

gait and lumbar strain and denied his request for authorization for a magnetic resonance imaging (MRI) scan. The Board found that the reports by Dr. Randy M. Rosenberg, a treating Board-certified neurologist, and Dr. Michael J. Rosner, a treating Board-certified internist, supported that appellant sustained consequential gait and back problems sustained in falls due to left leg instability causally related to the December 17, 1980 employment-related injury. While the reports were not sufficient to meet appellant's burden of proof to establish his claim, they were sufficient to require the Office to further develop the medical evidence. The law and the facts of the case as set forth in the Board's prior decision are hereby incorporated by reference.²

In an April 28, 2003 report, Dr. Rosenberg concluded that appellant's left leg and back pain were employment related. He stated that appellant "has more than one source of pain and disability effecting his left leg" which includes "both local musculoskeletal factors related to orthopedic disease plus a more proximal radiculopathy." Dr. Rosenberg noted that "a disturbance of nerve root supply proximally will often provoke symptoms that seem mostly focal in the leg."

On a July 8, 2003 Dr. Rosenberg noted that appellant continued to have left knee pain and would shift his balance to the right in order to relieve the weight on his painful left leg, sometimes resulting in a fall. With regard to appellant's gait, he noted it was "obviously antalgic and he favors the left leg." Appellant compensated for his gait with a cane.

In a September 30, 2003 report, Dr. Rosenberg noted that appellant recently had serious falls down a flight of steps, which he attributed to sudden flares of pain that prompted him to lose balance. Appellant related increased left leg and low back pain. On December 23, 2003 Dr. Rosenberg diagnosed antalgic gait, pain in the left leg and a tendency to favor his right side. A physical examination revealed "mild weakness of the extensor hallucis longus on the left" and "[r]eflexes were +1-2 at the knees, trace at the ankles and both toes were down going."

On April 8, 2004 Dr. Rosenberg noted that appellant continued to have leg pain and episodic falling. Physical and neurological examinations revealed an antalgic gait, left knee trace reflexes and both toes were down going.

The Office referred appellant to Dr. Kevin Hanley, a Board-certified orthopedic surgeon, for a second opinion on whether appellant's abnormal gait and lumbar strain were consequential injuries of his December 17, 1980 employment injury. In a report dated February 27, 2006, Dr. Hanley diagnosed left knee degenerative arthritis. Physical examination revealed good range of motion and stability of the left leg. Appellant could bend up to 80 degrees and had no neurologic compromise findings. An MRI scan demonstrated shows a tiny L5-S1 right lateral herniated disc, which did not appear to be impinging on the spine and did not represent a clinically significant finding. Dr. Hanley found that appellant did not develop a lumbar

² Appellant, then a 32-year-old mail carrier, sustained a traumatic injury on December 17, 1980 to his left knee when he slipped on some ice. The Office accepted the claim for left knee torn meniscus, left knee degenerative joint disease and authorized left knee arthroscopic surgery, which was performed on February 11, 1999. A total left knee replacement was performed on April 29, 1999. Appellant's claim was expanded on May 13, 2002 to include the condition of pain disorder associated with psychological factors and a generalized medical condition. The Office accepted his claims for recurrences of disability and intermittent periods of disability from 1981 to 2001. The Office placed appellant on the periodic rolls effective December 30, 2001.

condition or abnormal gait as a result of his accepted injury. He stated that appellant “has had some falls, but the knee does not give way.” It could not be concluded that appellant’s altered gait caused his falls. Dr. Hanley stated that the physical examination showed “there is no reason to consider altered gait as a cause of his occasional low back pain.” He found that appellant’s low back was not very symptomatic and that his symptoms continued to stem from his knee problems and involved the medial aspect of the knee down the leg. Dr. Hanley opined that appellant had not aggravated any preexisting back condition and found no evidence of a material change in the back as a consequence of the employment injury.

By decision dated May 11, 2006, the Office denied appellant’s claim, finding that he did not sustain a lumbar strain or abnormal gait due to his accepted injury.

In a letter dated May 15, 2006, appellant’s counsel requested a review of the written record by an Office hearing representative.

