knee, such that appellant's May 10, 2015 fall was attributable to these conditions.[15]

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 met his burden of proof to establish a consequential right elbow fracture as a result of his accepted right knee conditions.

[13] *V.G.*, Docket No. 17-0067 (issued April 5, 2017); *T.C.*, Docket No. 16-1052 (issued November 8, 2016).

[14] *See T.M.*, Docket No. 08-0975 (issued February 6, 2009); *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006); *William C. Thomas*, 45 ECAB 591 (1994) (a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

[15] *See J.K.*, Docket No. 09-1766 (issued March 12, 2010) (the physician must medically explain how the diagnosed condition is a result of the accepted employment injury).

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the October 25, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 26, 2017
Washington, DC

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

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

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