

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of KATHY A. KELLEY and U.S. POSTAL SERVICE,  
POST OFFICE, Gainesville, GA

*Docket No. 03-1660; Submitted on the Record;  
Issued January 5, 2004*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
MICHAEL E. GROOM

The issue is whether appellant's third right shoulder surgery was causally related to her accepted right rotator cuff tear.

On January 4, 1999 appellant, then a 44-year-old rural carrier, filed an occupational disease claim alleging that repetitive movement in her job over time caused right shoulder damage. The Office of Workers' Compensation Programs accepted that she sustained a right rotator cuff tear and right shoulder surgery was authorized. Appellant underwent corrective surgery on February 16, 1999.

Appellant was given a limited-duty assignment commencing on March 1, 1999. She returned to work on March 3, 1999 and was limited to eight hours of duty per day.

On August 31, 1999 appellant's treating physician, Dr. Harry H. Ferran, Jr., a Board-certified orthopedic surgeon, opined that, in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, appellant had an eight percent impairment of her right upper extremity.<sup>1</sup>

On February 8, 2001 appellant underwent a right shoulder arthrogram which revealed a bony spur projecting from the inferior aspect of the humeral head articular surface. She remained symptomatic and underwent a second opinion evaluation by Dr. Xavier A. Duralde, a Board-certified orthopedic surgeon.

On September 14, 2001 appellant underwent a second right shoulder surgery performed by Dr. Duralde for a recurrent right rotator cuff tear, a right shoulder impingement syndrome, a right biceps tendon tear and right acromioclavicular joint arthrosis. She stopped work on September 14, 2001 and returned to limited duty on November 5, 2001.

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<sup>1</sup> There is no evidence in the case record that appellant was granted a schedule award for this impairment.

On September 26, 2001 appellant was seen for a 12-day postoperative office visit by Dr. Duralde. On January 30, 2002 Dr. Duralde noted: "Approximately one month following surgery, [appellant] did stumble and fall and sustained an avulsion of her biceps tenodesis. She has been having ongoing pain in the shoulder. Appellant has had no significant improvement over the last month's time." Dr. Duralde opined that appellant "may have avulsed her repair at the time [that] she ruptured her biceps tendon."

A right shoulder arthrogram performed on February 1, 2002 demonstrated a full thickness rotator cuff tear involving the distal supraspinatus tendon, a large subacromial-subdeltoid bursa effusion consistent with acute bursitis, a moderate glenohumeral joint effusion consistent with capsular synovitis, a poorly visualized longhead biceps tendon at the level of the bicipital groove, raising the possibility of a tear in this region and subcortical bone marrow edema seen within the superior lateral humeral head, consistent with post-traumatic bone contusion [versus] reactive edema or hyperemia.

On March 12, 2002 Dr. Duralde diagnosed a recurrent tear of the right rotator cuff with disruption of the repair two weeks following surgery. He opined that "this represents a work-related injury as her shoulder was healing from a work-related problem when she fell and disrupted the repair.<sup>2</sup> This is a disruption of her original rotator cuff tear and, therefore, is related to her on-the-job injury and subsequent surgeries. If she had not had a work-related injury and torn her rotator cuff, the fall at home would have caused no significant problems at all in her arm." Dr. Duralde opined that appellant required further right shoulder surgery.

In a March 12, 2002 preadmission medical note, Dr. Duralde indicated that appellant was "scheduled for a second revision for right shoulder surgery because of disruption of the repair in the immediate postoperative period." He noted that appellant "did well in the immediate postoperative period but presented back on October 9 stating that she had fallen down one week prior to this visit, which was approximately two weeks following surgery. She had severe pain with that fall and was requiring narcotics. Appellant's biceps was noted to be ruptured at that visit."

In an undated letter, appellant stated:

"On September 14, 2001 I had surgery on my right shoulder. Following surgery, I was on very strong medication for pain prescribed by Dr. Duralde. On September 25, 2001, less than two weeks after surgery, while at home recuperating, I lost my balance. Due to my equilibrium being affected by the medication, I fell on the involved (right) shoulder. It was not known until February 1, 2002 after an MRI [magnetic resonance imaging] [scan] and arthrogram was performed ... that the fall sustained on September 25, 2001 had torn the repairs done by the September 14, 2001 surgery."

