

FACTUAL HISTORY

On November 10, 1999 appellant, then a 55-year-old immigration inspector, filed a notice of occupational disease and claim for compensation for the conditions of carpal tunnel syndrome and aggravated lumbar disc which he claimed were due to various repetitive activities in the course of his employment. He first became aware of his conditions and it was caused or aggravated by his employment on July 19, 1999. Appellant worked for the employing establishment from February 21, 1995 until July 1999, when he stopped working. The Office accepted the conditions of bilateral carpal tunnel syndrome and lumbosacral sprain.²

In a September 26, 2007 letter, appellant's attorney requested that additional diagnosed conditions, including degenerative joint disease of both knees be accepted as work related. In follow-up letters from 2008 and 2009, appellant continued to request that his bilateral knee conditions be accepted. He also referenced various medical reports of record in support of his request.

In an October 21, 1999 report, Dr. Kevin L. Metros, a Board-certified orthopedic surgeon, diagnosed several conditions, including right knee patellofemoral subluxation. In an August 25, 2000 report, Dr. Metros noted appellant was last seen on May 23, 2000 and continued, among other conditions, to have intermittent back pain along with knee pain. He diagnosed right patellofemoral arthritis, bilateral carpal tunnel syndrome and lumbar disc disease. In a May 15, 2001 report, Dr. Metros noted his treatment of various conditions since August 1999. Among the medical conditions treated, Dr. Metros listed right knee pain/patellofemoral arthritis, nonindustrial. No opinion was provided on the cause of appellant's right knee condition.

In a September 1, 2005 report, Dr. Jacob E. Tauber, a Board-certified orthopedic surgeon, noted that appellant stated he developed knee pain in the course of his employment and his knee was now giving way. He stated the x-rays showed degenerative patellar spurring in the right knee and that appellant had medial jointline tenderness at the right knee with effusion. Dr. Tauber continued to report on appellant's right knee problems. A September 22, 2005 magnetic resonance imaging (MRI) scan of the right knee revealed a small vertical tear of the posterior horn of the medial meniscus posterior to the tip without cartilage damage or displaced meniscal fragment, prepatellar soft tissue edema and a popliteal cyst.

Dr. Tauber sought authorization for arthroscopic surgery and also reported problems had developed in the left knee. A December 21, 2006 MRI scan of the left knee indicated appellant had history of left-sided knee pain for three months without history of trauma. Findings revealed normal collateral and cruciate ligaments; mild patellar tendinitis; bursitis of subcutaneous infrapatellar bursa; mild to moderate-sized joint effusion with a 2.4 centimeter Bakers' cyst; degenerative tear of the free edge of the lateral meniscus; and complex tear of the posterior horn and body of the medial meniscus.

² On September 12, 2006 the Office issued a schedule award for 10 percent permanent impairment of the left arm and 10 percent permanent impairment of the right arm.

In an August 30, 2007 report, Dr. Tauber indicated that appellant had a long history of low back pain and knee pain. He stated that appellant's lumbar spine MRI scan revealed spinal stenosis and a disc protrusion that measured seven millimeters at L5-S1. Spinal stenosis was also noted at multiple levels. Dr. Tauber indicated that appellant's back pain had resulted in weakness, further aggravating his underlying knee condition. He noted that a medial meniscal tear was documented on MRI scan and stated, as a result of the radiating pain and weakness, appellant's knee had given way even more than one would expect from the meniscal tear alone. Dr. Tauber stated that the claim had been accepted for lumbar spinal stenosis with sciatica from L1 through L5 and at L5-S1. He opined that the right knee had been further aggravated on a permanent basis by the lumbar spine condition thereby making it industrial in nature.

In an October 25, 2007 report, Dr. Tauber noted that appellant had complaints in multiple regions that were documented, but the only accepted conditions were bilateral carpal tunnel syndrome and lumbosacral strain. He stated the knee condition had been documented over the years and the October 5, 2006 MRI scan of the right knee documented a torn medial meniscus and degenerative arthritis. Dr. Tauber opined these conditions should be considered industrial and the claim expanded to include those conditions.

In a July 22, 2009 letter, the Office advised appellant's attorney that the medical record was insufficient to support causal relationship of the claimed bilateral knee condition.

In letters dated September 10 and October 5, 2009, appellant's attorney requested a formal decision be issued concerning appellant's knee conditions. In a September 3, 2009 report, Dr. Tauber stated that appellant's knee pain went back to 1999 and was also noted in 2001. He advised that appellant had spinal stenosis and degenerative arthritis of the knees. Dr. Tauber described appellant's work duties, as contained in the January 14, 2009 statement of accepted facts, and stated that appellant carried out extensive strenuous duties which would clearly affect his lumbar spine and his knees. He opined that appellant's knee conditions had been at least partially affected by those duties.

By decision dated October 8, 2009, the Office denied appellant's claim for a bilateral knee condition as the medical evidence did not establish that the claimed condition was causally related to factors of his employment.

Appellant's attorney disagreed with the October 8, 2009 decision and requested an oral hearing. A video hearing was held on January 8, 2010. Appellant testified about his right knee condition and treatment. He also provided additional medical evidence. In an October 3, 2007 report, Dr. Tauber indicated appellant's right knee MRI scan showed a tear of the medial meniscus. Chondromalacia of the lateral compartment was also noted. He indicated that those findings should be regarded as tentative diagnoses. Dr. Tauber advised that appellant had patellar spurring and thus likely had chondromalacia of the patella. In a January 21, 2010 report, he indicated that appellant had severe low back pain with radiation as well as pain at his knees. Lumbar spine x-rays indicated degenerative disc disease. Dr. Tauber stated that appellant had a long-standing work-related lumbar spine abnormality and that his impaired gait, due to his back conditions, caused stress to the knees. He opined that this stress caused a permanent aggravation of degenerative joint disease of both knees.

