

FACTUAL HISTORY

On May 12, 2005 appellant, then a 44-year-old security screener, sustained injury to her right arm while lifting a suitcase. On August 18, 2005 the Office accepted her claim for sprain/strain of the right forearm and elbow and lateral epicondylitis. Appellant filed a recurrence of disability claim on August 4, 2005. She indicated that she returned to light-duty work but continued to experience pain while lifting. Appellant underwent a right lateral epicondyle debridement and partial osteotomy of the lateral epicondyle on April 10, 2006. She returned to light-duty work on April 27, 2006. The Office accepted appellant's recurrence of disability claim and paid compensation benefits for intermittent periods through March 31, 2007.

Dr. Steven E. Kann, an attending Board-certified orthopedic surgeon, examined appellant on February 14, 2007. He noted that she reported pain along her right rhomboid and the posterior medial aspect of her trapezius. Dr. Kann found a full range of motion of appellant's shoulder with normal strength. He stated that she had subjective pain along the medial border of her scapula and the trapezius muscle region. Dr. Kann diagnosed rhomboid spasm/trigger point and trapezius muscle spasm/trigger point as well as residual right elbow subjective complaints. He referred appellant to Dr. Paul Lieber, a physiatrist, for treatment.

Dr. Lieber examined appellant on February 26, 2007. He noted her history of injury and indicated that she was experiencing neck and right arm pain. Dr. Lieber stated that cervical flexion exacerbated her pain. Appellant demonstrated full cervical and shoulder range of motion, but tenderness in the right shoulder upper trapezius and rhomboid musculature. Dr. Lieber found positive facet loading maneuver at C5-6 and slightly positive spinal nerve stretch test. He diagnosed neck pain with right arm pain and cervical myofascial pain. Dr. Lieber requested a magnetic resonance imaging (MRI) scan of her cervical spine and suggested that appellant could have brachial plexopathy resulting from positioning during surgery.

In a report dated March 2, 2007, Dr. Kann stated that following appellant's April 10, 2006 surgery she recovered slowly but continued to experience pain in the right epicondyle area. He stated, "Due to [appellant's] postoperative discomfort she had decreased range of motion of her right arm which developed into adhesive capsulitis and rhomboid spasm." Dr. Kann concluded that appellant's condition was directly related to her right elbow surgery and employment related. Appellant underwent an electromyogram on March 6, 2007 which was reported as normal with no evidence of radiculopathy, myopathy or entrapment syndrome. On March 26, 2007 she underwent an MRI scan of the right elbow which was read as unremarkable.

On April 4, 2007 Dr. Kann reviewed appellant's MRI scan of the right elbow and found that it was normal. He stated that her current issue was pain in the trapezius region and along her rhomboid region. Dr. Kann opined that appellant's condition was work related. In a report dated May 2, 2007, he noted treating her since November 29, 2005 for her work-related right arm injury. Dr. Kann stated that appellant's initial diagnosis was right lateral epicondylitis and that she underwent surgery on April 10, 2006. He reported that she recovered slowly from her surgery and continued to have complaints of pain at the right epicondyle area. Dr. Kann stated, "Due to [appellant's] postoperative discomfort, she had decreased range of motion of her right arm which developed into adhesive capsulitis and rhomboid spasm." He advised that her

adhesive capsulitis and rhomboid spasm were consequential to her surgery on April 10, 2006 and related to her May 12, 2005 injury.

The Office referred the medical evidence to the Office medical adviser on June 21, 2007. On June 30, 2007 the Office medical adviser found that appellant did have adhesive capsulitis due to her work-related surgery and advised that the Office should accept this condition. He stated that a significant portion of appellant's symptoms were due to cervical spine pathology. The Office medical adviser recommended that the Office not accept the other diagnosed conditions pertaining to any cervical spine pathology because neither the mechanism of injury nor the sequence of events noted in the clinical course would support the cervical spine being added to the list of accepted conditions. He concluded that rhomboid spasm was not a specific diagnosis and that it was commonly associated with cervical spine pathology.

On September 10, 2007 the Office accepted the condition of adhesive capsulitis. By decision dated October 5, 2007, it denied appellant's claim for medical treatment of her cervical spine or rhomboid spasm.¹

LEGAL PRECEDENT -- ISSUE 1

The Office's obligation to pay for medical expenses and other expenses incident to obtaining medical care, such as loss of wages, extends only to expenses incurred for treatment of the effects of any employment-related condition. A claimant has the burden of proof which includes the necessary to submit supporting rationalized medical opinion evidence. Whether a particular injury caused an employee disability from employment is a medical issue, which must be resolved by competent medical evidence.²

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained a traumatic injury to her right elbow and forearm on May 12, 2005 resulting in lateral epicondylitis for which she underwent surgery on April 27, 2006. Appellant sought treatment from Dr. Lieber, a Board-certified physiatrist, who reviewed the history of injury and indicated that she was experiencing neck and right arm pain. Dr. Lieber noted that cervical flexion exacerbated appellant's pain and that she demonstrated tenderness in the right shoulder upper trapezius musculature and rhomboid musculature. He found positive facet loading maneuver at C5-6 and slightly positive spinal nerve stretch test. Dr. Lieber diagnosed neck pain with right arm pain and cervical myofascial pain. He requested an MRI scan of her cervical spine and suggested that appellant could have brachial plexopathy resulting from positioning during surgery.

