

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

J.S., Appellant)	
)	
and)	Docket No. 10-1183
)	Issued: February 23, 2011
)	
DEPARTMENT OF VETERANS AFFAIRS,)	
MOUNTAIN HOME VETERANS)	
ADMINISTRATION MEDICAL CENTER,)	
Mountain Home, TN, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 24, 2010 appellant filed a timely appeal of the February 9, 2010 merit decision of the Office of Workers' Compensation Programs denying modification of the denial of his consequential injury claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant sustained a back injury as a consequence of his August 2, 2007 employment injury.

FACTUAL HISTORY

On September 11, 2007 appellant, then a 49-year-old detective, filed a traumatic injury claim alleging that on August 2, 2007 he sustained a left shoulder injury when he lost his footing on steps which caused him to fall forward and land on his left upper extremity.

In an August 2, 2007 medical report, Sherry J. Brandt, a nurse practitioner, advised that appellant had shoulder and back strains causally related to the August 2, 2007 incident. She listed findings on physical examination and diagnosed shoulder and back strain and pain in a limb/low back.

In x-ray reports dated August 2, 2007 of appellant's lumbosacral spine and left shoulder, Dr. William M. Kauffman, a Board-certified radiologist, obtained a history of the August 2, 2007 incident. He noted appellant's complaints of pain in his low back and left shoulder and a history of a pectoralis major tear with surgery. Dr. Kaufman found no evidence of a fracture or degenerative changes. There was no narrowing of the lumbar disc spaces or any paravertebral hemorrhage. The left shoulder revealed mild degenerative changes at the acromioclavicular joint. There were old orthopedic screw holes in the proximal humerus. There was no evidence of a fracture. Dr. Kauffman concluded that there were no acute findings.

In an October 19, 2007 letter, appellant described the August 2, 2007 incident. After retrieving his weapon and duty gear, he lost his footing and fell while going up stairs. Appellant informed Captain Dave Vaughn, a supervisor, about his injury, advising that he experienced minor pain in his left shoulder, but stated that he was fine. He was treated in the employee health unit and returned to work on the date of injury. Appellant filed a claim because he continued to experience left shoulder pain a few weeks following the August 2, 2007 incident.

By decision dated October 29, 2007, the Office denied appellant's claim. The evidence was sufficient to establish that the August 2, 2007 incident occurred as alleged. The medical evidence was found insufficient to establish that appellant sustained left shoulder or low back conditions causally related to the employment incident.

On January 28, 2008 appellant requested reconsideration. In a November 13, 2007 treatment note, Dr. John L. Holbrook, a Board-certified orthopedic surgeon, obtained a history of the August 2, 2007 employment incident. On physical examination of appellant's left shoulder, Dr. Holbrook listed essentially normal findings, noting pain in the posterior shoulder and with abduction and reaching behind him. He diagnosed posterior shoulder pain. Dr. Holbrook ordered a magnetic resonance imaging (MRI) scan of the left shoulder to rule out a rotator cuff tear.

In a January 15, 2008 treatment note, Dr. Holbrook reviewed the findings of a November 19, 2007 MRI scan of appellant's left shoulder.¹ He listed essentially normal findings on physical examination, noting some tenderness over the posterior deltoid. Dr. Holbrook advised that appellant had a labral degenerative tear with shoulder strain.

By decision dated March 3, 2008, the Office found that appellant sustained a left shoulder strain causally related to the August 2, 2007 employment incident. It found that the medical evidence was insufficient to establish that he sustained a degenerative labral tear of the left

¹ In a November 19, 2007 MRI scan report of appellant's left shoulder, Dr. Jocelyn H. Medina, a Board-certified radiologist, advised that there were suspicious findings of a tear of the anterior-superior, anterior-inferior and posterior-superior labrum. Dr. Medina stated that the superior labrum could be torn even though it was poorly evaluated on examination. She diagnosed a partial thickness tear of the supraspinatus tendon with tendinosis.

shoulder or low back condition due to the accepted incident. In a March 3, 2008 letter, the Office advised appellant that his claim had been accepted for sprain of the left shoulder and upper arm.²

On April 22, 2008 appellant requested reconsideration. In an April 7, 2008 report, Dr. Timothy M. Fullagar, a Board-certified neurologist, provided a history of appellant's August 2, 2007 employment injury, medical treatment and family and social background. He noted his complaints of back pain radiating down the left leg through the buttock and hamstring. Dr. Fullagar listed normal findings on physical examination of the lumbar spine and reviewed the findings of a March 18, 2008 lumbar MRI scan.³ He advised that appellant had degenerative changes with herniations at L4-5 and L5-S1. Dr. Fullagar stated that the onset of appellant's low back pain dated to the August 2, 2007 employment injury. One month prior, appellant's pain was intermittent in nature with progression to the lower extremity. Dr. Fullagar noted that appellant attributed his current symptoms to the accepted employment injury.

An April 13, 2008 progress note from Bobby L. Mashburn, a registered nurse, advised that appellant was treated in a hospital emergency room for low back pain that radiated down his left leg.

