United States Department of Labor
Employees' Compensation Appeals Board

T.S., Appellant **and** **U.S. POSTAL SERVICE, POST OFFICE, Muskegon, MI, Employer**	)	**Docket No. 16-1477** **Issued: December 16, 2016**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On July 11, 2016 appellant filed a timely appeal from a March 25, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established an additional cervical, left shoulder, or back condition as a consequential injury from an October 16, 2013 fall.

FACTUAL HISTORY

OWCP has administratively combined three of appellant's claims. In the first claim appellant, then a 37-year-old carrier, filed a claim for traumatic injury (Form CA-1) alleging that he sustained a left knee injury on June 6, 1978 as a result of striking a bolt head that protruded

[1] 5 U.S.C. § 8101 *et seq.*

from a dash panel. This claim was accepted for left knee meniscus derangement and left leg traumatic arthropathy. On January 5, 1979 appellant underwent authorized left knee surgery that included a total medial meniscectomy.

By decision dated July 17, 1990, OWCP issued a schedule award for 10 percent left leg permanent impairment, based on loss of motion and pain. The date of maximum medical improvement (MMI) was June 23, 1979. Appellant retired from federal employment on November 2, 2002.

In a report dated December 10, 2011, an OWCP medical adviser, Dr. Brian Tonne, a Board-certified orthopedic surgeon, opined that appellant had 28 percent left leg permanent impairment. He used Table 16-3 of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment,* for left knee arthritis. By decision dated January 9, 2012, OWCP issued a schedule award for an additional 18 percent permanent impairment to the left leg.

OWCP also requested that Dr. Tonne provide an opinion as to whether appellant had sustained a consequential right knee condition. By report dated April 19, 2012, an OWCP medical adviser opined that it was reasonable to conclude that appellant's degeneration of the right knee meniscus was a consequential injury. On April 24, 2012 OWCP accepted bilateral meniscus derangement, bilateral traumatic arthropathy of the lower legs, and right knee internal derangement. By report dated September 6, 2012, an OWCP medical adviser opined that appellant had 26 percent right leg permanent impairment, based on Table 16-3 of the A.M.A., *Guides*. In a decision dated February 6, 2013, OWCP issued a schedule award for a 26 percent permanent impairment to the right leg.

In his second claim, appellant alleged that on March 18, 1991, he slipped and fell while in the performance of duty and injured both shoulders. OWCP developed the claim as a claim for traumatic injury.[2] Under this claim it accepted bilateral shoulder strains, fractured left humerus, lumbar strain, and C6-7 herniated disc. An OWCP medical adviser opined, in a June 9, 1995 report, that under the fourth edition of the A.M.A., *Guides* appellant had 19 percent impairment to both arms. By decision dated December 12, 1995, OWCP issued a schedule award for a 38 percent permanent impairment of the upper extremities due to his right and left shoulder conditions.

Appellant's third claim was a notice of traumatic injury (Form CA-1) filed on December 18, 2000 for a November 21, 2000 injury. He alleged that he slipped on snow and ice while in the performance of duty, and injured his right wrist, right shoulder, and low back. OWCP accepted the claim for aggravation of right shoulder osteoarthritis on July 18, 2001. It also accepted lumbar sprain and displacement of cervical intervertebral disc without myelopathy.

With respect to the 1990 accepted left leg claim, appellant requested reconsideration of the January 9, 2012 decision in a March 3, 2012 letter and argued that OWCP had used an incorrect date of MMI. OWCP issued a May 21, 2012 decision finding that he was not entitled to an additional schedule award for the left leg. By letter dated May 26, 2012, appellant

[2] Appellant had filed this claim on Form CA-2 as a recurrence of disability.

requested reconsideration and argued that he was not contesting the percentage of impairment, but the date of MMI and corresponding pay rate. In a decision dated November 27, 2012, OWCP denied modification. Appellant filed an appeal with the Board.

The Board reviewed the November 27, 2012 decision and in a July 8, 2013 decision remanded the case to OWCP.[3] The Board found that OWCP had failed to make proper findings with respect to MMI and pay rate related to the schedule award for the left lower extremity.

