

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

C.D., Appellant)	
)	
and)	Docket No. 18-1652
)	Issued: June 26, 2019
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Albuquerque, NM, 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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 30, 2018 appellant filed a timely appeal from a July 20, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the July 20, 2018 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met his burden of proof to establish consequential bilateral shoulder conditions causally related to his accepted July 2, 2013 employment injury.

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances of the case as set forth in the prior order are incorporated herein by reference. The relevant facts are as follows.

On July 2, 2013 appellant, then a 57-year-old electronics technician, filed a traumatic injury claim (Form CA-1) alleging that on that date he knelt down on his left knee and when he stood up, his right knee popped and felt pain under his kneecap while in the performance of duty. He did not initially stop work. OWCP accepted appellant's claim for right knee sprain and medial meniscus tear as a result of a July 2, 2013 traumatic injury.⁴ On November 19, 2013 appellant underwent authorized right knee arthroscopy of the medial and lateral meniscectomies, chondroplasty lateral femoral condyle, and removal of multiple loose bodies. He stopped work on November 13, 2013. OWCP paid appellant intermittent wage-loss compensation on the supplemental rolls as of November 19, 2013 and paid him wage-loss compensation for temporary total disability on the periodic rolls as of December 15, 2013. Appellant retired on February 28, 2014. On May 15, 2014 he underwent authorized right knee arthroscopy and revision lateral meniscectomy.

On October 6, 2014 appellant filed a new traumatic injury claim (Form CA-1) alleging a bilateral shoulder injury resulting from a fall at home on March 4, 2014. He provided a September 19, 2014 statement indicating that he had an accepted claim for injury to his right knee. Appellant explained that he had undergone unsuccessful right knee surgery on November 19, 2013, and he was scheduled for a second surgery on May 15, 2014. On March 4, 2014 his right knee buckled, he fell, and injured both shoulders. Appellant argued that, if he had not previously injured his right knee, he would not have fallen and would not have sustained the shoulder injury. He included a witness statement from his wife, who indicated that they were walking down the driveway when appellant suddenly fell, held his arms out, and informed her that his right knee buckled and he had pain in both shoulders.

In a May 7, 2014 report, Dr. Lindsey Patman, an orthopedic surgeon, noted that appellant presented with bilateral shoulder pain, greater in the right shoulder than the left. She related that he was scheduled for a repeat right knee arthroscopy and that he indicated that his right shoulder

³ *Order Remanding Case*, Docket No. 17-1074 (issued August 28, 2017).

⁴ Appellant has other accepted claims including OWCP File No. xxxxxx895, September 30, 2000, accepted for lumbar strain; OWCP File No. xxxxxx940, November 18, 2000, accepted for lumbar strain; OWCP File No. xxxxxx411, May 5, 2002, accepted for right carpal tunnel syndrome; OWCP File No. xxxxxx302, April 28, 2009, accepted for sprain of the left shoulder and upper arm, left rotator cuff, left and complete rotator cuff rupture on the left; and OWCP File No. xxxxxx372, November 11, 2010, accepted for Achilles tendon (acquired) left ankle and osteoarthritis of the left ankle and foot. These claims have been combined with the current file, OWCP File No. xxxxxx428, serving as the master file.

condition stemmed from a fall he sustained due to complications from a work-related knee injury a few months ago. Dr. Patman diagnosed a number of conditions including right rotator cuff (capsule) sprain.

In a July 16, 2014 report, Dr. Alan Altman, a Board-certified orthopedic surgeon, noted that appellant injured both shoulders in a fall on March 4, 2014, when his right knee buckled. He explained that appellant was between surgeries, fell, landed on both hands, and did a “face plant.” Dr. Altman diagnosed a full-thickness right rotator cuff tear, a left acromioclavicular separation, and partial rotator cuff tear.

In a development letter dated November 19, 2014, OWCP requested that appellant provide additional factual and medical evidence regarding his claimed shoulder condition. It noted that the Form CA-1 indicated that the fall occurred in the driveway of appellant’s home on March 14, 2014; however, there was no corresponding medical evidence discussing a fall on that date. Appellant was afforded 30 days to respond.⁵

On December 18, 2014 appellant responded that at the time of his fall his “right leg was and still is locked,” that he could not fully extend it forward, and that this prevented him from “walking normally” and throwing his leg out in front to catch himself as he fell. He indicated that “this is a direct result of the injury sustained while working for the [employing establishment].” Appellant also noted that the date he fell in his driveway was March 4, 2014.