On June 28, 2006 Dr. Rosenberg reported that appellant attributed his fall down a flight of the stairs to “the sudden onset of blindly intense pain that literally throws him off his balance.” Physical examination revealed a familiar antalgic gait, L5 left lower mild weakness and the bilateral lower extremity absence of deep tendon reflexes. As to appellant’s lumbar condition, Dr. Rosenberg noted that “the disease is persistent and a consistent source of disability and generating local, as well as referred pain.” He reported that “[t]he absence of any overt neurologic deficit today is not indication of the absence of disease in general and it would be unfortunate if at any time the patient’s pains are underestimated.”

By decision dated October 27, 2006, the Office hearing representative affirmed the May 11, 2006 decision.

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 which is attributable to the employee’s own intentional conduct.³ In discussing how far the range of compensable consequences is carried, once the primary injury is causally connected with the employment, Professor Larson states:

“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.”⁴

³ Larson, *The Law of Workers’ Compensation* § 10.00 (2007); see also *John R. Knox*, 42 ECAB 193 (1990).

⁴ Larson, *supra* note 3 at 10.02 (2003); see also *Kathy A. Kelley*, 55 ECAB 206 (2004); *Stuart K. Stanton*, 40 ECAB 859 (1989); *Robert R. Harrison*, 14 ECAB 29 (1962).

Section 8123(a) of the Federal Employees' Compensation Act provides in pertinent part: if there is 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.⁵ When there are opposing reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a) of the Act, to resolve the conflict in the medical evidence.⁶

ANALYSIS

The Office accepted the conditions of left knee torn meniscus, left knee degenerative joint disease, left knee degenerative joint disease pain disorder associated with psychological factors and a generalized medical condition. The question on appeal is whether appellant sustained consequential injuries of lumbar strain and abnormal gait due to the accepted December 17, 1980 employment injury.

Dr. Rosenberg opined that appellant's left leg and back pain were related to his accepted injury. He described appellant as losing his balance and falling as a result of sudden intense left leg pain. On July 8, 2004 Dr. Rosenberg noted that appellant continued to experience left knee pain, which could flare unexpectedly and that appellant shifted his balance to the right knee to relieve pain. This sometimes resulted in a fall. Dr. Rosenberg noted that appellant's gait was "obviously antalgic and he favors the left leg" and used a cane. On June 28, 2006 he reiterated his findings of an antalgic gait, L5 left lower mild weakness and the bilateral lower extremity absence of deep tendon reflexes. Dr. Rosenberg also noted that appellant had recently fallen down a flight of stairs, which he attributed to severe left leg pain which caused him to lose his balance.

Dr. Hanley, an Office referral physician, reviewed the medical evidence and statement of accepted facts and performed a physical examination. He provided a report concerning appellant's medical history and diagnosed left knee degenerative arthritis. Dr. Hanley concluded that appellant's abnormal gait and lumbar conditions were not consequential to the accepted work-related left knee injury. He stated that appellant's gait was not the cause of his occasioned back pain.

The Board finds a conflict in the medical opinion between Dr. Rosenberg and Dr. Hanley.⁷ Dr. Rosenberg found that appellant's lumbar and abnormal gait conditions were consequential injuries arising from his accepted left leg condition. Dr. Hanley opined that appellant did not have an abnormal gait and his lumbar condition was unrelated to his employment injury. The Board will remand the case to the Office for appropriate development of the medical record to determine whether appellant sustained an abnormal gait and lumbar condition as a consequence of his accepted employment-related left knee injury. On remand, the

⁵ 5 U.S.C. § 8123(a); *R.C.*, 58 ECAB ___ (Docket No. 06-1676, issued December 26, 2006); *Darlene R. Kennedy*, 57 ECAB ___ (Docket No. 05-1284, issued February 10, 2006).

⁶ *M.S.*, 58 ECAB ___ (Docket No. 06-797, issued January 31, 2007).

⁷ *Bryan O. Crane*, 56 ECAB 713 (2005).

Office should prepare a statement of accepted facts and a list of questions and refer appellant to an appropriate Board-certified physician for an impairment medical opinion. Following this and any other further development as deemed necessary, the Office shall issue an appropriate decision on appellant's claim.

CONCLUSION

The Board finds that this case is not in posture for a decision due to an unresolved conflict in the medical opinion evidence.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs' hearing representative dated October 27, 2006 is set aside and the case remanded for further proceeding consistent with the above opinion.

Issued: February 21, 2008
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board