U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RONALD M. SINGLETON and DEPARTMENT OF THE NAVY, SEAL BEACH NAVAL WEAPONS STATION, Seal Beach, CA

Docket No. 00-604; Submitted on the Record;
Issued February 21, 2001

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether appellant is entitled to more than a 23 percent permanent impairment of the left knee, for which he received a schedule award; and (2) whether he has established that he has a right knee condition causally related to his accepted left knee condition.

On September 19, 1996 appellant, then a 41-year-old guidance missile mechanic, filed a traumatic injury claim (Form CA-1) alleging that on September 18, 1996 he injured his left knee while he was pushing a missile in the performance of duty.

The Office of Workers' Compensation Programs accepted appellant's claim for internal derangement of the left knee and authorized arthroscopic surgery.[1]

On July 15, 1997 appellant, filed a claim (Form CA-7) for a schedule award for his left lower extremity and submitted a July 10, 1997 report from his treating physician. On December 30, 1997 at the request of the Office, an Office medical adviser reviewed appellant's medical records and determined that appellant was entitled to a schedule award for a 17 percent permanent impairment of the left lower extremity.

On January 9, 1998 the Office granted appellant a schedule award for a 17 percent permanent impairment of the left leg for the period July 10, 1997 to June 17, 1998.

By letter received February 12, 1998, appellant requested a review of the written record. He contended that he was entitled to an award for a 30 percent permanent impairment of his left

[1] Appellant underwent arthroscopic surgery on October 30, 1996, and returned to light-duty work on November 5, 1996. On February 20, 1997 appellant stopped work and filed a claim for a recurrence of disability, alleging that he developed a flare-up of his left knee condition due to increased walking and standing in his performance of duty. The record indicates that the Office paid appellant appropriate compensation benefits until he returned to work on May 6, 1997.

lower extremity. Appellant also asserted that his accepted left knee condition had caused him to develop a right lower extremity condition, for which he requested a schedule award.

In a decision dated August 13, 1998, an Office hearing representative set aside the Office's January 9, 1998 decision and remanded the case, finding a conflict in the medical opinion evidence between appellant's treating physician and the Office medical adviser and second opinion physician. The Office hearing representative noted that appellant also claimed injury to his right lower extremity. The hearing representative instructed the Office to adjudicate the consequential injury claim accordingly.

By letter dated September 18, 1998, the Office referred appellant, together with medical records, a statement of accepted facts and a list of specific questions, to Dr. Steven R. Graboff, a Board-certified orthopedic surgeon, for an impartial medical examination.

In a report dated October 6, 1998, Dr. Graboff, based on a thorough physical examination and review of the record, concluded that appellant's left lower extremity conditions equated to a 22 percent permanent impairment of the whole person. By letter dated November 5, 1998, the Office requested that he revise his opinion to specifically address the percentage of appellant's left lower extremity impairment, rather than the whole person. In a follow-up letter dated November 6, 1998, the Office noted that in his report Dr. Graboff had made some references to appellant's right knee and asked him whether he could offer an opinion regarding any right knee conditions appellant might have, based on his examination.

In a report dated November 17, 1998, Dr. Graboff stated that, as he had only used appellant's right knee as a comparison for examination of the left knee, he did not have sufficient diagnostic information on which to base any opinions regarding appellant's right knee. He then revised his original report to comport with the Office's use of lower extremity percentages, rather than whole person percentages and concluded that appellant had a combined permanent impairment of the left lower extremity of 23 percent.

In a decision dated November 20, 1998, the Office granted appellant a schedule award for an additional six percent permanent impairment, for a total of 23 percent. The award covered the period June 18 to October 16, 1998. Appellant requested a written review of the record, stating that he felt the award should run for the period of his original schedule award.

In a decision dated January 5, 1999, the Office denied appellant's claim for a consequential injury to his right leg on the grounds that the medical evidence of record was insufficient to support a causal relationship between his accepted left knee condition and his claimed right leg injury. By letter dated January 20, 1999, appellant requested a review of the written record with regard to his claim for a consequential injury.

In a decision dated April 15, 1999, an Office hearing representative affirmed the Office's November 20, 1998 and January 5, 1999 decisions.

