United States Department of Labor
Employees' Compensation Appeals Board

D.G., Appellant	)	
and	)	**Docket No. 20-1183**
	)	**Issued: May 26, 2021**
U.S. POSTAL SERVICE, PARK HILL STATION POST OFFICE, Denver, CO, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On May 12, 2020 appellant filed a timely appeal from a January 28, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP).[1] Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[3]

[1] The Board notes that appellant requested oral argument pursuant to section 501.5(b) of the Board's *Rules of Procedure*. 20 C.F.R. § 501.5(b). On September 3, 2020 appellant requested withdrawal of his request for oral argument.

[2] 5 U.S.C. § 8101 *et seq.*

[3] The Board notes that, following the issuance of the January 28, 2020 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met his burden of proof to establish a consequential lumbar condition causally related to the accepted November 22, 2014 employment injury.

FACTUAL HISTORY

On November 24, 2014 appellant, then a 50-year-old carrier technician, filed a traumatic injury claim (Form CA-1) alleging that on November 22, 2014 he strained his left knee when he slipped and fell on wet grass and ice while in the performance of duty. He stopped work and returned to full-time modified-duty work on November 26, 2014. OWCP accepted appellant's claim for left knee sprain and temporary aggravation of left knee degenerative joint disease.

On July 27, 2015 appellant underwent OWCP-approved total left knee arthroplasty and stopped work. He subsequently underwent left knee manipulation under anesthesia on October 1, 2015. On June 2, 2016 appellant underwent OWCP-approved left knee arthroscopy with extensive debridement and lateral release. OWCP paid him wage-loss compensation on the supplemental rolls for intermittent periods of total disability.

By decision dated February 8, 2016, OWCP expanded the acceptance of appellant's claim to include permanent aggravation of left knee degenerative joint disease with arthrofibrosis.

On October 22, 2016 appellant returned to full-time modified-duty work as a letter carrier. Thereafter, by decision dated June 14, 2017, OWCP reduced his compensation to zero, effective that date, based on his actual wages as a modified letter carrier. It indicated that appellant had been employed in the position for over 60 days and noted that his actual wages exceeded the wages of the job he held when injured.

By decision dated February 20, 2019, OWCP expanded the acceptance of appellant's claim to include the additional conditions of a left foot hallux valgus and left foot/ankle bursitis.

In a March 7, 2019 report, Dr. Philip A. Stull, a Board-certified orthopedic surgeon, indicated that he last treated appellant in June 2017 for left knee complaints. He noted that appellant was three years post-left total knee arthroplasty (TKA) that was complicated by arthrofibrosis. Dr. Stull recounted that appellant currently complained of some intermittent ache and stiffness in his left knee and also reported other symptoms, including low back pain, numbness on the lateral side of the left leg, and intermittent tingling in the right leg. Upon examination of appellant's lumbar spine, he observed mild loss of lumbar lordosis and mild paralumbar spasm and tenderness. Dr. Stull indicated that lumbar x-ray films showed significant disc space narrowing at the upper lumbar levels and fairly large anterior osteophytes at L4 and L5 with some facet hypertrophy at the lower lumbar levels. Examination of appellant's left knee demonstrated mild crepitus from the patellofemoral compartment and no effusion or tenderness. Dr. Stull diagnosed degenerative joint disease of the lumbar spine with lower extremity radiculopathy and left knee mild arthrofibrosis. He recommended a lumbar spine magnetic resonance imaging (MRI) scan and a follow up with Dr. Stephen Pehler, a spine specialist and Board-certified orthopedic surgeon.

In an April 1, 2019 report, Dr. Stull recounted appellant's complaints of left knee pain and persistent low back symptoms. He provided examination findings for appellant's left knee and diagnosed left knee arthrofibrosis, status post-left TKA. Dr. Stull also reported that, "regarding causation, it is reasonable to suggest that [appellant's] back issue, the lumbar spine, is related to chronic knee difficulties." He explained that appellant had an altered gait due to an arthritic knee for many years. Dr. Stull noted that appellant had a "rocky recovery" from his surgery, which also contributed to his back difficulties.

