

¹ The Board notes that the Office issued a notice of proposed termination on July 24, 2008. As no final decision was issued on this matter prior to the filing of the appeal on July 29, 2008, the Board has no jurisdiction over this matter. *See* 20 C.F.R. § 501.2(c).

1984 work injury when he slipped and fell down seven steps. He stopped work on September 19, 1990 and has not returned. Appellant was placed on the periodic compensation rolls and is in receipt of medical and compensation benefits for disability for this injury.

On February 28 and August 20, 2006 appellant filed a notice of recurrence, Form CA-2a, claiming that he sustained a consequential injury to the right shoulder when his leg gave way. He indicated that the pain from his back condition travels to his legs, which then become weak and give way causing him to fall. In his first notice of recurrence, appellant stated his recurrence commenced February 8, 2006. Medical records dated February 24, 2006 from St. Elizabeth Medical Center Emergency Department indicated that appellant sustained a right shoulder strain when he fell from chronic back pain.

In a May 17, 2006 report, Dr. Gary A. Shearer, a Board-certified family practitioner, stated that appellant fell on or about February 16, 2006 and injured his right shoulder as a result of his legs going out, which was a result of his low back condition. He indicated that appellant went to the emergency room one week later as he hit his right shoulder on a landscaping rock. Dr. Shearer advised that appellant was seen in the office on March 28, 2006 and had extreme amount of difficulty raising his right shoulder. He opined that appellant had a rotator cuff tear as a result of his legs going out, which was the result of his low back condition. Copies of a February 24, 2006 x-ray and an August 23, 2006 magnetic resonance imaging (MRI) scan of the right shoulder were also provided. In a June 5, 2006 report, Dr. Shearer continued to opine that appellant's accepted injury-related conditions were medically present and totally and permanently disabled him.

In a July 5, 2006 letter, the Office found that the current medical evidence was insufficient to show causal relationship between appellant's accepted injury-related conditions and the current problems with the right shoulder. Appellant was requested to submit additional factual and medical evidence within 30 days of the Office's letter. No further evidence was received.

By decision dated September 12, 2006, the Office denied the claim for the claimed consequential injury to the right shoulder on the grounds that the evidence was insufficient to establish that the right shoulder condition was causally related to the 1984 employment injury. Appellant disagreed with the Office's decision and requested a hearing before an Office hearing representative. By decision dated June 15, 2007, the Office hearing representative set aside the September 12, 2006 decision. The case was remanded to the Office to determine whether appellant's fall was a result of the accepted work-related back condition and whether the aggravation of lumbar degenerative disc disease was ongoing or appellant's current back condition was the natural progression of lumbar degenerative disc disease.

To determine whether appellant's February 2006 fall was related to his accepted conditions of lumbar strain and aggravation of degenerative disc disease, the Office referred him, along with the case record and a list of questions, to Dr. Edward Gregory Fisher, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a September 7, 2007 report, Dr. Fisher reviewed available medical records and examined appellant. He opined that the shoulder injury was not related to the accepted conditions. Dr. Fisher noted that while the medical notes received from appellant noted "weakness in the legs," such notes failed to

demonstrate muscle loss, muscle atrophy or lack of strength in either leg. He stated that his examination of appellant did not show any muscle weakness, muscle loss or a lack of muscle strength over the lower extremities and there was no muscle atrophy of the thigh or calf muscles. Motor strength over the thigh and calf muscles was 5/5 bilaterally with no apparent muscle weakness or muscle loss and no evidence of a drop foot bilaterally. Straight leg raising bilaterally up to 80 degrees caused back pain with no thigh or leg pain over the lower extremities. Dr. Fisher stated that there was a lack of objective findings to show a causal relationship between the accepted conditions to the shoulder injury. Thus, he concluded that the fall which occurred in February 2006 was not due to the low back condition but was simply a fall which was due to a nonwork-related condition. Dr. Fisher further opined that appellant's current back condition was due to the natural aging process and not due to the aggravation of the degenerative condition stemming from injuries almost 20 years ago. He explained that appellant had not worked since 1990 and the increased symptoms over the last few years were due to the natural progression of the disease.

By decision dated October 3, 2007, the Office denied appellant's claim on the basis that the medical evidence did not establish a consequential injury related to the accepted conditions. It accorded determinative weight to the opinion of Dr. Fisher, the Office referral physician.

Appellant, through his attorney, requested a telephonic hearing, which was held April 15, 2008. He submitted reports from Dr. John W. Gilbert, a Board-certified neurologist, dated December 4, 2007 and January 21, February 14, April 1 and May 27, 2008 concerning possible surgical procedures to the low back. In an April 1, 2008 medical note, Dr. Gilbert opined that appellant was totally disabled from his 1984 and 1989² work injuries and required back surgery. In a February 11, 2008 report, Dr. Mark A. Toennis, a psychologist, discussed appellant's ongoing depressive condition.

In a May 25, 2008 report, Dr. Shearer opined that appellant continued to have chronic lumbar spondylolysis with compression of nerve root, chronic lumbar myositis, chronic sacroiliitis, chronic lumbar strain and chronic lumbar discogenic pain with probable internal disc disruption as a result of his back injury. He opined that appellant reached maximum medical improvement on September 4, 1990 and was permanently totally disabled.

Also of record were March 18, 2008 lumbar and thoracic MRI scan reports, which noted various diagnoses of the lumbar spine; an October 25, 1993 work restriction evaluation form from Dr. Raul Florez, a Board-certified orthopedic surgeon; and a July 13, 1995 letter from the Office of Personnel Management approving appellant's application for disability retirement.

