United States Department of Labor
Employees' Compensation Appeals Board

D.T., Appellant	)	
and	)	**Docket No. 20-0234**
	)	**Issued: January 8, 2021**
U.S. POSTAL SERVICE, LANSING PROCESSING & DISTRIBUTION CENTER, Lansing, MI, Employer	)	

Appearances:
Shelley Coe, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On November 9, 2019 appellant, through counsel, filed a timely appeal from an October 9, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met his burden of proof to establish that the acceptance of his claim should be expanded to include consequential left knee and back conditions causally related to his accepted May 11, 2011 employment injury.

FACTUAL HISTORY

On May 20, 2011 appellant, then a 53-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on May 11, 2011 he injured his right knee while pulling an all-purpose container in the performance of duty. He stopped work on May 18, 2011. OWCP accepted the claim for right knee meniscus tear and authorized right knee arthroscopic surgeries which occurred on July 1, 2011 and May 11, 2012.[3] Appellant returned to full-duty work on a part-time basis on September 30, 2011 before stopping work on October 17, 2011. He retired from the employing establishment effective January 31, 2013.

Dr. Michael D. Austin, an osteopath Board-certified in orthopedic surgery, performed an arthroscopic procedure to appellant's left knee on March 8, 2002 for a tear of the medial meniscus of the left knee and degenerative arthritis.

In a report dated May 23, 2011, Dr. Austin noted appellant's history of right knee injury; however, he also noted that appellant was seen again for another injection to his left knee, which bothered him more during the last winter than it had in previous winters. He noted that x-rays of appellant's left knee showed degenerative changes medial joint space narrowing and some spurring. In progress reports dated June 2 and 9, 2011, March 26 and April 16, 2012, and July 15 and 29, 2013, Dr. Austin noted that he had treated appellant's left knee with Supartz injections.

In a report dated April 23, 2012, Dr. Austin noted that x-rays of appellant's left knee showed significant medial joint space narrowing, worse than on the right knee; however, on clinical examination appellant's left knee was significantly better than the right.

In a second opinion report dated January 16, 2013, Dr. Emmanuel Obianwu, a Board-certified orthopedic surgeon, noted appellant's history of right knee injury, and his prior medical history of treatment of his left knee with Dr. Austin. He noted appellant's physical examination findings, and *inter alia*, a diagnosis of left knee degenerative arthritis. Dr. Obianwu concluded that appellant's bilateral knee osteoarthritis would preclude him from performing his regular full-time employment duties.

On April 26, 2013 OWCP referred appellant to Dr. Mitchell Pollak, a Board-certified orthopedic surgeon, to resolve the conflict in medical evidence as to whether appellant had residuals of the accepted medical condition, and whether he remained disabled from work. In a report dated May 14, 2013, Dr. Pollak noted appellant's history of right knee injury. He reported that on physical examination appellant's standing alignment of both knees showed mild varus deformity, both knees exhibited -10 degrees of full extension, and mild swelling was noted in both

[3] By decision dated February 8, 2017, OWCP granted appellant a schedule award for 21 percent permanent impairment of his right lower extremity.

knees, slightly more on the left than right. Dr. Pollak noted that appellant had been in a motor vehicle accident in 1988 which resulted *inter alia* in a left knee injury. Appellant's past medical records were reviewed and Dr. Pollak noted that appellant's x-rays dated May 28, 2011 and April 22, 2012 showed progressive osteoarthritis of both knees. Dr. Pollak concluded that appellant would not be able to return to his regular work duties due to advanced degenerative arthritis of both knees. He also noted that appellant would require total arthroplasty of both knees, due entirely to his underlying condition of degenerative arthritis.

In a January 22, 2015 report, Dr. Charles J. Taunt, Jr., an osteopathic physician Board-certified in joint replacement and reconstruction, diagnosed degenerative bilateral knee osteoarthritis. A physical examination revealed tenderness on palpation of both knees.

In a January 27, 2015 report, Dr. Raymond Hansen, a Board-certified internist, noted that appellant seen for a preoperative visit for scheduled right total knee replacement surgery. Diagnoses included multiple sites generalized osteoarthritis, post-traumatic stress disorder, hypertension, and hyperlipidia. Past medical history included a history of left knee surgery.

On February 10, 2015 appellant underwent a total right knee replacement, which was not authorized by OWCP.

In a March 23, 2015 report, Dr. Taunt provided examination findings and reviewed diagnostic testing. He noted that appellant had a history left knee arthroscopic surgery. Dr. Taunt diagnosed left knee osteoarthritis based on a review of a left knee x-ray interpretation. In a report dated May 21, 2015, he noted histories of right knee replacement surgery and left knee arthroscopic surgery. Dr. Taunt reviewed appellant's physical examination findings and diagnostic test results. He diagnosed left knee or lower leg localized degenerative arthritis.