Dr. Lieber did not provide a clear diagnosis of any cervical condition, noting only that appellant experienced neck pain and cervical myofascial pain. The Board has held that the mere

¹ Following the Office's October 5, 2007 decision, appellant submitted additional new evidence. As the Office did not consider this evidence in reaching its final decision, the Board may not review the evidence for the first time on appeal. See 20 C.F.R. § 501.2(c).

² *Carol A. Lyles*, 57 ECAB 265, 268 (2005).

diagnosis of “pain” does not constitute a basis for the payment of compensation.³ Dr. Lieber did not address how appellant’s accepted injury to her right forearm and elbow would result in symptoms of neck pain or how her condition was a result of the accepted employment injury or a consequence of her elbow surgery. He suggested that appellant could have developed a brachial plexopathy due to surgery, but couched his report in speculative terms. The Board has held that medical opinions that a condition is “probably” related, “most likely” related or “could be” related are speculative and of diminished probative value. An opinion regarding 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 regarding the causal relationship of the condition to the employment and must be supported with affirmative medical rationale based upon a complete and accurate factual and medical background.⁴ The diagnostic tests of record were reported as negative or unremarkable. There is no definitive diagnosis of a neck or cervical condition and speculative medical opinion on the relationship of such condition to her accepted employment injury and surgery. Dr. Lieber’s report is not sufficient to establish that she sustained a cervical condition due to her employment injury.

LEGAL PRECEDENT -- ISSUE 2

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 In discussing the range of compensable consequences, once the primary injury is causally connected with the employment, then 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 her claim for a consequential injury. As part of this burden, a claimant must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.⁷ Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.⁸ Rationalized medical evidence is evidence which relates a work incident, work injury or factors of employment to a claimant’s condition, with stated reasons of a physician.⁹ The opinion of the physician must be one of reasonable medical certainty and must be supported by medical rational

³ *Robert Broome*, 55 ECAB 339, 342 (2004).

⁴ *Kathy A. Kelley*, 55 ECAB 206 211-12 (2004).

⁵ *Albert F. Ranieri*, 55 ECAB 598, 602 (2004); A. Larson, *The Law of Workers’ Compensation* § 10.01 (2000).

⁶ *Charles W. Downey*, 54 ECAB 421, 422-23 (2003).

⁷ *Id.*

⁸ *Steven S. Saleh*, 55 ECAB 169, 172 (2003).

⁹ *Charles W. Downey*, *supra* note 6.

explaining the nature of the relationship of the diagnosed condition and the specific employment factors or employment injury.¹⁰

ANALYSIS -- ISSUE 2

As noted, the Office accepted appellant's claim for lateral epicondylitis of the right forearm and elbow. Appellant underwent surgery for this condition and the Office accepted that she developed adhesive capsulitis following surgery. Dr. Kann, an attending Board-certified orthopedic surgeon, also opined that appellant had developed rhomboid spasms following surgery. He submitted three brief medical notes in which he advised that appellant experienced postoperative discomfort with decreased range of motion of her right arm which developed into adhesive capsulitis and rhomboid spasm. Dr. Kann opined that her adhesive capsulitis and rhomboid spasm were consequential to her recovery from surgery on April 10, 2006.

The Office referred appellant's medical records to the Office medical adviser who recommended that appellant's condition of adhesive capsulitis be accepted by the Office. However, the Office medical adviser noted that Dr. Kann did not provide sufficient medical rationale in support of his opinion that appellant's rhomboid spasms were a consequence of her accepted surgery. He stated that rhomboid spasm was not a specific diagnosis and was commonly associated with cervical spine pathology, a condition not accepted as employment related.

The Board finds that the reports of Dr. Kann are of diminished probative value on the issue of causal relationship. His brief medical notes on causal relationship do not provide adequate explanation as to how the surgical procedure to appellant's right forearm and elbow would cause or contribute to her rhomboid spasms. Dr. Kann did not fully address the nature of the negative diagnostic testing obtained following surgery or provide a clear explanation of how symptoms pertaining to her right shoulder or cervical spine were caused or contributed to by her right forearm surgery. As the Office has not accepted any cervical or rhomboid condition, appellant bears the burden of proof in submitting probative medical opinion evidence in support of her claim.

CONCLUSION

The Board finds that appellant failed to meet her burden of proof in establishing that she developed a cervical condition or rhomboid spasms due to her accepted employment injury.

¹⁰ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the October 5, 2007 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: September 23, 2008
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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