

of the medial meniscus of the left knee. On July 28, 2009 Dr. Robin Fuchs, a Board-certified orthopedic surgeon, performed a left knee limited synovectomy and chondroplasty of the patella, trochlea, and medial femoral condyle.

After experiencing intermittent disability, appellant returned to full-time modified employment on December 26, 2009.²

OWCP subsequently expanded acceptance of the claim to include localized secondary osteoarthritis of the left lower leg.³

On January 22, 2018 appellant filed a notice of recurrence (Form CA-2a) alleging that on March 15, 2014 he sustained a recurrence of the need for medical treatment causally related to his June 11, 2009 employment injury. In an accompanying statement, he related that he had performed modified duty from December 2009 to March 2014 due to his accepted June 11, 2009 employment injury. During this time, appellant put additional stress on his right knee because his left knee was injured. On December 22, 2014 he had a right total knee replacement. Appellant requested a schedule award for his right knee, contending that his right knee condition and right knee replacement resulted from his left knee injury.

In a development letter dated May 9, 2018, OWCP requested that appellant provide medical evidence regarding the causal relationship between his employment and his alleged consequential injury to his right knee. It afforded him 30 days to respond.

In a report dated May 23, 2018, Dr. Fuchs discussed his treatment of appellant for a right knee condition beginning April 18, 2014. He related that he had undergone a right partial meniscectomy and debridement on May 13, 2014 and a total knee replacement on December 22, 2014. Dr. Fuchs diagnosed status post right total knee replacement following a diagnosis of degenerative arthritis. Regarding causation, he related, "I reviewed with [appellant] that on his previous chart notes dating back to April 18, 2014 I have no documentation that this was an injury at work." Dr. Fuchs related that he had reviewed his chart notes, but could not "find a causal relationship with work." He related, "[Appellant] understands, unfortunately, since this was never discussed prior to his surgeries, it would be difficult to change his medical record. If at this time he feels there was some injury at work that caused his knee condition he can certainly pursue this on his own."

On September 18, 2018 appellant related that after he returned to modified employment in December 2009 he had overused his right knee due to limitations resulting from his left knee injury. He requested a schedule award for his total knee replacement.

By decision dated November 16, 2018, OWCP denied appellant's claim for a consequential right knee condition. It found that the medical evidence was insufficient to establish that his right

² Appellant worked modified duty until his retirement on December 1, 2016.

³ By decision dated July 9, 2010, OWCP granted appellant a schedule award for two percent permanent impairment of the left lower extremity. By decision dated May 8, 2017, it granted him a schedule award for an additional 19 percent left lower extremity impairment.

knee condition occurred as a consequence of his accepted June 11, 2009 left knee employment injury.

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.⁴ 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.⁵ 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.⁶

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, explaining 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.⁷

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a consequential right knee condition causally related to his accepted June 11, 2009 left knee employment injury.

Appellant alleged that he developed a right knee condition that required a total knee replacement as a result of overcompensating for his accepted left knee injury. He did not, however, submit sufficient medical evidence to establish a diagnosed right knee condition as a consequential injury.

On May 23, 2018 Dr. Fuchs discussed appellant's history of a right knee partial meniscectomy and debridement on May 13, 2014 and a total knee replacement on December 22, 2014. He diagnosed status post right total knee replacement. Dr. Fuchs reviewed chart notes beginning on April 18, 2014 which he advised contained no history of a work injury. He related that he could not find a causal relationship between appellant's right knee condition and

⁴ *Albert F. Ranieri*, 55 ECAB 598 (2004); *Clement Jay After Buffalo*, 45 ECAB 707 (1994); *John R. Knox*, 42 ECAB 193 (1990).

⁵ *S.M.*, 58 ECAB 166 (2006); *Debra L. Dillworth*, 57 ECAB 516 (2006); *Carlos A. Marrero*, 50 ECAB 117 (1998).

⁶ *R.V.*, Docket No. 18-0552 (issued November 5, 2018); *L.S.*, Docket No. 08-1270 (issued July 2, 2009); *Kathy A. Kelley*, 55 ECAB 206 (2004).

⁷ *J.B.*, Docket No. 14-1474 (issued March 13, 2015).

his employment. Dr. Fuchs' opinion, consequently, is insufficient to establish that appellant sustained a right knee condition as a consequence of his accepted June 11, 2009 left knee employment injury.⁸

On appeal appellant alleged that he would not have sustained a right knee condition requiring a total knee replacement if he had not experienced the left knee injury on June 11, 2009.

As explained above, however, appellant has the burden of proof to establish a claim for a consequential injury through the submission of rationalized medical opinion evidence.⁹ He has not submitted evidence from a physician who, based on an accurate factual history, found that he had a right knee condition as a consequence of his accepted left knee condition. Thus, appellant has not met his burden of proof.¹⁰

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 knee condition causally related to his accepted June 11, 2009 left knee employment injury.

⁸ See *Y.F.*, Docket No. 17-1187 (issued June 5, 2018).

⁹ *Id.*

¹⁰ *K.W.*, *supra* note 3; *see also V.R.*, Docket No. 17-1166 (issued October 24, 2017).

ORDER

IT IS HEREBY ORDERED THAT the November 16, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 25, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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