In an April 18, 2016 report, Dr. Peter Metropoulos, Board-certified in occupational medicine, noted appellant's employment injury and medical histories. He noted that appellant's physical examination findings included decreased left knee flexion, mild gait alteration, crepitus on palpation, varus deformity, and lumbar paraspinal muscle tenderness. Dr. Metropoulos diagnosed chronic right knee pain following a May 11, 2011 employment injury, right knee meniscal tear, right knee synovitis, right knee degenerative arthritis, right knee traumatic medical radial meniscal tear, left knee medial meniscal tear, left knee degenerative arthritis, and left knee traumatic medial meniscal tear. Regarding appellant's left knee, he explained that appellant had sustained a left knee injury while golfing, which necessitated a meniscal tear repair. Dr. Metropoulos further noted that appellant subsequently injured his left knee while moving mailbags, which may have weighed in excess of 100 pounds, from a truck in 2011 or 2012. He also noted that appellant had no history of significant low back injury, but appellant's low back and left knee pain was more likely than not related to postural changes and gait impairment due to his right knee injury.

In letters dated October 5 and November 23, 2016, appellant, through counsel, requested that the claim be expanded to include the consequential conditions of left knee osteoarthritis and lumbar pain without radiculopathy, based on the report from Dr. Metropoulos.

On June 26, 2017 OWCP referred appellant, together with the medical record, a statement of accepted facts (SOAF), and a list of questions, to Dr. Bala Prasad, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine whether appellant's claim should be expanded to include left knee and back conditions causally related to the accepted May 11, 2011 employment injury. The SOAF noted that OWCP had accepted torn right knee medial meniscus, and authorized surgeries which occurred on July 1, 2011 and May 11, 2012. It noted that on February 10, 2015 appellant underwent right total knee replacement surgery, which had not been authorized and a 1988 motor vehicle accident resulted in cracked vertebrae, left rotator cuff tear, and left knee arthroscopic surgery.

In a letter dated January 5, 2018, counsel informed OWCP that the copy of appellant's file through October 30, 2017 did not contain a copy of the second opinion evaluation performed by Dr. Prasad on July 19, 2017. In a February 1, 2018 letter, OWCP advised counsel that Dr. Prasad's report had not been included with a copy of appellant's file as OWCP had not received the report.

In a letter dated June 20, 2019, counsel asked that OWCP evaluate appellant's request to expand his claim based on the evidence of record, which included the Dr. Metropoulos' report and noted that OWCP had been unsuccessful in obtaining Dr. Prasad's second opinon report.

On July 9, 2019 OWCP received Dr. Prasad's second opinion report dated July 19, 2017. Dr. Prasad noted that he was to evaluate appellant's left knee and low back only. He further noted that appellant had injured his left knee while playing golf in 2005, but eventually he had to undergo a total knee replacement in 2015, following which his left knee was symptom free. Dr. Prasad also noted that appellant had injured his left knee in 2011 or 2012 while emptying mailbags weighing 100 pounds each, following which he underwent arthroscopic surgery in 2013, which helped temporarily until he underwent total knee replacement in 2016. Regarding appellant's back condition, he indicated that appellant had informed him that he had experienced back complaints since he was in high school. Dr. Prasad provided physical examination findings and concluded that appellant had no objective findings for either the left knee or back other than the scar from his total left knee arthroplasty. In response to OWCP's questions, he found that appellant currently had no objective findings supporting any left knee or back condition caused or aggravated by the accepted May 11, 2011 employment injury.[4]

Dr. Metropoulos, in an August 12, 2019 report, reviewed Dr. Prasad's July 9, 2017 report, and opined that Dr. Prasad appeared confused and co-mingled the medical history of appellant's right and left knees. He discussed what he believed to be deficiencies and inaccuracies in Dr. Prasad's report including noting that appellant underwent total right knee arthroplasty in 2015 and that arthroscopic surgery for the left knee did not occur until 2016. In addition, Dr. Metropoulos noted that Dr. Prasad had referenced surgery following an injury in 2011 or 2012, but appellant's prior left knee arthroscopy occurred in 2002. He also noted that nowhere in Dr. Prasad's report did he mention that he had reviewed appellant's operative report or diagnostic studies, regarding his left knee arthroplasty. Dr. Metropoulos also noted that appellant had

[4] On August 12, 2019 counsel requested that Dr. Prasad's report be excluded as she had not been notified of the examination. He also raised arguments regarding the sufficiency of Dr. Prasad's report as it was based on an incorrect medical history and his report was vague and unresponsive to the issue of whether appellant's left knee and back conditions were causally related to the accepted employment injury.

bilateral knee weakness, but he then contradicted this opinion by noting no objective findings related to appellant's left knee.

