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M.N., Appellant)	
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and)	Docket No. 22-0488
)	Issued: February 15, 2023
DEPARTMENT OF THE ARMY, U.S. ARMY)	
INSTALLATION MANAGEMENT)	
COMMAND, Fort Lee, VA, Employer)	
)	

Case Submitted on the Record

Office of Solicitor, for the Director

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

On February 17, 2022 appellant, through counsel, filed a timely appeal from a December 27, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

The issues are: (1) whether appellant has met his burden of proof to establish a consequential right knee condition as causally related to his accepted March 9, 2010 employment

² 5 U.S.C. § 8101 *et seq.*

injury; and (2) whether OWCP abused its discretion in denying appellant's request for authorization for total left knee replacement surgery.

FACTUAL HISTORY

On March 30, 2010 appellant, then a 43-year-old conservation law enforcement officer, filed a traumatic injury claim (Form CA-1) alleging that on March 9, 2010 he sustained a left knee injury when he twisted his left knee while utilizing a pressure washer in the performance of duty. He stopped work on March 9, 2010 and returned to limited-duty work on March 10, 2010 without wage loss. OWCP accepted appellant's claim for lateral collateral ligament sprain, aggravation of chondromalacia (except for the patella), lateral meniscus derangement, and chronic anterior cruciate ligament deficiency/disruption of the left knee.

On July 21, 2010 appellant underwent left knee arthroscopy with debridement, lateral retinacular release, chondroplasty and meniscectomy and on March 26, 2013 he underwent total left knee replacement surgery. Both procedures were authorized by OWCP. On August 1, 2019 OWCP expanded the acceptance of appellant's claim to include degenerative arthritis of the left knee.

In a November 2, 2020 report, Dr. John W. Ellis, a Board-certified family medicine physician, discussed appellant's factual and medical history and reported the findings of his physical examination. He discussed the degenerative changes of appellant's right knee seen on a July 16, 2020 magnetic resonance imaging (MRI) scan and noted that the physical examination showed anterior cruciate and medial/lateral collateral ligament laxity of the left knee, as well as limited range of motion of the right knee with 114 degrees of flexion. Dr. Ellis noted that he was able to easily make appellant's left knee pop out of its joint with very little movement. He indicated that appellant had abnormal gait mechanics of both knees due mostly to his multiple sclerosis and weakness in the right lower extremity. Dr. Ellis diagnosed sprain of the lateral collateral ligament of the right knee, left knee chondromalacia, old rupture of the anterior cruciate ligament of the left knee, derangement of the left knee (including the lateral meniscus), and primary osteoarthritis of the left knee. He opined that the work-related consequential conditions of appellant's right knee included aggravation of chondromalacia and osteoarthritis. Dr. Ellis found that, based on his review of the medical record and his medical examination, the accepted March 9, 2010 employment injury contributed to and aggravated appellant's right knee condition. He maintained that the work-related injury to appellant's left knee, which caused instability and abnormal gait, "caused him to favor his left knee, causing him to put more forces on the right knee, which has contributed to, aggravated and accelerated the chondromalacia and arthritis in the right knee."

On November 13, 2020 appellant, through counsel, requested expansion of the acceptance of his claim to include a right knee condition and total left knee replacement sustained as a consequence of his accepted March 9, 2010 employment injury.

OWCP referred appellant's case record to Dr. Arthur S. Harris, a Board-certified orthopedic surgeon serving as an OWCP district medical adviser. In a December 14, 2020 report, Dr. Harris discussed Dr. Ellis' report and asserted that there was insufficient evidence in the case

record to accept appellant's aggravation of right knee osteoarthritis as a work-related condition. He noted:

“[T]here is no evidence based medical literature or any orthopedic literature that supports that altered gait mechanics in one lower extremity due to problems with the left knee will result in increased stresses in the right lower extremity or aggravation of preexisting osteoarthritis. Based on the above, I would recommend that the claim not be expanded to include aggravation of osteoarthritis in the right knee, as discussed by Dr. Ellis.”

In September 2021, OWCP referred appellant, along with a statement of accepted facts (SOAF) and a series of questions, for a second opinion examination and evaluation with Dr. Richard J. Mazzei, a Board-certified orthopedic surgeon. It requested that he provide an opinion regarding whether appellant sustained a right knee condition as a consequence of his accepted March 9, 2010 employment injury.

