

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

W.H., Appellant)	
)	
and)	Docket No. 10-127
)	Issued: August 18, 2010
U.S. POSTAL SERVICE, CINCINNATI)	
PERFORMANCE CLUSTER, Pittsburgh, PA,)	
Employer)	
)	

<i>Appearances:</i>	<i>Case Submitted on the Record</i>
Alan J. Shapiro, Esq., for the appellant	
Office of Solicitor, for the Director	

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 19, 2009 appellant timely appealed a September 8, 2009 merit decision of the Office of Workers' Compensation Programs denying his claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.

ISSUE

The issue is whether appellant established that he sustained a right shoulder condition as a consequence of his employment conditions.

FACTUAL HISTORY

This case has previously been before the Board. In a June 19, 2009 decision, the Board affirmed, as modified, a June 27, 2008 Office decision finding that appellant did not meet his burden of proof to establish that he sustained a right shoulder condition as a consequence of his accepted conditions of lumbar strain, aggravation of degenerative disc disease and depressive

disorder.¹ Appellant attributed his right shoulder condition to a February 2006 fall caused by his accepted low back conditions. The Board found that the medical evidence was insufficient to meet his burden of proof. The facts of the claim as set forth in the Board's prior decision are incorporated herein by reference.

Following the June 27, 2008 Office decision, appellant submitted evidence. In an August 2, 2004 report, Dr. Richard Lingreen, a Board-certified anesthesiologist, diagnosed cervicalgia, cervical herniated nucleus pulposus without myelopathy and cervical nerve root injury syndrome. Possible surgical procedures were discussed. In March 4 and September 12, 2008 reports, Dr. John Gilbert, a Board-certified neurologist, noted that appellant had work injuries in 1984 and 1989. He diagnosed lumbar stenosis, lumbar degenerative disc disease, lumbago, lumbosacral pain, lumbar sciatica, lumbar nerve root injury, lumbar spondylosis without myelopathy, hip pain, lower leg pain, numbness/tingling, anxiety, depression, insomnia and muscle spasms. In a March 4, 2008 report, Dr. Gilbert noted that appellant had increased falls recently. He discussed appellant's progress as well as possible surgical procedures.

In a June 28, 2009 letter, appellant's attorney requested reconsideration. In an August 9, 2008 report, Dr. Gary A. Shearer, a Board-certified family practitioner, reviewed a history of appellant's back injury. He indicated that appellant sustained an injury to the right shoulder as a result of back spasms which caused his legs to go out. Dr. Shearer explained that appellant was totally asymptomatic of any shoulder problems prior to the fall and had been essentially totally disabled since. He opined that the right shoulder pathology was directly related to his workers' compensation injury. Dr. Shearer also opined that appellant's back condition was not a natural progression of the disease. Had appellant not been injured in 1984, he would not have been disabled or in pain for years. Dr. Shearer advised that appellant's complaints and physical findings were consistent, he had a positive nerve conduction study and a surgical problem in his shoulder. Chart notes of June 19, 2009 were submitted. In a September 3, 1996 report, Dr. Shearer stated that appellant had chronic back pain with degenerative disc disease of the lumbosacral spine. He found appellant's conditions were permanent and caused total disability from any active employment.

In a September 8, 2009 decision, the Office denied modification of its prior decisions. It found that appellant's right shoulder condition was not a consequence of his accepted back conditions. The Office found the evidence submitted was not sufficient to overcome the medical opinion of Dr. Fisher, the second opinion examiner.

LEGAL PRECEDENT

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.² The subsequent injury is compensable if it is the direct and natural result of a compensable

¹ Docket No. 08-2125 (issued June 19, 2009). The Board also modified the Office's decision to reflect that the Office should not have analyzed the claim as a recurrence of disability since appellant never returned to work.

² *Albert F. Ranieri*, 55 ECAB 598 (2004).

primary injury.³ 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.⁴ 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.⁵ 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.⁶

ANALYSIS

The Office accepted that appellant's June 28, 1984 work injury resulted in lumbar strain, aggravation of degenerative disc disease and depressive disorder.

In an August 9, 2008 report, Dr. Shearer opined that appellant's right shoulder pathology was directly related to the accepted employment injury. He found that appellant sustained injury to his shoulder as a result of back spasms which caused his legs to go out. Dr. Shearer advised that appellant's back condition was not a natural progression of a disease and explained that, had he not been injured in 1984, he would not have become disabled. The Board finds that Dr. Shearer did not provide sufficient medical rationale explaining the reasons appellant's legs gave out as a direct and natural result of the accepted lumbar strain or aggravation of degenerative disc disease rather than an independent intervening cause or other nonwork-related condition. Dr. Shearer did not explain the processes by which the lumbar strain and aggravation of degenerative disc disease would cause such weakening or instability to the legs so as to cause appellant to fall in 2006. The need for such rationale is especially important as the fall occurred in February 2006, more than 20 years after the work injury. Dr. Shearer's earlier report of September 3, 1996, predated the February 2006 fall and are not relevant to the issue on appeal.

The medical evidence from Dr. Gilbert and Dr. Lingreen discusses appellant's treatment for his current lumbar condition and provide diagnoses related to the lumbar spine. While Dr. Gilbert mentioned appellant's work injuries, neither physician provided a specific discussion on how any of the work injuries would cause the fall in question.⁷ While Dr. Gilbert noted appellant was experiencing increased falls in his March 4, 2008 report, he did not indicate how the February 2006 fall was related to appellant's work injury or the accepted conditions.

³ *Id.*; *Carlos A. Marrero*, 50 ECAB 117 (1998); A. Larson, *The Law of Workers' Compensation* § 10.01 (2005).

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

⁵ *Charles W. Downey*, 54 ECAB 421 (2003).

⁶ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁷ Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship. *A.D.*, 58 ECAB 149 (2006); *Conrad Hightower*, 54 ECAB 796 (2003).

Dr. Lingreen's report predated the 2006 fall. Thus, these reports are not probative regarding how the accepted conditions caused the February 2006 fall that resulted in a right shoulder injury.

The other medical evidence provided by appellant offered no opinion on the issue of causal relationship and are insufficient to establish appellant's claim.

It is appellant's burden of proof to submit the necessary medical evidence to establish a consequential injury. He did not meet his burden of proof as the medical evidence submitted is insufficient to establish a consequential relationship between his diagnosed right shoulder condition and his work injury. Appellant failed to submit sufficient medical evidence which demonstrated 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.

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 September 8, 2009 is affirmed.

Issued: August 18, 2010
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