An April 4, 2019 lumbar spine MRI scan report revealed diffuse lumbar degenerative disc disease and facet arthropathy with congenital lower lumbar central canal narrowing, severe central canal stenosis at L4-5, moderate central canal stenosis at L3-4, and mild-to-moderate formal stenosis bilaterally at L4-5 and L5-S1.

In an April 29, 2019 report, Dr. Pehler indicated that appellant was seen for initial consultation regarding his low back pain with left lower extremity radiculopathy. He noted that appellant had informed him that it was due to a 2014 work-related injury when he slipped on wet grass. Dr. Pehler recounted that appellant reported that four to five months prior, he began to have debilitating low back pain shooting down his left leg. Upon examination of appellant's lower extremities, he observed intact sensation to light touch and normal motor testing. Straight leg raise testing was positive on the left at 30 degrees. Dr. Pehler reported problems of lumbar disc degeneration with neurological manifestation and lumbar intervertebral disc stenosis of the neural canal.

On May 8, 2019 OWCP requested that a district medical adviser (DMA) review Dr. Stull's reports and comment on whether he agreed with his opinion that appellant's back symptoms were a consequence of the accepted November 22, 2014 employment injury.

In a May 14, 2019 report, Dr. Nathan Hammel, a Board-certified orthopedic surgeon serving as the DMA, noted his review of appellant's history and referenced appellant's accepted conditions of left knee sprain, left knee primary osteoarthritis, lower extremity venous embolism and thrombosis of the deep vessels, left ankle and foot bursitis, and left foot hallux valgus. He indicated that there was no mechanism of injury to support the development of a direct or consequential lumbar injury. Dr. Hammel, in responding to questions posed by OWCP, opined that there was "only the vaguest of connections" in Dr. Stull's April 1, 2019 report and noted that spinal osteoarthritis had not been caused by gait alteration. He concluded that no additional conditions should be accepted as work related.

By decision dated June 4, 2019, OWCP denied the expansion of appellant's claim to include a consequential low back condition finding that the medical evidence of record was insufficient to establish that the additional conditions were caused or aggravated by his accepted November 22, 2014 employment injury.

On July 2, 2019 appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on November 13, 2019. Appellant described the difficulties that he had experienced recovering from several left knee surgeries. He explained that all the scarring from the surgeries and his new knee joint caused problems with his gait.

OWCP subsequently received an October 23, 2019 report by Dr. Pehler. Dr. Pehler indicated that he evaluated appellant's complaints of low back pain and left lower extremity radiculopathy. He reported that examination of the lower extremities revealed intact sensation to light touch at L2-S1. Dr. Pehler noted that appellant had "significant canal stenosis with a medical probability exacerbated by [appellant's] work-related injury in 2014." He recommended lumbar decompression surgery.

Appellant also submitted medical reports regarding continued treatment for his left knee and foot conditions.

On November 27, 2019 appellant underwent OWCP-approved left foot surgery. He stopped work and received wage-loss compensation for total disability on the supplemental rolls.

By decision dated January 28, 2020, OWCP's hearing representative affirmed the June 4, 2019 decision.

LEGAL PRECEDENT

When 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.[4]

To establish causal relationship, the employee must submit rationalized medical opinion evidence.[5] The opinion of the physician must be based on a complete factual and medical background of the employee, 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 accepted employment injury.[6] The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.[7]

When an injury arises in the course of employment, every natural consequence that flows from that injury likewise arises out of the employment, unless it is the result of an independent intervening cause attributable to a claimant's own intentional misconduct.[8] Thus, a subsequent

[4] *R.J.*, Docket No. 17-1365 (issued May 8, 2019); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

[5] *See W.C.*, Docket No. 19-1740 (issued June 4, 2020); *S.A.*, Docket No. 18-0399 (issued October 16, 2018); *see also Robert G. Morris*, 48 ECAB 238 (1996).

[6] *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[7] *D.S.*, Docket No. 20-0146 (issued June 11, 2020); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *James Mack*, 43 ECAB 321 (1991).

[8] *See S.M.*, Docket No. 19-0397 (issued August 7, 2019); *Mary Poller*, 55 ECAB 483, 487 (2004).

injury, be it an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural consequence of a compensable primary injury.[9]

ANALYSIS

The Board finds that this case is not in posture for decision.