The Board finds that appellant is not entitled to more than a 23 percent permanent impairment of the left knee, for which he has received a schedule award.

The schedule award provision of the Federal Employees' Compensation Act[2] and its implementing regulations,[3] set forth the number of weeks of compensation to be paid for permanent loss or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage of loss of use.[4] However, neither the Act nor the regulations specify the manner, in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* have been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.[5] Section 8123(a) of the Act provides that if there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.[6]

In the present case, the Office found that a conflict in medical opinion existed between appellant's treating physician, Dr. Anthony R. Mork, a Board-certified orthopedic surgeon and the Office medical adviser and Office referral physician and properly referred appellant to Dr. Graboff, a Board-certified orthopedic surgeon, for an impartial medical examination.

When there exist opposing medical reports of virtually equal weight and rationale and the case is 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.[7]

In his October 6 and November 17, 1998 medical reports, Dr. Graboff provided a history of appellant's left knee injury and medical treatment. He also provided his findings on physical examination. Dr. Graboff noted that appellant had a 635 cm atrophy of the left thigh and a 1.2 cm atrophy of the left calf. Applying Table 37, on page 77 of the A.M.A., *Guides*, Dr. Graboff found that while appellant's left thigh measurement yielded no degree of impairment, his left calf atrophy of 1.2 cm fell in the lower 50 percent of the range of table values, representing a mild impairment and amounting to a 4 percent impairment of the left lower extremity.

With respect to appellant's left lower extremity muscle function, Dr. Graboff noted that appellant was able to achieve active movement against gravity with some resistance and that based on Table 38, page 77, this corresponded to Grade IV muscle function. He specifically

[2] 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

[3] 20 C.F.R. § 10.404.

[4] 5 U.S.C. § 8107(c)(19).

[5] *See James J. Hjort*, 45 ECAB 595 (1994); *Luis Chapa, Jr.*, 41 ECAB 159 (1989); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

[6] 5 U.S.C. § 8123(a); *see also Rita Lusignan (Henry Lusignan)*, 45 ECAB 207 (1993).

[7] *Kathryn Haggerty*, 45 ECAB 383 (1994); *Edward E. Wright*, 43 ECAB 702 (1992).

noted, however, that this weakness was noted only in flexion and not noted in extension. Utilizing Table 39, page 77, of the A.M.A., *Guides*, Dr. Graboff concluded that a Grade IV weakness in knee flexion corresponds to a 12 percent lower extremity impairment.

Further examination of the left knee revealed no varus or valgus deformity or contractures and range of motion on extension was full to zero degrees. Dr. Graboff noted that range of motion on flexion, however, was only to 115 degrees. Utilizing Table 41, page 78 of the A.M.A., *Guides*, he concluded that as flexion to 115 degrees was just above the 110 degree measurement which would qualify appellant, pursuant to Table 41, for a 10 percent or mild, impairment rating, his best estimate of appellant's left lower extremity impairment would be approximately 8 percent.

Finally, Dr. Graboff noted that while appellant required the part time use of a cane or crutch for distance walking, Table 36 of the A.M.A., *Guides* did not provide for a specific lower extremity impairment based on gait derangement.

Utilizing the Combined Value Chart on page 322 of the A.M.A., *Guides*, Dr. Graboff determined that appellant had a 23 percent impairment of the left lower extremity.

Inasmuch as Dr. Graboff's medical report is rationalized and based on an accurate factual and medical background, the Board finds that his opinion constitutes the weight of the medical opinion evidence in this case. The Office properly determined that appellant was not entitled to more than a 23 percent permanent impairment of the left knee.

The Board further finds that appellant has not met his burden of proof to establish that he has a right knee or leg condition causally related to his accepted left knee injury.

