

**United States Department of Labor
Employees' Compensation Appeals Board**

P.L., Appellant

and

**U.S. POSTAL SERVICE, BULK MAIL
CENTER, Jersey City, NJ, Employer**

)
)
)
)
)
)
)
)
)
)
)

**Docket No. 09-541
Issued: November 9, 2009**

Appearances:

*James D. Muirhead, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On December 15, 2008 appellant, through his representative, filed a timely appeal from an August 26, 2008 merit decision of the Office of Workers' Compensation Programs denying acceptance of his claim for various additional conditions. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant established that he sustained a head injury, traumatic brain injury, balance disturbance, cognitive impairment or aggravation of lumbosacral spinal stenosis, spondylosis and radiculopathy due to his August 27, 2006 employment injury.

On appeal, appellant's representative contends that medical and wage-loss benefits were wrongly denied after September 2006 as the June 13, 2008 medical report of Dr. Haodong Song, a Board-certified psychiatrist and neurologist, established that appellant developed these conditions as a result of his employment injury.

FACTUAL HISTORY

On August 31, 2006 appellant, then a 56-year-old dock clerk, filed a traumatic injury claim (Form CA-1) alleging that on August 27, 2006 he fell and hit his face on concrete resulting in swelling. The employing establishment controverted the claim.

In an August 27, 2006 accident report, appellant's supervisor stated that appellant was on his way from transportation to his tour and that the last thing he remembered was approaching the ground. Appellant blacked out and had no memory regarding the cause of the fall. He sustained facial injuries and scraped knees and was admitted to the hospital for three to four days.

On September 5, 2006 the Office notified appellant of the deficiencies in his claim and requested additional evidence. Appellant submitted a series of chart notes and medical reports dated August 27 through September 15, 2006 related to his hospitalization and follow-up treatment for a subdural hematoma and laceration due to a slip and fall.

By decision dated October 5, 2006, the Office denied appellant's claim on the grounds that he did not submit sufficient factual evidence describing the August 27, 2006 fall to establish that the incident occurred as alleged.

On October 11, 2006 appellant submitted a second traumatic injury claim (Form CA-1). He alleged that on August 27, 2006 he stepped on loose gravel causing him to lose his balance and fall. Appellant claimed that he injured his left eye, sustained a laceration of his left cheek and a concussion.

On November 7, 2006 appellant requested an oral hearing before an Office hearing representative, which took place on February 26, 2007. He testified that his fall on August 27, 2006 occurred after he stepped on a pebble and lost his balance.

In a February 21, 2007 medical report, Dr. Haodong Song, a Board-certified psychiatrist and neurologist, reported appellant's complaints of left-sided lower extremity pain after an August 27, 2006 fall at work when appellant stepped on a loose pebble and lost his balance. Appellant reported intermittent pain around his left facial wound, tingling sensation and pain in the left lateral thigh with frequent attacks of dizziness and lightheadedness when standing up quickly or during the shower. A February 8, 2007 magnetic resonance imaging (MRI) scan revealed minor degenerative disc and facet changes involving the lower lumbar levels associated with mild convex left scoliosis, superimposed minimal central annular tearing, left foraminal ridging at L2-3 and L3-4, moderate to large central and left lateralizing herniated nucleus pulposus, minor left lateralizing ridging at L5-S1, central stenosis, severe at L4-5 and moderate to severe at L3-4, and borderline canal dimension at L2-3. Dr. Song opined that appellant's lower extremity pain was likely secondary to degenerative disease and disc herniation of the lumbar spine. He noted that it was unclear whether the left lower extremity weakness was from a previous stroke or contributed to by the lumbosacral radiculopathy.

By decision dated June 6, 2007, the Office hearing representative reversed the October 5, 2006 decision and accepted appellant's claim for facial laceration, contusion to the face, scalp

and neck and subdural hematoma. He found that appellant was entitled to continuation of pay for time lost from work from the date of injury through September 6, 2006. However, the hearing representative noted that the evidence of record did not establish entitlement to medical or wage-loss benefits thereafter.