In reports dated March 7 and April 1, 2019, Dr. Stull, appellant's treating physician, opined that it was reasonable that appellant's back condition was related to his accepted left knee injury. He indicated that appellant had an altered gait from his knee for many years and had a difficult recovery from his left knee surgery, which also contributed to his back condition. On May 8, 2019 OWCP requested that a DMA review Dr. Stull's reports and comment on whether he agreed with his opinion that appellant's back symptoms were a consequence of the accepted November 22, 2014 employment injury.

In a May 14, 2019 report, the DMA indicated that he had reviewed the medical records and noted that appellant's claim was accepted for left knee sprain, left knee primary osteoarthritis, lower extremity venous embolism and thrombosis of the deep vessels, left ankle and foot bursitis, and left foot hallux valgus. He reported that there was no mechanism of injury in the SOAF to support the development of a consequential lumbar injury. In his brief responses to questions posed by OWCP, the DMA opined that there was "only the vaguest of connections" in Dr. Stull's April 1, 2019 report and concluded that spinal osteoarthritis had not been caused by gait alteration. He, however, did not provide any medical reasoning to support his conclusory statements that appellant had not developed a consequential lumbar condition.[10] The DMA did not refer to any examination findings nor directly address Dr. Stull's opinion that an altered gait due to appellant's left knee condition or difficulty in recovery could have contributed to a consequential back condition. The Board has held that a report is of limited probative value if a physician does not provide medical rationale explaining his or her conclusion on that matter.[11]

It is well established that proceedings under FECA are not adversarial in nature, and while appellant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.[12] It has an obligation to see that justice is done.[13] Accordingly, once OWCP undertakes to develop the medical evidence further, it has the responsibility to do so

[9] *A.T.*, Docket No. 18-1717 (issued May 10, 2019); *Susanne W. Underwood (Randall L. Underwood),* 53 ECAB 139 (2001).

[10] *See D.T.,* Docket No. 20-0234 (issued January 8, 2021); *see also K.C.,* Docket No. 19-1251 (issued January 24, 2020).

[11] *L.G.,* Docket No. 19-0142 (issued August 8, 2019); *C.M.,* Docket No. 14-0088 (issued April 18, 2014).

[12] *See, e.g., M.G.,* Docket No. 18-1310 (issued April 16, 2019); *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985); *Michael Gallo,* 29 ECAB 159, 161 (1978); *William N. Saathoff,* 8 ECAB 769, 770-71; *Dorothy L. Sidwell,* 36 ECAB 699, 707 (1985).

[13] *See A.J.,* Docket No. 18-0905 (issued December 10, 2018); *William J. Cantrell,* 34 ECAB 1233, 1237 (1983); *Gertrude E. Evans,* 26 ECAB 195 (1974).

in a manner that will resolve the relevant issues in the case.[14] In this case, the DMA failed to offer a rationalized medical explanation regarding why appellant did not sustain a consequential back condition causally related to the accepted November 22, 2014 employment injury. Due to the deficiencies in the DMA's report, OWCP should have sought clarification or referred appellant for a second opinion evaluation.[15]

On remand OWCP shall refer appellant, together with a SOAF and a list of specific questions, to an appropriate specialist in the field of medicine for a second opinion evaluation in order to resolve the issue of whether appellant developed a consequential back condition causally related to the accepted November 22, 2014 employment injury.[16] If the second opinion physician disagrees with the explanations provided by Dr. Stull, he or she must provide a fully-rationalized explanation regarding why the accepted employment injury was insufficient to have caused or contributed to his current back condition. Following this and any other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

[14] *T.K.*, Docket No. 20-0150 (issued July 9, 2020); *T.C.*, Docket No. 17-1906 (issued January 10, 2018).

[15] *M.S.*, Docket No. 19-0282 (issued August 2, 2019); *V.H.*, Docket No. 14-433 (issued July 3, 2014).

[16] *T.S.*, Docket No. 18-1702 (issued October 4, 2019).

ORDER

IT IS HEREBY ORDERED THAT the January 28, 2020 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: May 26, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board