On September 12, 2019 OWCP referred the medical evidence and SOAF to an OWCP district medical adviser (DMA) for review, specifically to review the findings in the April 18, 2016 report by Dr. Metropolous. In an October 4, 2019 report, Dr. Nathan Hammel, a Board-certified orthopedic surgeon serving as a DMA, disagreed with Dr. Metropolous that appellant's left knee and back pain had been caused or had been aggravated by the a transient gait abnormality due to the accepted right knee condition. He opined that Dr. Metropolous had not provided a scientific argument supporting his opinion that appellant's left knee and back conditions were causally related to the accepted employment injury.

By decision dated October 9, 2019, OWCP denied appellant's request to expand the acceptance of his claim to include consequential left knee and back conditions relying upon the opinions of the DMA and Dr. Prasad.

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.[5]

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.[6] 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.[7] The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.[8]

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

[5] *S.H.*, Docket No. 19-1128 (issued December 2, 2019); *M.M.*, Docket No. 19-0951 (issued October 24, 2019); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[6] *T.K.*, Docket No. 18-1239 (issued May 29, 2019); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

[7] *D.S.*, Docket No. 18-0353 (issued February 18, 2020); *T.K.*, *id.*; *I.J.* 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[8] *See P.M.*, Docket No. 18-0287 (issued October 11, 2018).

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 this case is not in posture for a decision.

On October 5 and November 23, 2016 counsel requested that the acceptance of appellant's claim be expanded to include left knee osteoarthritis and low back lumbar pain without radiculopathy based on the April 18, 2016 report from Dr. Metropoulos. On June 26, 2017 OWCP referred appellant for a second opinion examination with Dr. Prasad.[10]

OWCP specifically requested that Dr. Prasad provide an opinion on whether appellant's claim should be expanded to include consequential left knee and back conditions as causally related to the accepted May 11, 2011 employment injury. Dr. Prasad completed a physical examination and provided responses to a series of questions posed to him by OWCP. He found that appellant had no objective findings supporting any left knee or back condition caused or aggravated by the accepted May 11, 2011 employment injury. However, Dr. Prasad did not specifically address whether appellant sustained left knee or back conditions, due to the accepted employment injury.

On January 29, 2017 a DMA reviewed the SOAF and medical records. He noted his disagreement with Dr. Metropoulos' conclusions regarding consequential low back and left knee conditions, but provided no medical rationale in support of his opinion.

It is well established that proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter.[11] While the claimant has the responsibility to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence. It has the obligation to see that justice is done.[12]

Once OWCP undertakes development of the record, it must procure medical evidence that will resolve the relevant issues in the case.[13] Following its determination that additional medical development was necessary to address whether appellant's left knee and back conditions were

[9] *See V.K.*, Docket No. 19-0422 (issued June 10, 2020).

[10] Counsel alleged in an August 12, 2019 letter to OWCP that Dr. Prasad's July 19, 2019 report should be excluded as she was not informed of the second opinion examination. The record reflects that Dr. Prasad examined appellant on July 19, 2017 and counsel was apprised on this rescheduled examination on June 26, 2017. Counsel's listed address was her last known address in Walled Lake, MI. Absent evidence to the contrary, a letter properly addressed and mailed in the ordinary course of business is presumed to have been received. This is called the mailbox rule. *See K.J.*, Docket No. 10-0414 (issued July 30, 2020). Counsel did not submit evidence of nondelivery such that the presumption of receipt would be rebutted.

[11] *See F.K.*, Docket No. 19-1804 (issued April 27, 2020); *B.W.*, Docket No. 19-0965 (issued December 3, 2019).

[12] *Id.*

[13] *Id.*

causally related to the accepted employment injury, it denied his request for expansion of the claim based upon Dr. Prasad and the DMA's reports. However, Dr. Prasad failed to address the primary question posed by OWCP, whether appellant sustained consequential left knee and back conditions causally related to the accepted employment injury. Furthermore, neither Dr. Prasad, nor the DMA offered a rationalized medical explanation as to why appellant's left knee and back conditions were not caused or consequential to the accepted employment injury. Due to the deficiencies in Dr. Prasad's and the DMA's reports, OWCP should have sought clarification or referred appellant for a new second opinion evaluation. On remand, OWCP shall obtain a supplemental report from Dr. Prasad or refer appellant, together with a SOAF and a list of specific questions, to a new second opinion physician in the appropriate field of medicine to resolve the issue.[14]

The Board will remand the case to OWCP for further development of the claim, including updating the SOAF, pursuant to its procedures to determine whether the claim should be expanded to include additional conditions. Following this and any other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

[14] *T.S.*, Docket No. 18-1702 (issued October 4, 2019).

ORDER

IT IS HEREBY ORDERED THAT the October 9, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: January 8, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board