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<sup>2</sup> Dr. Duralde did not discuss the cause of appellant's fall.

By decision dated June 5, 2002, the Office declined to pay for appellant's third right shoulder surgery, finding as follows:

"You stated that on September 25, 2001, less than two week[s] after your surgery and while at home recuperating, you lost your balance and fell on your right shoulder and this was due to taking some strong medication. However, Dr. Duralde stated[,] (in a medical note dated January 30, 2002)[,] that you stumbled and fell one month after your surgery causing you to sustain an avulsion of your biceps tenodesis. You were advised that there was no medical evidence furnished that supports that your reinjury was related to your taking medication or to any employment-related factors."

On June 5, 2002 Dr. Duralde diagnosed left shoulder impingement syndrome, acromioclavicular joint arthrosis and a reupture of right rotator cuff repair and right biceps tendon repair last fall. He noted that he continued to feel that appellant's right shoulder problem was work related and that revision surgery was essential to her improvement.

By letter dated June 24, 2002, appellant requested an oral hearing before an Office hearing representative.

Appellant underwent a left shoulder arthroscopic acromioplasty, distal clavicle resection, rotator cuff repair and mini open biceps tenodesis on August 12, 2002.

On January 8, 2003 appellant underwent surgery for a recurrent right rotator cuff tear, a recurrent right biceps tendon tear and right shoulder arthrofibrosis.

A hearing was held on February 3, 2003 at which appellant testified. Following the September 14, 2001 right shoulder surgery, she kept her arm in a sling and was taking narcotic pain medication several times a day. Appellant stated that she was weak from having surgery and from the medication which had the side effects of dizziness. On September 26, 2001 Dr. Duralde gave her more medication over and above the medications that were originally prescribed. She stated that, about three to four days after being given more medication, she lost her balance and when she fell she landed on her shoulder. Appellant opined that taking the medications and having her arm in a sling contributed to the fall. She testified that it was morning and she was going down one step from her living room to a side room, that it was carpeted and that she had right arm tightly pressed against her side such that she could not move it. Appellant testified that she was barefoot, that going through doorway she lost her balance and could not catch herself when she fell. She testified that she called Dr. Duralde's office on the date of injury and he said that, because of the strength of the stitching, he did not feel that she had damaged her surgical repair.

By letter dated January 28, 2003, Dr. Duralde stated that, at the time of the fall, appellant was two and one-half weeks status post right shoulder surgery and that she was taking both OxyContin and Vicodin on a regular basis. He noted that these drugs were opioid-type

controlled substances and had common side effects which included sedation, dizziness and weakness. Dr. Duralde stated:

“The medications which [appellant] was taking most certainly could have affected her balance due to the above-stated common side effects of the medication. The most likely cause for her fall was loss of coordination and impaired motor skills resulting from the taking of the prescribed medications for pain.”

By decision dated April 21, 2003, the hearing representative affirmed the June 5, 2002 decision.

The Board finds that appellant has not established that her third right shoulder surgery is causally related to her accepted right rotator cuff injury.

The basic rule respecting consequential injuries as expressed by *Larson* is 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 likewise arises out of the employment, unless it is the result of an independent intervening cause which is attributable to the [employee’s] own intentional conduct.”<sup>3</sup> The subsequent injury “is compensable if it is the direct and natural result of a compensable primary injury.”<sup>4</sup> With regard to consequential injuries, the Board has stated that where an injury is sustained as a consequence of an impairment residual to an employment injury, the new or second injury, even though nonemployment related, is deemed, because of the chain of causation, to arise out of and be in the course of employment and is compensable.<sup>5</sup> However, an employee who asserts that a nonemployment-related injury was a consequence of a previous employment-related injury has the burden of proof to establish that such was the fact.<sup>6</sup>

The Board finds that appellant has not met her burden of proof to establish that her claimed September 25, 2001 fall and subsequent right shoulder injury, was consequential to her accepted right shoulder rotator cuff tear, its repair or other right shoulder or right upper extremity injury.