By decision dated June 19, 2007, the Office notified appellant that his claim was accepted for face laceration, contusion of the face, scalp and neck and traumatic subdural hematoma. It also stated that there was no evidence of record establishing appellant's entitlement to additional medical treatment beyond September 15, 2006 or wage-loss benefits after August 27, 2006.

In a May 27, 2008 letter, appellant, through his representative, filed a request for reconsideration of the June 19, 2007 decision. He requested that the Office continue his wage-loss and medical benefits after September 15, 2006.

In a medical report dated June 13, 2008, Dr. Song stated that appellant fell on August 27, 2006 at work. Appellant recalled stepping on loose pebbles, losing his balance and falling. The fall resulted in a left facial laceration and he was hospitalized. After the left facial wound was repaired, appellant reported experiencing sharp pain around the wound, but, the pain had since resolved. He also experienced new tingling and pain in the left lower extremity. Dr. Song noted a history of stroke in 1995 with residual left-sided hemiparesis. He stated that appellant's weakness and memory worsened after the fall and that he had not returned to his functional baseline and was unable to return to work. Physical examination revealed left-sided hemiparesis, decreased muscle bulk and increased tone on the left side. Appellant demonstrated paresthesia in the distribution of the left lateral femorocutaneous nerve and hemiparetic gait. Reflexes were increased in the left side and plantar reflex showed toes up going on the left. Dr. Song diagnosed an old stroke with residual persistent left hemiparesis. He stated that the August 27, 2006 fall resulted in facial laceration and possible subdural hematoma. Dr. Song opined that appellant's motor function worsened after the fall and he also developed new symptoms consistent with postconcussion syndrome. There was also a suggestion of worsening lumbosacral radiculopathy after the fall. Dr. Song opined that appellant was likely to be more vulnerable to subsequent complications secondary to the fall. He diagnosed persistent gait disturbance and balance difficulty with a likely multifactorial etiology, including increased tone due to upper motor neuron dysfunction secondary to old stroke and a brain injury from the fall, lumbosacral spinal stenosis and radiculopathy. Dr. Song also assessed mild-to-moderate cognitive impairment, likely related to stroke and head injury. He stated that appellant's lumbosacral spinal stenosis, spondylosis and radiculopathy worsened after the fall.

In a June 13, 2008 letter, appellant, through his representative, requested that the Office accept the conditions of head injury, brain injury, traumatic brain injury, balance disturbance and cognitive impairment, as well as aggravation of lumbosacral spinal stenosis, spondylosis and radiculopathy.

By decision dated August 26, 2008, the Office denied modification of the prior decision. It found that appellant did not submit sufficient medical evidence to establish that the August 27, 2006 employment injury caused or contributed to the conditions diagnosed by Dr. Song.

LEGAL PRECEDENT

The claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.¹ Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. 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 specific employment factors identified by the employee.²

The Board has held that the subsequent progression of an employment-related condition "remains compensable so long as the worsening is not shown to have been produced by an independent nonindustrial cause."³ If a member weakened by an employment injury contributes to a later fall or other injury, the subsequent injury will be compensable as a consequential injury, if the further medical complication flows from the compensable injury, *i.e.*, "so long as it is clear that the real operative factor is the progression of the compensable injury, with an exertion that in itself would not be unreasonable in the circumstances."⁴

ANALYSIS

The Office accepted that appellant sustained facial laceration, contusion of the face, scalp and neck and traumatic subdural hematoma as a result of the August 27, 2006 employment-related fall. It denied medical benefits and wage-loss benefits after September 15, 2006. Appellant requested reconsideration and also requested that his claim be expanded to include head injury, brain injury, traumatic brain injury, balance disturbance, cognitive impairment and aggravation of lumbosacral spinal stenosis, spondylosis and radiculopathy. In an August 26, 2008 decision, the Office denied expansion of the claim finding that appellant did not establish that the additional conditions were causally related to the August 27, 2006 employment injury. The issue is whether appellant established that he sustained the additional conditions due to the August 27, 2006 fall. The Board finds that he has not met his burden of proof.