In a report dated December 29, 2014, Dr. Altman opined that appellant “did sustain injuries to his bilateral shoulders due to a fall on March 4, 2014.” He noted that appellant had two arthroscopic surgeries to his right knee, one before the fall and one afterward. Dr. Altman advised that at the second surgery, he “found a recurrent lateral meniscal tear, which caused his knee to lock up” and that, when appellant suffered a fall on March 4, 2014, he “landed on both hands and did a ‘face plant.’” He opined that “the fall was directly related to the injuries to the two shoulders. Appellant had a previous arthroscopy of the left shoulder, however, had not had any previous problems with the right shoulder.”

Dr. Altman opined that appellant had right shoulder rotator cuff disease, which he sustained in the fall of March 2014. He explained that appellant had a full-thickness tear of the right rotator cuff and a partial left rotator cuff tear. Dr. Altman’s additional diagnosis of left AC separation was a clinical finding and not something that was identified on a magnetic resonance imaging scan. He concluded that the medical evidence clearly established a causal relationship between the buckling of appellant’s right knee, his fall, and his subsequent bilateral shoulder injuries.

In a letter dated June 12, 2015, appellant noted that Dr. Altman’s December 29, 2014 report supported his claim for a consequential bilateral shoulder injury due to his accepted conditions.

⁵ Appellant’s Form CA-1 indicated that the fall occurred on March 4, 2014.

In a November 23, 2015 decision, OWCP denied expansion of appellant's claim to include a consequential injury. It explained that the evidence of record did not demonstrate that weakness or impairment caused by the accepted work-related injury led to a new injury.

On November 22, 2016 appellant requested reconsideration and submitted new evidence from Dr. Altman.

In a November 18, 2016 report, Dr. Altman indicated that his prior reports dated December 29, 2014 and March 25, 2015, "clearly relate the shoulder injuries to his work-related injury." He explained that, when appellant's right knee locked on March 4, 2014, he sustained a fall and injury to both shoulders. Dr. Altman also noted that appellant was seen by Dr. Patman on May 7, 2014, that Dr. Patman identified the two rotator cuff tears, opined they were directly related to the fall at home on March 4, 2014, and should be considered work related.

By decision dated March 30, 2017, OWCP denied appellant's request for reconsideration, finding that it was not timely filed and failed to present clear evidence of error.

On April 17, 2017 appellant appealed to the Board. By order dated August 28, 2017, the Board remanded the case⁶ because OWCP erred in finding that appellant's reconsideration request was untimely and applied the wrong standard of review. The Board found that the March 20, 2017 decision should be set aside, and the case remanded for proper consideration of appellant's timely request for reconsideration pursuant to 20 C.F.R. § 10.606(b)(3).

On remand, by decision dated August 31, 2017, OWCP denied modification of its prior decision.

On July 20, 2017 OWCP referred appellant for a second opinion examination with Dr. Ryan Kraft, an osteopath specializing in physical medicine and rehabilitation, for an assessment of appellant's employment-related conditions and disability status. It prepared a statement of accepted facts (SOAF) dated July 20, 2017 noting the accepted conditions of right knee sprain and right medial meniscus tear. The SOAF also noted that appellant had claimed that he sustained a bilateral shoulder injury as a result of a fall at this residence on March 4, 2014; however, a bilateral shoulder condition was not accepted as a consequence of the July 2, 2013 injury. Appellant underwent a right knee revision of lateral meniscectomy on May 15, 2014; however, this surgery was not authorized as a result of the July 2, 2013 employment injury.

In a September 27, 2017 report, Dr. Kraft noted appellant's history of injury and treatment. With regard to the right knee, he advised that appellant initially sustained an injury on July 2, 2013, when he stood up and his right knee popped. Dr. Kraft advised that appellant was diagnosed with a right knee sprain and a right medial meniscus tear. Appellant then underwent arthroscopy with subtotal medial and lateral menisectomies on the right knee on November 19, 2013 and arthroscopic chondroplasty of the lateral femoral condyle with removal of multiple loose bodies. Dr. Kraft noted that appellant fell on March 4, 2014, while at home, and had a noncovered right knee surgery on May 15, 2014, with revision of the lateral meniscectomy. He also noted that

⁶ See *supra* note 3.

appellant “sustained bilateral shoulder injuries secondary to the fall as well, but again these are not covered.” Dr. Kraft opined that appellant was not capable of performing the requirements for an electronics technician as he continued to struggle with walking and standing. He also noted that appellant was not capable of climbing or kneeling due to his left ankle and right knee issues.

On October 11, 2017 appellant requested reconsideration. He noted that OWCP had authorized and paid for the May 15, 2014 right knee surgery performed by Dr. Altman for a recurrent lateral meniscus tear. Appellant enclosed the authorization and operative report from Dr. Altman.