By decision dated March 8, 2010, an Office hearing representative affirmed the Office's October 8, 2009 decision. He found that the evidence did not show that appellant's work factors from 1995 to 1999 caused a bilateral knee condition or that the accepted low back strain caused or aggravated any knee condition.

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 attributable to the employee's own intentional conduct.³

When an employee claims that a condition not accepted or approved by the Office was due to an employment injury, he bears the burden of proof to establish that the condition is causally related to the employment injury.⁴ To establish a causal relationship between the condition claimed, as well as any attendant disability and the employment event or incident, an employee must submit rationalized medical evidence based on a complete medical and factual background supporting such a causal relationship.⁵ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁶ Rationalized medical evidence is evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. 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

Neither the 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.⁸

ANALYSIS

At the time of the Office's October 8, 2009 and March 8, 2010 decisions, the only accepted conditions were that of bilateral carpal tunnel syndrome and lumbosacral strain. Appellant subsequently claimed that his knee conditions should be accepted. The issue of whether appellant's knee conditions are causally related to factors of his federal employment or

³ *John R. Knox*, 42 ECAB 193 (1990); *Lee A. Holle*, 7 ECAB 448 (1955).

⁴ *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁵ *Jennifer Atkerson*, 55 ECAB 317 (2004).

⁶ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁷ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁸ *Ernest St. Pierre*, 51 ECAB 623 (2000).

are consequential to the accepted conditions is based on the sufficiency of the medical evidence.⁹ The Board finds the medical evidence is insufficient to establish causal relationship between appellant's knee conditions and factors of his federal employment or a consequential injury due to his accepted lumbosacral strain.

Dr. Tauber initially reported a right knee condition in his September 1, 2005 report and reported a left knee problem in December 2006. He offered no opinion on causation¹⁰ until August 30, 2007, when he opined that the right knee medial meniscal tear had given way more than one would expect from the meniscal tear alone. Dr. Tauber opined that the knee condition was permanently aggravated by back pain from his lumbar spinal stenosis with sciatica from L1 through L5 and at L5-S1. He stated that the Office had accepted the claim for the condition of lumbar stenosis with sciatica and thus opined that the right knee condition was industrial in nature. The Office, however, had not accepted the condition of lumbar spinal stenosis with sciatica. Thus, Dr. Tauber's opinion is based on an inaccurate factual background¹¹ and he did not otherwise provide medical reasoning explaining how any knee conditions were due to appellant's employment or to the accepted lumbar strain. While he properly noted the Office had accepted a lumbosacral strain in his October 25, 2007 report, Dr. Tauber offered no explanation with medical rationale as to why appellant's right knee torn medial meniscus and degenerative arthritis were work related either as a new condition causally related to work factors or as a consequential injury. On September 3, 2009 Dr. Tauber opined that appellant's knee conditions were at least partially affected by his employment duties but he did not provide an explanation as to how appellant's duties would affect his knees. In his January 21, 2010 report, Dr. Tauber opined that appellant's employment-related lumbar spine abnormality and the resultant impaired gait caused stress to the knee and caused a permanent aggravation of appellant's bilateral degenerative joint disease of the knees. However, this opinion is general in nature as it did not identify how or why the accepted lumbosacral strain could result in an impaired gait and cause stress on appellant's degenerative joint disease of the knees more than 10 years after appellant stopped work in 1999. Other reports from Dr. Tauber offered no opinion for cause of appellant's knee conditions. For the reasons explained above, Dr. Tauber's reports are of insufficient probative value to accept appellant's claim.

Dr. Metro first reported appellant's complaints of right knee pain in October 1999. He diagnosed right knee patellofemoral subluxation and right patellofemoral arthritis. However, Dr. Metro failed to offer an opinion on the causation of appellant's right knee condition in his October 21, 1999 and August 25, 2000 reports. Moreover, the Board notes that he specifically negated causation in his May 15, 2001 report by noting the right knee pain/patellofemoral arthritis was nonindustrial. Dr. Metro offered no opinion regarding appellant's knee conditions

⁹ Causal relationship is a medical issue that must be established through rationalized opinion by a physician. *John W. Montoya*, 54 ECAB 306 (2003).

¹⁰ Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship. *A.D.*, 58 ECAB 149 (2006); *Conard Hightower*, 54 ECAB 796 (2003).

¹¹ See *Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions based upon an incomplete history have little probative value).

as a consequential injury to his accepted conditions. Thus, his reports are insufficient to establish appellant's claim.

Appellant argues on appeal that the denial of his claim was a serious injustice. However, it is his burden of proof to submit the necessary medical evidence to establish either a new condition or a consequential injury. As noted above, appellant has not met his burden of proof as the medical evidence submitted is insufficient to establish either a causal or a consequential relationship between his diagnosed knee conditions and factors of his federal employment or his accepted work-related conditions.

CONCLUSION

The Board finds that appellant did not meet his burden of proof in establishing that his knee conditions are either causally related to factors of his federal employment or a consequence of his accepted conditions.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated March 8, 2010 is affirmed.

Issued: April 22, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board