U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICHARD P. SALDIBAR and U.S. POSTAL SERVICE,
POST OFFICE, Staten Island, NY

Docket No. 03-1017; Submitted on the Record;
Issued July 14, 2003

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has established a right ankle injury as a consequence of his accepted right knee injury.

The case was before the Board on a prior appeal. The Board remanded the case for further development on the issue of whether appellant was entitled to a schedule award for a permanent impairment to the right leg.[1] The Office of Workers' Compensation Programs paid a schedule award for a five percent permanent impairment to the right leg by decision dated December 3, 1996. By decision dated October 4, 1997, the schedule award was vacated and the Office subsequently declared an overpayment of compensation. The Board noted that, once the schedule award issue was resolved, the Office could address the overpayment issue if appropriate. The history of the case was provided in the Board's prior decision and is incorporated herein by reference.

In a report dated September 8, 2000, Dr. Samuel Epstein, an osteopath, provided a history stating in relevant part: "[Appellant] is a 50-year-old male complaining of right ankle pain. It is sharp and severe. It began yesterday when he twisted and fell. He denies any specific history of injury to his ankle. He has a history of right knee pain in the patellofemoral region and a lateral release of the right knee." Dr. Epstein diagnosed a fracture of the distal fibula on the right with a tear of the deltoid ligament. In a statement dated December 27, 2000, appellant asserted that his fall was the result of his right knee giving way.

By decision dated January 3, 2001, the Office issued a schedule award for a seven percent permanent impairment to the right leg. The award was based on a right knee impairment as described by a second opinion orthopedic surgeon, Dr. Hassan Zekavat. Since appellant had previously received an award for a five percent permanent impairment, the Office found that appellant was entitled to an additional award of two percent.

[1] Docket No. 98-2057 (issued July 13, 2000).

In a brief report dated February 26, 2001, Dr. Epstein stated: "The patient claims that his knee has been giving him problems for awhile when he was coming downstairs back on September 7[, 2000]. His knee gave way and he twisted his ankle sustaining the fracture of the right ankle. This is how his accepted knee condition resulted in the fall and fracture."

By decision dated September 10, 2001, an Office hearing representative remanded the case for further development. The hearing representative directed the Office to obtain a second opinion with respect to whether the right ankle injury was employment related, as well as the degree of permanent impairment to the right leg.

The Office referred appellant, medical records and a statement of accepted facts to Dr. Irving Strouse, a Board-certified orthopedic surgeon. In a report dated November 5, 2001, he provided a history and results on examination. With respect to the right ankle, Dr. Strouse opined: "It is my opinion that this patient's right ankle injury is unrelated to his right knee condition. I found no evidence on my examination that this patient has any weakness or instability of his right knee, which would cause him to fall."

In a decision dated December 13, 2001, the Office determined that the record did not establish that appellant's right ankle injury was causally related to his employment injury. The Office also issued a separate decision dated December 13, 2001, finding that appellant was entitled to a schedule award for an additional five percent impairment to the right leg. The award was based on an opinion from an Office medical adviser that appellant had a five percent impairment for pain and swelling in the right knee.

By decision dated December 9, 2002, an Office hearing representative affirmed the December 13, 2001 decision that appellant's right ankle was employment related. The case was remanded for additional development with respect to the schedule award issue.

The Board finds that appellant has not established that his right ankle injury was causally related to his employment injury.

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 which is attributable to the employee's own intentional conduct.[2] The Board has held that 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.[3]

Because the hearing representative remanded the case with respect to the permanent impairment to the right leg, the only adverse decision before the Board is the determination that the right ankle fracture with torn ligament is not a consequence of the accepted chondromalacia patella of the right knee. Appellant contends that on September 7, 2000 his right knee gave way

[2] *Carlos A. Marrero,* 50 ECAB 117, 120 (1998); 1 A. Larson, *The Law of Workers' Compensation* § 10.01 (2002).

[3] *Melissa M. Fredrickson,* 50 ECAB 170 (1998); *Sandra Dixon-Mills,* 44 ECAB 882 (1993).

and caused a fall that resulted in the right ankle fracture. The attending osteopath, Dr. Epstein, treated appellant on the September 8, 2000, but his report of that date does not discuss a right knee instability or otherwise support causal relationship between the employment-related knee injury and the ankle injury. In a brief report dated February 28, 2001, Dr. Epstein states that appellant's right knee "gave way," without providing additional medical explanation. Dr. Epstein does not clearly describe appellant's right knee condition and explain how the employment-related condition caused a fall on September 7, 2000. The second opinion physician, Dr. Strouse, found no evidence of knee instability and opined that the fall on September 7, 2000 was not a consequence of the right knee condition. Dr. Strouse based his opinion on a review of the medical evidence and results on examination, and the Board finds that it constitutes probative medical evidence negating causal relationship in this case.

As the weight of the medical evidence does not support causal relationship between the right ankle injury and the employment-related knee condition, appellant has not established a consequential injury. The Board accordingly finds that the Office properly found the right ankle fracture and torn ligament were not employment related.

The decision of the Office of Workers' Compensation Programs dated December 9, 2002 is affirmed.

Dated, Washington, DC
July 14, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member