In support of a claim for a consequential right knee or leg condition, appellant submitted reports from Dr. Anthony R. Mork dated January 28, March 24 and July 10, 1997, in which he noted that appellant complained of pain in his right knee and foot. While Dr. Mork noted that appellant attributed his right knee and foot pain to the use of crutches and to the extra strain placed on his right side as a result of favoring his left side, in his January 28 and March 24, 1997 notes Dr. Mork did not offer any opinion as to the cause of appellant's right lower extremity pain and in his July 10, 1997 report, Dr. Mork stated that appellant's right foot condition was nonindustrial. Appellant also submitted reports from Dr. Philip E. Hill, a Board-certified internist, who took over appellant's care and treatment from Dr. Mork. While in his reports dated July 14, 1997, February 2 and April 28, 1998 Dr. Hill diagnosed right foot tendinitis and bilateral knee and foot degenerative arthritis and further noted that appellant attributed his right knee and ankle pain to his use of crutches for his left knee condition, in his report dated April 27, 1998, Dr. Hill specifically stated that appellant's right knee and ankle conditions were not work related. Finally, appellant submitted a report dated January 6, 1999 from Dr. Fernando A. Ravessoud, a treating physician and Board-certified orthopedic surgeon, who noted the history of appellant's injury and treatment and further noted that appellant's symptoms had recently

switched from the left side to the right side. After reporting his findings on examination, Dr. Ravessoud stated:

> "It is my opinion that [appellant's] patellofemoral joint defects are long lasting and certainly there is a history going back some years of problems with both knees. [He] suspected from having a similar loss of patellofemoral articular cartilage precipitated by the same injury factors affecting his left knee with a possible additional influence of the increased weight bearing required on the right dominant side during rehabilitation of the left side. [Appellant's] treatment options are quite similar. His degree of impairment would be identical on the right side as the left and the left has improved though it is not resolved. [Appellant] may require future medical care for the right knee to include arthroscopy, nonsteroidal anti-inflammatory agents and rehabilitation post such procedure for which I anticipate some likelihood."

It is an accepted principle of workers' compensation law and the Board has so recognized, 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 which is attributable to the employee's own intentional conduct.[8]

In discussing how far the range of compensable consequences is carried, once the primary injury is causally connected with the employment, Professor Larson notes:

> "When 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 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]

Thus, it is accepted that once the work-connected character of any condition is established, "the subsequent progression of that condition remains compensable so long as the worsening is not shown to have been produced by an independent nonindustrial cause."[10] If a member weakened by an employment injury, contributes to a later fall or other injury, the subsequent injury will be compensable as a consequential injury, if the further medical complication flows from the compensable injury, *i.e.*, "so long as it is clear that the real operative factor is the progression of the compensable injury, with an exertion that in itself would not be unreasonable in the circumstances."[11]

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[8] *Robert W. Meeson*, 44 ECAB 834 (1993).

[9] Larson, *The Law of Workers' Compensation* § 13.00.

[10] *Id* at § 13.11(a); *see also Dennis J. Lasanen*, 41 ECAB 933 (1990).

[11] *Supra* note 8.

In the present case, appellant has not submitted sufficient medical evidence to establish that his right knee and ankle conditions are due to the accepted employment injury.

The medical evidence submitted by appellant in support of his right knee and ankle conditions offer no medical rationale to explain how appellant's condition was caused by the accepted injury. As neither Drs. Mork nor Hill offered any medical opinion causally relating appellant's right knee and ankle conditions to his accepted left knee condition, these reports are insufficient to establish appellant's claim for a consequential right lower extremity injury. In addition, while Dr. Ravessoud alludes to a connection between appellant's accepted left knee condition and his right knee and ankle condition, it is not clear from Dr. Ravessoud's report whether he is offering his own opinion or whether he is merely relating appellant's belief that his injuries are related. Furthermore, assuming the opinion is Dr. Ravessoud's own, the Board has held that a physician's opinion is not dispositive simply because it is offered by a physician.[12] To be of probative value to appellant's claim, the physician must provide a proper factual background and must provide medical rationale which explains the medical issue at hand.[13] As Dr. Ravessoud did not explain, nor is there any medical evidence of record which shows, that appellant had a right knee or ankle condition which is a consequential injury arising directly and naturally from appellant's accepted left knee conditions, the Office properly found that appellant had failed to meet his burden of proof.

The April 15, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
February 21, 2001

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[12] *See Michael Stockert*, 39 ECAB 1186 (1988).

[13] *See Robert J. Krstyen*, 44 ECAB 227 (1992).