By decision dated June 27, 2008, an Office hearing representative affirmed the Office's October 3, 2007 decision. The hearing representative found that appellant had not established a recurrence of disability or a consequential condition due to his accepted conditions.

² Appellant claimed a December 11, 1989 recurrence of disability that the Office accepted for a lumbar strain.

LEGAL PRECEDENT

Section 10.5(x) of the Office's regulations provides that a recurrence of disability means an inability to work after an employee has returned to work caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.³

The general rule respecting consequential injuries 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 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.⁴ The subsequent injury is compensable if it is the direct and natural result of a compensable primary injury.⁵ With respect 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 in the course of employment and is compensable.⁶ However, a claimant bears the burden of proof to establish his claim for a consequential injury and as part of this burden, 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.⁷ Such opinion of the physician must be one of reasonable medical certainty and must be supported by medical reasoning explaining the nature of the relationship between the diagnosed condition and the employment.⁸

ANALYSIS

The Office accepted that appellant's June 28, 1984 work injury resulted in lumbar strain, aggravation of degenerative disc disease and depressive disorder. Appellant filed a recurrence of disability claim on February 28 and August 20, 2006 claiming a recurrence on February 8, 2006 and a consequential injury to the right shoulder when his leg gave way due to pain arising from his back. The Board initially notes that the Office hearing representative analyzed the claim, in part, as one for a recurrence of disability in addition to addressing whether appellant established a consequential injury as employment related. As noted, the Office's regulations provide that a recurrence of disability means an inability to work after an employee has returned to work. The record reflects that appellant has not worked since September 1990 and has been and is in receipt of medical and compensation benefits. Thus, his claim does not fit into the definition of a

³ 20 C.F.R. § 10.5(x); see *Theresa L. Andrews*, 55 ECAB 719 (2004).

⁴ *Albert F. Ranieri*, 55 ECAB 598 (2004).

⁵ *Id.*; *Carlos A. Marrero*, 50 ECAB 117 (1998); A. Larson, *The Law of Workers' Compensation* § 10.01 (2005).

⁶ *Kathy A. Kelley*, 55 ECAB 206 (2004).

⁷ *Charles W. Downey*, 54 ECAB 421 (2003).

⁸ *Leslie C. Moore*, 52 ECAB 132 (2000).

recurrence of disability. Instead, the evidence indicates that appellant is seeking to have his right shoulder condition accepted as a consequential injury. Accordingly, the issue in this case concerns whether appellant established a consequential injury as a result of his accepted employment injuries.

Appellant, however, has not met his burden of proof as he did not submit sufficient medical evidence to establish a consequential relationship between his diagnosed right shoulder condition and his accepted work injuries. He has failed to demonstrate how his right shoulder condition arose as a natural consequence of his accepted injuries of lumbar strain and aggravation of degenerative disc disease rather than as a result of an intervening cause.

The Office sought to further develop the matter by referring appellant to Dr. Fisher. In his September 6, 2007 report, Dr. Fisher found that appellant had no evidence or objective findings to show a causal relationship between the accepted work-related conditions and the shoulder injury of February 2006. Specifically, he noted that while the medical notes received from appellant indicated “weakness in the legs,” such notes failed to demonstrate muscle loss, muscle atrophy or lack of strength in either leg. Dr. Fisher further found that appellant had a normal examination, with no muscle weakness, muscle loss or a lack of muscle strength over the lower extremities or muscle atrophy over the thigh muscles or calf muscles. Thus, he concluded that the fall which occurred in February 2006 was not due to the low back condition but was simply a fall which was due to a nonwork-related condition. Dr. Fisher further opined that appellant’s current back condition was due to the natural aging process and not due to the aggravation of the degenerative condition stemming from injuries almost 20 years ago. He explained that appellant had not worked since 1990 and the increased symptoms over the last few years were due to the natural progression of the disease.

The treatment reports from Drs. Shearer and Gilbert indicate various diagnoses of the lumbar spine; however, such reports fail to offer a rationalized medical opinion explaining causal relationship between appellant’s leg giving away to cause a fall and result in a shoulder injury. Medical reports not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet appellant’s burden of proof.⁹ For example, Dr. Shear, on May 17, 2006, stated that appellant injured his right shoulder on about February 16, 2006 as a result of his legs going out that was due to his low back condition. However, he did not provide medical rationale explaining the reasons why the legs giving away would be a direct and natural result of the accepted lumbar strain and aggravation of degenerative disc disease rather than an independent intervening cause or other nonwork-related condition.

The other medical evidence of record, including diagnostic studies of March 18, 2008 and an October 25, 1993 work restriction evaluation form from Dr. Florez provide no opinion on the issue of causal relationship and are insufficient to establish appellant’s claim. Dr. Toennis’ February 11, 2008 report addressing appellant’s emotional condition does not provide any support for a consequential injury.

The Office additionally received a July 13, 1995 letter from the Office of Personnel Management approving appellant’s application for disability retirement. However, the Board

⁹ *Lois E. Culver (Clair L. Culver)*, 53 ECAB 412 (2002).

has noted that findings of other government agencies are not dispositive with regard to questions arising under the Federal Employees' Compensation Act.¹⁰ This letter would be insufficient to establish that appellant's right shoulder condition arose from his accepted condition.

The Board finds that the evidence of record is insufficient to discharge appellant's burden of proof establishing that his right shoulder condition was a consequence of his accepted conditions.

CONCLUSION

The Board finds that appellant did not meet his burden of proof in establishing that he sustained a right shoulder condition as a consequence of his accepted conditions.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated June 27, 2008 is affirmed, as modified.

Issued: June 19, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹⁰ *Ernest J. Malagrida*, 51 ECAB 287, 291 (2000).