Following remand, OWCP issued a nonmerit decision dated August 28, 2013 denying the request. Appellant filed another appeal with the Board, and by Order dated April 3, 2014, the Board remanded the case to OWCP.[4] The Board found that the August 28, 2013 OWCP decision had not complied with the directive of the Board's remand. The record indicates that OWCP subsequently issued a July 29, 2014 merit decision amending the July 17, 1990 schedule award decision and finding that the date of MMI was March 19, 1990.

In addition to pursuing the issue of MMI and pay rate, appellant also claimed that he had suffered consequential injuries from his left knee condition. In an October 24, 2013 letter, he reported that his left knee condition had worsened. Appellant alleged that on October 16, 2013, his left knee had buckled and he fell, striking the edge of a billiard table. He asserted that his left shoulder and head also hit the floor and he was treated at the emergency room on October 16, 2013.

In a hospital report dated October 16, 2013, Dr. Seth Jaskowiak, an osteopathic physician specializing in emergency medicine, indicated that appellant reported that his left knee buckled and he hit his head on the edge of a billiard table, with no loss of consciousness. He noted that appellant reported left-sided neck pain. In a hospital report dated October 23, 2013, Dr. Bryan Eadie, an osteopathic physician specializing in emergency medicine, indicated that appellant was seen for removal of sutures above his left eyebrow, and appellant had reported angina-type chest pain while walking into the hospital.

By report dated October 23, 2013, Dr. Fredric Levin, Board-certified in orthopedic surgery, considered appellant a good candidate for bilateral knee replacements. He reported that appellant had fallen and reinjured his neck, and that appellant felt this was an aggravation secondary to the fall. Dr. Levin diagnosed bilateral knee degenerative joint disease.

Appellant was seen on December 5, 2013 by Dr. Yousif Hamati, a Board-certified orthopedic surgeon. Dr. Hamati provided a history of stiff neck, low back pain, and bilateral shoulder pain for the last 22 years. He reported that appellant's knee buckled and he fell, hitting his head on a pool table, and landing on his shoulder. Dr. Hamati provided results on examination, and reviewed cervical x-rays, which showed multilevel cervical degenerative disc disease, and lumbar x-rays which showed hypertrophic osteophytes at multiple levels.

[3] Docket No. 13-0767 (issued July 8, 2013).

[4] Docket No. 13-2135 (issued April 3, 2014).

OWCP referred the record to its medical adviser who reviewed the medical evidence and opined, in a December 16, 2013 report, that bilateral knee surgery was appropriate for the accepted conditions.

In a report dated February 25, 2014, Dr. Hamati reported that appellant had a history of multiple injuries to neck and back. He wrote that appellant reported that his neck was "really bad and [appellant] want[ed] something done for it soon." Appellant asserted that walking and the knee buckling, had aggravated neck pain, and Dr. Hamati advised appellant that the walking and knee buckling could aggravate the cervical condition. Dr. Hamati recommended a cervical magnetic resonance imaging (MRI) scan.

Dr. Hamati submitted a March 18, 2014 report, noting that appellant's knee had buckled on October 16, 2013. He wrote that appellant had a hyperextension injury that caused worsening of his neck condition. Dr. Hamati indicated that appellant had a work-related injury in 1991, and had "a skipped area in [appellant's] fusion and now that is deteriorated. I agree with the neurosurgeon who saw him, that this is completely work related, related to the previous injury because of his current situation and the skipped joint in his neck." He discussed the results of a March 5, 2014 MRI scan, noting bone osteophyte complex in the midline compressing the spinal cord resulting in mild spinal canal stenosis, with arthritis of the facet joints causing severe bilateral neural foraminal narrowing. Dr. Hamati concluded that appellant had a bad knee, due to the injury in the 1970s, which had deteriorated and was buckling on him, and "[appellant's] buckling injury definitely caused the problems he is having now."

OWCP referred the case to an OWCP medical adviser for an opinion with respect to the October 16, 2013 fall. The medical adviser was asked to provide an opinion as to whether appellant's head laceration or angina on October 23, 2013 were consequential injuries. In a report dated March 26, 2014, OWCP's medical adviser opined that the buckling of the knee was related to the employment-related left knee condition and that appellant sustained a laceration on the left side to the head/scalp. The medical adviser noted a history of angina, but found that the angina episode on October 23, 2013 was related to having stiches removed from the October 16, 2013 fall.