In an April 22, 2008 treatment note, Dr. Holbrook listed essentially normal findings on physical examination, noting some mild crepitation with circumduction. He diagnosed superior labral sprain. Dr. Holbrook stated that, since appellant had no left shoulder symptoms, no additional medical treatment was necessary. He concluded that the diagnosed left shoulder condition was caused by the fall at work and not by a previous avulsion of the pectoral muscle that occurred nearly a decade before.

By decision dated June 16, 2008, the Office denied modification of the March 3, 2008 decision. It found that the medical evidence was insufficient to establish that appellant sustained a low back condition or degenerative labral tear of the left shoulder causally related to the August 2, 2007 employment injury.

On July 21, 2008 appellant requested reconsideration. In an April 15, 2008 report, Dr. Ihab Y. Labatia, a Board-certified physiatrist, listed a history of appellant's August 2, 2007 employment injury and medical treatment. He reported essentially normal findings on physical examination, noting limited flexion and equal pain with extension and flexion of the lumbar spine and a positive straight leg raise test. Dr. Labatia also reported essentially normal findings on neurological examination, noting diminished pinprick sensation over the left L5 and S1 dermatomes, weakness in the left big toe extension with strength of 4/5, loss of a left ankle jerk and a gait that showed normal heel to toe walking bilaterally with slight antalgia on the left side. He reviewed the March 18, 2008 MRI scan findings. Dr. Labatia opined that appellant had

² In a separate decision dated March 3, 2008, the Office denied appellant continuation of pay on the grounds that the August 2, 2007 employment injury was not reported within 30 days.

³ In a March 18, 2008 lumbar MRI scan report, Dr. Charles G. Miller, II, an osteopath, found a large left paracentral disc bulge at L5-S1 that measured 2.3 centimeters in width and 9 millimeters in depth. The bulging disc was distorting the course of the left exiting nerve root.

sensory loss and weakness mostly in the L5 and S1 distributions on the left side. He advised that his back condition was most likely caused by left L5 and S1 radiculitis which was caused by left paracentral disc herniation at L5-S1. Dr. Labatia noted that appellant underwent a left S1 transforaminal epidural block under fluoroscopy to treat his lumbosacral radiculitis on that date. On April 29, 2008 he reiterated his prior diagnosis of left L5-S1 paracentral disc herniation that resulted in lumbosacral radiculitis.

In a July 2, 2008 report, Dr. Fullagar stated that appellant did not have any back pain radiating down to his lower extremities prior to the August 2, 2007 employment injury. He reiterated his diagnosis of degenerative changes at L4-5 and L5-S1 and large left paracentral disc herniation at L5-S1.

By decision dated September 16, 2008, the Office denied modification of the June 16, 2008 decision. It found that the medical evidence failed to establish that appellant sustained additional conditions causally related to the August 2, 2007 employment injury.

On February 23, 2009 appellant requested reconsideration. In a February 5, 2009 report, Dr. Fullagar noted appellant's complaints of low back pain and mild left leg pain. Appellant related to him that, at the time of the August 2, 2007 employment injury, he experienced worsening low back pain that radiated down to his left buttock and hamstring. Prior to the accepted employment injury, he only had low back pain. Dr. Fullagar opined that his disc herniation at L5-S1 to the left obviously occurred after the August 2, 2007 employment injury.

In a March 5, 2009 decision, the Office denied modification of the September 16, 2008 decision. It found that appellant's herniated disc was not employment related.

On December 1, 2009 appellant requested reconsideration. In a November 6, 2009 treatment note, Dr. Holbrook addressed appellant's ongoing problems with posterior left shoulder pain dating back to the August 2, 2007 employment injury. His lumbar degenerative disc bothered him at night or while engaged in strenuous activities. Appellant experienced some popping although it was not really more painful when it occurred. On physical examination, Dr. Holbrook found some crepitation when he rotated appellant's left shoulder which was not any different than his asymptomatic right shoulder. Impingement testing caused some aggravation, but his pain was primarily focused on the posterior and underneath the acromion level. Appellant had some increased pain with testing of a superior labral tear from anterior to posterior although no real clunking was noted. His stability seemed good. Appellant had good external and internal rotation strength. Dr. Holbrook advised that appellant had internal derangement of the left shoulder that was likely fraying his labrum based on an MRI scan.

In a November 25, 2009 report, Dr. Fullagar obtained a history that, following the August 2, 2007 employment injury, appellant experienced muscle spasm in his low back that radiated down to his left leg. He reviewed appellant's medical records and opined that the left-sided lumbar radiculopathy was causally related to the August 2, 2007 employment injury. The nerve impingement from his L5-S1 disc herniation caused his left leg pain. Dr. Fullagar stated that prior to the accepted employment injury appellant did not have significant nerve root impingement.