In a September 22, 2021 report, Dr. Mazzei detailed appellant's factual and medical history and reported the findings of his physical examination. He noted that appellant had a slightly antalgic right gait and that he had difficulty extending his right knee while in the sitting position. Appellant's left leg could straight raise with only a five-degree lag and he could only flex to 110 degrees. Dr. Mazzei noted that the right knee appeared to be in approximately five degrees of varus and that the left knee appeared to be in approximately five degrees of valgus. He diagnosed degenerative arthritis of both knees status post left knee surgeries on July 21, 2010 and March 26, 2013. Dr. Mazzei opined that appellant's right knee condition was not related to his accepted March 9, 2010 employment injury, but rather was related to several nonwork-related conditions, including possibly a running injury. He indicated, “[h]e likely had gradual wear and tear on the knee associated with the instability, which has gone on to the progression of his osteoarthritis.” Dr. Mazzei asserted that the March 9, 2010 employment injury did not “substantially” aggravate appellant's right knee condition. He noted that appellant might have temporarily had an increase in symptoms in the right knee due to reliance on the right knee when he recovered from two left knee surgeries, but maintained that this symptom aggravation was not substantial enough to accelerate the underlying right knee condition.

On November 1, 2021 OWCP requested that Dr. Mazzei clarify his opinion with respect to whether appellant's right knee condition was related to the March 9, 2010 employment injury.

In a December 13, 2021 supplemental report, Dr. Mazzei indicated that he had previously noted that the March 9, 2010 injury did not substantially aggravate appellant's right knee condition. He advised that, by using the word substantially, he meant that the March 9, 2010 injury did not change the right knee condition structurally, but only temporarily increased symptoms while appellant was recovering from the March 26, 2013 left knee operation. Dr. Mazzei opined that appellant's right knee problems were not caused by the extra strain on the knee or substantially made worse by favoring the left knee. He indicated that, if a time frame were required for this temporary increase in right knee symptoms, he would estimate the time frame to be approximately three months following the March 26, 2013 operation. Dr. Mazzei noted, “[t]hat would make the date of aggravation in mid-June of 2013. If an exact date is required (which is only an estimate), I would say June 26, 2013 is the duration of left knee relationship with the temporary aggravation of the right knee pain.”

By decision dated December 27, 2021, OWCP denied appellant's claim for a consequential right knee condition and total left knee replacement, finding that the weight of the medical opinion evidence with respect to the matter rested with the opinion of Dr. Mazzei, OWCP's referral physician.

LEGAL PRECEDENT -- ISSUE 1

The claimant bears the burden of proof to establish a claim for a consequential injury.³ As part of this burden, he or she must present rationalized medical opinion evidence, based on a complete factual and medical background, establishing causal relationship. The opinion must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship of the diagnosed condition and the specific employment factors or employment injury.⁴

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.⁵ 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.⁶

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.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 When an injury arises in the course of employment, every natural consequence that flows from that injury likewise arises out of the employment, unless it is the result of an independent intervening cause attributable to the claimant's own conduct.⁹

Section 8123(a) of FECA provides that if there is a disagreement between the physician making the examination for the United States and the physician of an employee, the Secretary shall appoint a third physician (known as a referee physician or impartial medical specialist) who shall make an examination.¹⁰ For a conflict to arise, the opposing physicians' opinions must be of

³ *V.K.*, Docket No. 19-0422 (issued June 10, 2020); *A.H.*, Docket No. 18-1632 (issued June 1, 2020); *I.S.*, Docket No. 19-1461 (issued April 30, 2020).

⁴ *K.W.*, Docket No. 18-0991 (issued December 11, 2018).

⁵ *G.R.*, Docket No. 18-0735 (issued November 15, 2018).

⁶ *Id.*

⁷ *K.S.*, Docket No. 17-1583 (issued May 10, 2018).

⁸ *Id.*

⁹ *A.M.*, Docket No. 18-0685 (issued October 26, 2018); *Mary Poller*, 55 ECAB 483, 487 (2004).

¹⁰ 5 U.S.C. § 8123(a); *see E.L.*, Docket No. 20-0944 (issued August 30, 2021); *R.S.*, Docket No. 10-1704 (issued May 13, 2011); *S.T.*, Docket No. 08-1675 (issued May 4, 2009); *M.S.*, 58 ECAB 328 (2007).

virtually equal weight and rationale.¹¹ In situations where the case is properly referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.¹²

ANALYSIS -- ISSUE 1

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

There is an existing conflict in the medical evidence regarding appellant's consequential injury claim between the opinion of Dr. Ellis, an attending physician, and the opinions of Dr. Mazzei, OWCP's referral physician.

In his November 2, 2020 report, Dr. Ellis diagnosed sprain of the lateral collateral ligament of the right knee, left knee chondromalacia, old rupture of the anterior cruciate ligament of the left knee, derangement of the left knee (including the lateral meniscus), and primary osteoarthritis of the left knee. He opined that the work-related consequential conditions of appellant's right knee included aggravation of chondromalacia and osteoarthritis of the right knee. Dr. Ellis found that, based on his review of the medical record and his medical examination, the accepted March 9, 2010 employment contributed to and aggravated appellant's right knee condition. He maintained that the work-related injury to appellant's left knee, which caused instability and abnormal gait, "caused him to favor his left knee, causing him to put more forces on the right knee, which has contributed to, aggravated and accelerated the chondromalacia and arthritis in the right knee."