Conflicting dates and histories of injury were indicated for the alleged consequential fall. Appellant alleged that the fall occurred on September 25, 2001, less than two weeks after her September 14, 2001 surgery, and attributed the fall to her postoperative medications. She was seen on September 26, 2001 by Dr. Duralde and at that time she was given additional pain medication, one day after the alleged fall. No history of the September 25, 2001 fall was mentioned in the treatment note; rather, Dr. Duralde reported that appellant was doing well. In Dr. Duralde’s medical note of January 30, 2002, he first reported that appellant apparently stumbled and fell “one month” following surgery, or approximately October 14, 2001 and that she sustained an avulsion of her biceps tenodesis. Dr. Duralde indicated that appellant “may

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<sup>3</sup> *Larson, The Law of Workers’ Compensation* § 13.00.

<sup>4</sup> *Id* at § 13.11.

<sup>5</sup> *Jessie Johnson, Jr.*, 39 ECAB 945, 950 (1988); *Marie Denhart*, 32 ECAB 1168, 1170 (1981).

<sup>6</sup> *Theron J. Barham*, 34 ECAB 1070, 1076 (1983).

have avulsed her repair at the time she ruptured her biceps tendon.” He did not provide any opinion of the cause of appellant’s postoperative stumble and fall. On March 12, 2002 Dr. Duralde diagnosed a recurrent tear of the right rotator cuff with disruption of the repair “in the immediate postoperative period. However, no specific date of injury was provided. He noted that surgery was performed on September 14, 2001 and that she “presented back on October 9 stating that she fell one week prior to this visit ... or approximately two weeks following surgery.” Again Dr. Duralde did not list a specific history of a September 25, 2001 fall as alleged by appellant. The first time that appellant specifically cited September 25, 2001 as the date of the fall at home was in a letter received by the Office on April 1, 2002. Neither appellant nor Dr. Duralde have addressed this history or explained the inconsistency with the September 26, 2001 treatment note.

On January 28, 2003 Dr. Duralde stated that, at the time of her fall, appellant was two and one-half weeks status post right shoulder surgery, or approximately October 2, 2001, and that at that time she was taking medication on a regular basis. He noted side effects of dizziness and weakness and stated: “The medications which [appellant] was taking most certainly could have affected her balance due to the above-stated common side effects of the medication. The most likely cause for her fall was loss of coordination and impaired motor skills resulting from the taking of the prescribed medications for pain.” The Board has held that, although opinions such as, the implant “may have ruptured”<sup>7</sup> and that the condition is “probably” related, “most likely” related or “could be” related are speculative and diminish the probative value of the medical opinion evidence. The opinion supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty, but the opinion must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and based upon a complete and accurate factual and medical background.<sup>8</sup> Dr. Duralde couched his opinion in speculative terms as to how the medication could have affected appellant’s balance and was what most likely caused her fall. His opinion is not of reasonable medical certainty.<sup>9</sup> The reports from Dr. Duralde are insufficient to establish appellant’s claim.

In *John R. Knox*,<sup>10</sup> the Board stated: “As is noted by *Professor Larson* in his treatise: ‘[O]nce the work-connected character of any injury, such as a back injury, has been 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.... [S]o long as it is clear that the real operative factor is the progression of the compensable injury, associated with

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<sup>7</sup> *Jacquelyn L. Oliver*, 48 ECAB 232 (1996).

<sup>8</sup> See *Thomas A. Faber*, 50 ECAB 566 (1999); *Samuel Senkow*, 50 ECAB 370 (1999); *Judith J. Montage*, 48 ECAB 292 (1997). Medical opinions which are speculative or equivocal in character have little probative value. *Linda I. Sprague*, 48 ECAB 386 (1997); *Jennifer L. Sharp*, 48 ECAB 209 (1996).

<sup>9</sup> *Jacquelyn L. Oliver*, *supra* note 7. See *Brian E. Flescher*, 40 ECAB 532 (1989).

<sup>10</sup> 42 ECAB 193 (1990).

an exertion that in itself would not be unreasonable [under] the circumstances.”<sup>11</sup> In this case, evidence of such a progression is not evident.

The record evidence is not consistent as to the alleged September 25, 2001 date of appellant’s fall at home. Moreover, the medical opinion is speculative as to causal relationship to the accepted injury. The record is insufficient to establish that appellant fell on September 25, 2001 as a consequence of her previous surgery or medication. Therefore, the subsequent worsening of her right shoulder condition is not shown to be employment related.

Therefore, the decision of the Office of Workers’ Compensation Program dated April 21, 2003 is hereby affirmed.

Dated, Washington, DC  
January 5, 2004

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

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<sup>11</sup> *Id.*