On June 16, 2014 OWCP accepted a laceration to the left side of the scalp and a single episode of angina. In a letter dated August 18, 2014, appellant alleged that he sustained additional injuries on October 16, 2013 to his neck, left shoulder, and mid to low back.

By decision dated September 22, 2014, OWCP found that the evidence was insufficient to establish additional consequential injuries. It found that the medical evidence did not establish consequential injuries other than a laceration and a single episode of angina.

On October 10, 2014 appellant requested a review of the written record by an OWCP hearing representative. He submitted an October 14, 2014 report from Dr. Hamati, which found that appellant had a problem in his neck and that appellant "relates this all to the accident in 2013." Dr. Hamati had progression of his arthritic changes, and "[t]he injury aggravated this problem. He now has a ruptured biceps tendon."

By decision dated February 23, 2015, the hearing representative affirmed the September 22, 2014 OWCP decision. The hearing representative found that there was no rationalized medical opinion with respect to additional diagnosed conditions causally related to the October 16, 2013 fall.

Appellant again requested reconsideration on April 8, 2015 and submitted a March 12, 2015 report from Dr. Hamati. Dr. Hamati related that appellant continued to have difficulty with his neck, lower back, and left shoulder. He opined that "[t]his injury happened [October 16, 2013]. [Appellant] had a previous work-related injury to his left knee." Dr. Hamati described the fall on October 16, 2013 as resulting in appellant jamming his shoulder as he fell on the floor, hurting his back. He wrote, "So obviously the fall had aggravated [appellant's] neck, shoulder, knee, and lower back." According to Dr. Hamati, the recent MRI scan showed multiple bulging discs from L1 to S1, with arthritic changes and narrowing of the canal. He opined that the basic problem was arthritis, but a fall "could very easily aggravate" appellant's neck, shoulder, back, and knee problems. Dr. Hamati concluded that "because of that fall, it caused head injury, neck injury, shoulder injury, and low back pain injury. There is no doubt that it has caused permanent changes, which caused them to be very symptomatic and very painful."

By decision dated July 7, 2015, OWCP reviewed the merits of the claim and denied modification. It found that the medical evidence did not establish additional consequential injuries causally related to the October 16, 2013 fall.

On November 3, 2015 appellant again requested reconsideration. He submitted a brief November 3, 2015 report from Dr. Hamati, in which appellant was referred for an electromyogram (EMG) of his upper and lower extremities.

Appellant submitted a December 14, 2015 report of electrodiagnostic examination from Dr. Kate McCausland, an osteopathic physician, specializing in physical medicine. Dr. McCausland noted that appellant worked as a mail carrier and had multiple injuries throughout his career. The diagnoses included carpal tunnel syndrome, left ulnar neuropathy, and lumbosacral radiculopathy. Dr. McCausland reported that today's electrodiagnostic findings of bilateral lumbar radiculopathy are consistent clinically with lumbar spinal stenosis.

In a report dated December 22, 2015, Dr. Hamati reviewed the EMG, which showed moderate carpal tunnel syndrome on the right and left ulnar nerve neuropathy across the elbow. He also noted sensory motor axonal polyneuropathy of both legs and lumbar radiculopathy at L5-S1 consistent with spinal canal stenosis clinically. Dr. Hamati opined that these conditions were secondary to a March 18, 1991 injury. He wrote that appellant "was a mailman for 40 years and [appellant] did a lot of sorting. Any repetitive work for 40 years is definitely a major contributing factor to these symptoms and his diagnosis."

By decision dated March 25, 2016, OWCP reviewed the merits of the claim and denied modification. It found that the medical evidence did not establish a consequential back, left shoulder, or cervical injury causally related to the October 16, 2013 fall.