By decision dated July 20, 2018, OWCP denied modification of the August 21, 2017, OWCP decision.

LEGAL PRECEDENT

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 attributable to the employee’s own intentional conduct.⁷ 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.⁸ With respect to consequential injuries, the Board has held 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.⁹

A claimant bears the burden of proof to establish a claim for a consequential injury. 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 an opinion of reasonable medical certainty supported by sound medical rationale explaining the nature of the relationship of the diagnosed condition and the specific employment factors or employment injury.¹⁰

ANALYSIS

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

⁷ See *C.R.*, Docket No. 18-1285 (issued February 12, 2019); *D.L.*, Docket No. 18-0629 (issued November 16, 2018); *Albert F. Ranieri*, 55 ECAB 598 (2004); *Clement Jay After Buffalo*, 45 ECAB 707 (1994); *John R. Knox*, 42 ECAB 193 (1990).

⁸ *D.L., id.*; *S.M.*, 58 ECAB 166 (2006); *Debra L. Dillworth*, 57 ECAB 516 (2006); *Carlos A. Marrero*, 50 ECAB 117 (1998); A. Larson, *The Law of Workers’ Compensation* § 10.01 (2005).

⁹ *D.L., supra* note 7; *L.S.*, Docket No. 08-1270 (issued July 2, 2009); *Kathy A. Kelley*, 55 ECAB 206 (2004).

¹⁰ *D.L., supra* note 7; *J.B.*, Docket No. 14-1474 (issued March 13, 2015).

Appellant's attending physicians noted that appellant sustained bilateral shoulder injuries when he fell at home on March 4, 2014. His fall on March 4, 2014 clearly did not occur while in the performance of duty as he had retired from the employing establishment on February 28, 2013. The issue presented was whether appellant's fall on March 4, 2014, which allegedly caused bilateral shoulder injury, was a consequence of his accepted July 2, 2013 right knee injury.

On July 20, 2017 OWCP referred appellant for a second opinion with Dr. Kraft to assess appellant's employment-related conditions and disability status. The SOAF provided to Dr. Kraft indicated that appellant's bilateral shoulder conditions were not a consequence of the July 2, 2013 employment injury. The SOAF also incorrectly indicated that appellant's May 15, 2014 right knee arthroscopic procedure, which was scheduled prior to his March 4, 2014 fall, and occurred two and a half months later had not been authorized. Based upon the content of the SOAF provided, Dr. Kraft noted that appellant underwent a "noncovered" right knee surgery with revision of lateral meniscectomy on May 15, 2014. He also indicated that appellant had sustained bilateral shoulder injuries secondary to the fall as well, "but again these are not covered."

It is OWCP's responsibility to provide a complete and proper frame of reference for a physician by preparing a SOAF.¹¹ OWCP procedures dictate that when an OWCP medical adviser, second opinion specialist, or referee physician renders a medical opinion based on a SOAF, which is incomplete or inaccurate or does not use the SOAF as the framework in forming his or her opinion, the probative value of the opinion is seriously diminished or negated altogether.¹²

As OWCP negated the central issue in this matter in its SOAF, whether the fall was consequential to the accepted July 2, 2013 employment injury, Dr. Kraft's opinion was based upon a conclusory SOAF and followed its dictates by repeating that the fall "was not covered."

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 of proof to establish entitlement to compensation, OWCP shares the responsibility in the development of the evidence to see that justice is done.¹³ Once it undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.¹⁴

On remand OWCP shall prepare a new SOAF which accurately presents the accepted conditions and authorized medical procedures and should obtain an opinion from a new second opinion physician which addresses whether appellant's fall on March 4, 2014 was a consequence of his accepted July 2, 2013 employment injury and, if so, whether appellant's bilateral shoulder

¹¹ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.3 (September 1995); see *L.J.*, Docket No. 14-1682 (issued December 11, 2015).

¹² *N.W.*, Docket No. 16-1890 (issued June 5, 2017).

¹³ *S.S.*, Docket No. 18-0397 (issued January 15, 2019); *D.G.*, Docket No. 15-0702 (issued August 27, 2015); *Donald R. Gervasi*, 57 ECAB 281, 286 (2005); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

¹⁴ *S.S.*, *id.*; *Richard F. Williams*, 55 ECAB 343, 346 (2004).

conditions were causally related to the March 4, 2014 fall. After such further development as necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the July 20, 2018 decision of the Office of Workers' Compensation Programs is set aside and this case is remanded for further development consistent with this opinion of the Board.

Issued: June 26, 2019
Washington, DC

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

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

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