In a December 14, 2009 treatment note, Dr. Bart I. McKinney stated that appellant's left shoulder condition had worsened.⁴ He reported essentially normal findings on physical examination of both the right and left upper extremities, noting a positive Neer, an equivocal Hawkins and a mildly positive compression rotation test. Dr. McKinney advised that appellant had a partial rotator cuff and possible full thickness and labral injury of the left shoulder.

In a February 9, 2010 decision, the Office denied modification of the March 5, 2009 decision finding that the back condition was employment related. It accepted appellant's claim for labral tear of the left shoulder due to the August 2, 2007 employment injury.

LEGAL PRECEDENT

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 Regarding the range of compensable consequences of an employment-related injury, Larson notes that, when the question is whether compensability should be extended to a subsequent injury or aggravation related in some way to the primary injury, the rules that come into play are essentially based upon the concepts of direct and natural results and of the claimant's own conduct as an independent intervening cause. The basic rule is that 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. Thus, once the work-connected character of any condition is 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.⁶

A claimant bears the burden of proof to establish a claim for a consequential injury.⁷ As part of this burden, he or she 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. The opinion must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship of the diagnosed condition and the specific employment injury.⁸

⁴ The Board notes that Dr. McKinney's professional qualifications are not contained in the case record.

⁵ *Albert F. Ranieri*, 55 ECAB 598 (2004).

⁶ A. Larson, *The Law of Workers' Compensation* § 10.01 (November 2000).

⁷ *J.J.*, 60 ECAB ____ (Docket No. 09-27, issued February 10, 2009).

⁸ *Charles W. Downey*, 54 ECAB 421 (2003).

ANALYSIS

The Office accepted that on August 2, 2007 appellant sustained an employment-related left shoulder strain and a labral tear of the left shoulder. Appellant contends that he sustained a low back condition as a result of the accepted injury. The Board finds that he has not submitted sufficient medical evidence to establish his claim.

The August 2, 2007 diagnostic test results of Dr. Kauffman which addressed appellant's back and left shoulder conditions are insufficient to establish appellant's claim. Dr. Kauffman reported no acute findings with regard to the low back, no degenerative changes or narrowing of the lumbar discs.

On April 7, 2008 Dr. Fullagar found that appellant had left-sided disc herniations at L4-5 and L5-S1 and lumbar radiculopathy causally related to the August 2, 2007 employment injury. He relied on diagnostic testing of the lumbar spine obtained seven months after the injury.⁹ Dr. Fullagar also appeared to base his opinion on appellant being asymptomatic prior to the accepted employment injury. A medical opinion stating that a condition is causally related to an employment injury because the employee was asymptomatic before the injury but became symptomatic is insufficient, without supporting rationale, to establish causal relationship.¹⁰ Dr. Fullagar failed to provide a full medical history of medical rationale explaining how the August 2, 2007 employment injury caused the lumbar herniated disc and radiculopathy conditions. His reports do not explain how the accepted injury caused or worsened the diagnosed lumbar conditions. The Board finds that Dr. Fullagar's reports are insufficient to establish appellant's claim.

Dr. Labatia's April 15 and 29, 2008 reports reviewed a history of the August 2, 2007 employment injury and medical evidence of record. He listed essentially normal findings on physical and neurological examination of the lumbar spine and left lower extremity. Dr. Labatia found that appellant had left L5 and S1 radiculitis which was caused by left paracentral disc herniation at L5-S1. He performed a left S1 transforaminal epidural block under fluoroscopy to treat appellant's lumbosacral radiculitis. Dr. Labatia did not provide any opinion addressing the causal relationship between the lumbar conditions and the August 2, 2007 employment injury.¹¹ The Board finds that Dr. Labatia's reports are insufficient to establish appellant's claim.

The reports of Ms. Brandt, a nurse practitioner, and Mr. Mashburn, a registered nurse, and appellant's physical therapists are of no probative value.¹² Neither is defined as a physician under the Federal Employees' Compensation Act. The Board finds, therefore, that these reports

⁹ See *Lindah. Mendenhall*, 41 ECAB 532 (1990). When diagnostic testing is delayed, the greater the likelihood that an event not associated to the employment caused or worsened the condition.

¹⁰ *T.M.*, 60 ECAB ___ (Docket No. 08-975, issued February 6, 2009); *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

¹¹ *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael E. Smith*, 50 ECAB 313 (1999).

¹² See 5 U.S.C. § 8101(2); see also *G.G.*, 58 ECAB 389 (2007); *Paul Foster*, 56 ECAB 208 (2004).

do not constitute competent medical evidence to support appellant's claim.¹³ The remainder of the medical evidence of record does not address appellant's low back condition.

Appellant has not submitted sufficient medical evidence to establish that his back condition is a consequence of his accepted left shoulder injury.¹⁴

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that his back condition is causally related to the August 2, 2007 injury.

ORDER

IT IS HEREBY ORDERED THAT the February 9, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 23, 2011
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

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

¹³ A.C., 60 ECAB ___ (Docket No. 08-1453, issued November 18, 2008).

¹⁴ See *Conard Hightower*, 54 ECAB 796 (2003).