LEGAL PRECEDENT

With respect to consequential injuries, 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.[5] 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.[6]

A claimant bears the burden of proof to establish a claim for a consequential injury.[7] As part of this burden, he or she must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship. Rationalized medical evidence is evidence, which relates a work incident or factors of employment to a claimant's condition, with stated reasons of a physician. 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.[8]

ANALYSIS

In the present case, with respect to the June 6, 1978 claim, OWCP has accepted bilateral meniscus derangement, bilateral traumatic arthropathy of the lower legs, right knee internal derangement. It has also accepted bilateral shoulder strains, fracture left humerus, lumbar strain, and C6-7 herniated disc, resulting from a March 18, 1991 slip and fall. In addition, there was a November 21, 2000 slip and fall accepted for aggravation of right shoulder osteoarthritis, lumbar sprain, and displacement of cervical intervertebral disc without myelopathy.

OWCP accepted that the fall on October 16, 2013 was the result of his employment-related left knee buckling. As a result of the fall, it accepted a laceration of the head/scalp, and a single episode of angina pectoris.

The issue presented is whether appellant sustained any other consequential injuries to his neck, back, or left shoulder as a result of that fall. It is appellant's burden of proof to establish any additional consequential injuries.[9] The Board has reviewed the evidence and finds that it is insufficient to meet his burden of proof.

Appellant was treated on October 16, 2013 and the initial hospital report from Dr. Jaskowiak referred only to appellant hitting his head on the pool table. Dr. Levin noted on

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[5] *Albert F. Ranieri*, 55 ECAB 598 (2004).

[6] *See* A. Larson, *The Law of Workers' Compensation* § 10.01 (November 2000).

[7] *J.A.,* Docket No. 12-603 (issued October 10, 2012).

[8] *Id.*

[9] *Supra* note 7.

October 23, 2013 that appellant felt he had injured his neck in the fall, without providing further detail.

Where an employee claims that, a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury. To establish a causal relationship between the condition claimed and the employment event or incident, the employee must submit rationalized medical evidence based on a complete medical and factual background supporting such a causal relationship.[10] The reports from Drs. Jaskowiak and Levin do not provide the factual background necessary to establish that appellant sustained a diagnosed medical condition as a consequence of his accepted injury.

Similarly, Dr. Hamati reported on December 5, 2013, that appellant had landed on his shoulder in the fall. He did not provide a diagnosis of a shoulder injury. In a March 18, 2014 report, Dr. Hamati briefly referred to a hyperextension that caused appellant's neck condition to worsen. He does not provide a complete medical history regarding appellant's neck, offer a diagnosis for a cervical condition, or explain how the October 16, 2013 fall affected the neck. Dr. Hamati then provided a March 12, 2015 report opining that the fall had aggravated appellant's neck, shoulder, knee, and lower back. Again, he does not provide a complete medical history.[11] As noted above, appellant presented with a complicated medical history that involved three claims. Dr. Hamati does not explain the nature and extent of any aggravation to the neck, back, or shoulder. No medical rationale was provided. An opinion with respect to aggravation must differentiate between the effects of the work-related injury or disease and the preexisting condition.[12] The Board has held that the physician must clearly explain the nature and extent of any aggravation, including whether temporary, or permanent.[13]

In his December 22, 2015 report, Dr. Hamati referred to repetitive work over 40 years. That is not the medical issue on appeal. The claim in this case was for additional injuries from the consequential fall on October 16, 2013.

It is appellant who has the burden of proof to establish additional consequential injuries.[14] For the reasons discussed above, the Board finds that appellant did not meet his burden of proof in this case.

On appeal, appellant argues that the medical evidence was sufficient to require further development, such as referral to an OWCP medical adviser. He also argues that OWCP has the burden of proof to modify or terminate compensation. The issue in this case is whether there were any additional consequential injuries from the October 16, 2013 fall. OWCP has not

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[10] *See L.C.*, Docket No. 08-2523 (issued May 15, 2009).

[11] *Id*.

[12] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(e) (January 2013).

[13] *See R.H.,* Docket No. 15-1785 (issued January 29, 2016).

[14] *Supra* note 7.

accepted any cervical, or back conditions as consequential injuries. It is appellant's burden of proof and, for the reasons discussed, the medical evidence is of diminished probative value on the issue presented.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not established an additional cervical, left shoulder, or back condition as a consequential injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 25, 2016 is affirmed.

Issued: December 16, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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