Appellant submitted two medical reports from Dr. Song dated February 21, 2007 and June 13, 2008. He noted appellant's complaints of left-sided lower extremity pain and reviewed a February 2, 2007 MRI scan revealing minor degenerative disc and facet changes involving the lower lumbar levels, superimposed minimal central annular tearing, left formlinal ridging in the

¹ *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

² *I.J.*, 59 ECAB ____ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

³ *Raymond A. Nester*, 50 ECAB 173, 175 (1998); *Robert W. Meeson*, 44 ECAB 834, 839 (1993).

⁴ *S.M.*, 58 ECAB ____ (Docket No. 06-536, issued November 24, 2006); *Raymond A. Nester*, *supra* note 3.

lumbar spine and central stenosis. Dr. Song opined that the lower extremity pain was likely due to degenerative disc disease and disc herniation of the lumbar spine. He advised that it was unclear whether the left lower extremity weakness was due to appellant's previous stroke or the lumbosacral radiculopathy. The Board finds this report insufficient to establish that appellant sustained any additional conditions due to or as a consequence of his employment injury. Although Dr. Song addressed appellant's spinal condition, he did not render an opinion as to the cause of the condition or specifically relate any diagnosed spinal condition to the August 26, 2007 fall.⁵ As to appellant's lower extremity weakness and pain, Dr. Song did not provide any opinion relating any diagnosed condition to the work-related injury. While he reported appellant's complaints of lower extremity pain following the August 27, 2006 fall, this is not sufficient to establish causation as there is no medical rationale explaining how the employment injury caused a diagnosed lower extremity condition.⁶

On June 13, 2008 Dr. Song stated that appellant fell on August 27, 2006 at work after losing his balance on gravel, resulting in a left facial laceration and possible subdural hematoma. Appellant also sustained a worsening of his motor function after the fall, as well as new symptoms consistent with postconcussion syndrome and a worsening of lumbosacral radiculopathy. Dr. Song diagnosed persistent gait disturbance and balance difficulty with a likely multifactorial etiology, including increased tone secondary to an old stroke and a brain injury. He assessed mild-to-moderate cognitive impairment, likely related to stroke and head injury. Dr. Song stated that appellant's lumbosacral spinal stenosis, spondylosis and radiculopathy were worsened after the fall.

The Board finds that this medical report also fails to establish that appellant sustained any additional conditions as a result of the August 27, 2006 employment injury. Dr. Song opined that, after the fall, appellant sustained a worsening of his left motor function, lumbosacral radiculopathy, lumbosacral spinal stenosis and spondylosis. The fact that appellant experienced these conditions after he fell is insufficient to establish causation as Dr. Song did not adequately explain how the fall caused or contributed to a worsening of appellant's spinal conditions or left motor function.⁷ These conditions are not established as employment related.⁸ The medical report does not establish that appellant sustained persistent gait disturbance, balance difficulty and cognitive impairment as a result of the August 27, 2006 employment injury. Dr. Song opined that these conditions had a likely multifactorial etiology including an old stroke and brain injury. This opinion is equivocal and lacks sufficient medical rationale.⁹ Dr. Song did not provide a well-reasoned explanation as to how the fall or any resulting brain injury actually

⁵ Medical reports that do not address causation are of diminished probative value. *Donald T. Pippin*, 54 ECAB 631 (2003).

⁶ Without a rationalized opinion on causal relationship, the mere fact that an injury manifested itself at work does not raise an inference of causal relationship. *Robert Lombardo*, 40 ECAB 1038 (1989).

⁷ *Id.*

⁸ See *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).

⁹ See *D.E.*, 58 ECAB ____ (Docket No. 07-27, issued April 6, 2007).

caused or contributed to the persistent gait disturbance, balance difficulty or cognitive impairment.¹⁰

The Board finds that the medical evidence is insufficient to support appellant's request for an expanded claim to include additional neurological and spinal conditions.

CONCLUSION

The Board finds that appellant did not establish that he sustained a head injury, traumatic brain injury, balance disturbance, cognitive impairment, aggravation of lumbosacral stenosis, spondylosis or radiculopathy due to his August 27, 2006 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the August 26, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 9, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹⁰ See *Victor J. Woodham*, *supra* note 2.