In contrast, Dr. Mazzei provided an opinion in his October 5, 2021 report that appellant's right knee condition was not related to the accepted March 9, 2010 employment injury. He diagnosed degenerative arthritis of both knees status post left knee surgeries on July 21, 2010 and March 26, 2013. Dr. Mazzei opined that appellant's right knee condition was not related to his accepted March 9, 2010 employment injury, but rather was related to several nonwork-related conditions, including possibly a running injury. He indicated, "[h]e likely had gradual wear and tear on the knee associated with the instability, which has gone on to the progression of his osteoarthritis." Dr. Mazzei asserted that March 9, 2010 employment injury did not "substantially" aggravate appellant's right knee condition. He noted that appellant might have temporarily had an increase in symptoms in the right knee due to reliance on the right knee when he recovered from two left knee surgeries, but maintained that this symptom aggravation was not substantial enough to accelerate the underlying right knee condition. In a supplemental December 13, 2021 report, Dr. Mazzei indicated that he had previously noted that the March 9, 2010 injury did not substantially aggravate appellant's right knee condition. He advised that, by using the word substantially, he meant that the March 9, 2010 injury did not change the condition structurally, but only temporarily increased symptoms while appellant was recovering from his March 26, 2013 left knee operation. Dr. Mazzei opined that appellant's right knee problems were not caused by the extra strain on the knee or substantially made worse by favoring the left knee.

¹¹ *P.R.*, Docket No. 18-0022 (issued April 9, 2018).

¹² See *D.M.*, Docket No. 18-0746 (issued November 26, 2018); *R.H.*, 59 ECAB 382 (2008); *James P. Roberts*, 31 ECAB 1010 (1980).

In addition, Dr. Harris indicated in his December 14, 2020 report that there was insufficient evidence in the case record to accept appellant's aggravation of right knee osteoarthritis as a work-related condition. He noted:

“[T]here is no evidence based medical literature or any orthopedic literature that supports that altered gait mechanics in one lower extremity due to problems with the left knee will result in increased stresses in the right lower extremity or aggravation of preexisting osteoarthritis. Based on the above, I would recommend that the claim not be expanded to include aggravation of osteoarthritis in the right knee, as discussed by Dr. Ellis.”

Because there remains an unresolved conflict in medical opinion regarding whether appellant sustained a consequential right knee condition related to his accepted March 9, 2010 employment injury, pursuant to 5 U.S.C. § 8123(a), the case will be remanded to OWCP for referral of appellant, together with the case record and a SOAF, to a specialist in the appropriate field of medicine for an impartial medical examination and opinion sufficient to resolve the conflict. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision regarding appellant's consequential injury claim.

LEGAL PRECEDENT -- ISSUE 2

Section 8103(a) of FECA states in pertinent part: “The United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances, and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation.”¹³

The Board has found that OWCP has great discretion in determining whether a particular type of treatment is likely to cure or give relief.¹⁴ The only limitation on OWCP's authority is that of reasonableness.¹⁵ Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.¹⁶ In order to be entitled to reimbursement of medical expenses, it must be shown that the expenditures were incurred for treatment of the effects of a work-related injury or condition.¹⁷ Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.¹⁸

¹³ 5 U.S.C. § 8103.

¹⁴ *R.C.*, Docket No. 18-0612 (issued October 19, 2018); *Vicky C. Randall*, 51 ECAB 357 (2000).

¹⁵ *B.L.*, Docket No. 17-1813 (issued May 23, 2018); *Lecil E. Stevens*, 49 ECAB 673, 675 (1998).

¹⁶ *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *Rosa Lee Jones*, 36 ECAB 679 (1985).

¹⁷ *J.R.*, Docket No. 17-1523 (issued April 3, 2018); *Bertha L. Arnold*, 38 ECAB 282, 284 (1986).

¹⁸ *Zane H. Cassell*, 32 ECAB 1537, 1540-41 (1981); *John E. Benton*, 15 ECAB 48, 49 (1963).

ANALYSIS -- ISSUE 2

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

In light of the Board's disposition of the issue of whether appellant sustained an additional condition as causally related to his accepted employment injury, it is premature to address the issue of whether OWCP properly denied authorization for total left knee replacement surgery.¹⁹

CONCLUSION

The Board finds that this case is not in posture for decision with regard to whether appellant has established a consequential right knee condition as causally related to his accepted March 9, 2010 employment injury. The Board further finds that the case is not in posture for decision with regard to whether OWCP properly denied appellant's request for total left knee replacement surgery.

ORDER

IT IS HEREBY ORDERED THAT the December 27, 2021 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: February 15, 2023
Washington, DC

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

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board

¹⁹ See *V.P.*, 21-1111 (issued May 23, 2022); *C.N.*, Docket No. 19-0621 (issued September 10, 2019).