

¹ 5 U.S.C. § 8101 *et seq.*

further review of the merits under 5 U.S.C. § 8128.² The facts and circumstances as set forth in the prior decision are hereby incorporated by reference. The facts relevant to the instant appeal will be set forth.

On December 25, 2006 appellant received treatment at the emergency room for right shoulder and elbow pain after a fall. In a report dated January 8, 2007, Dr. Michael A. Franchetti, a Board-certified orthopedic surgeon, found that appellant experienced “persistent shoulder and elbow pain on the right side.” He diagnosed a right shoulder sprain and strain, a rotator cuff injury and right elbow sprain. Dr. Franchetti noted that a magnetic resonance imaging (MRI) scan study of the right shoulder showed degenerative changes and rotator cuff tendinitis and tendinosis.

By letter dated January 22, 2007, appellant related that on December 25, 2006 his knees gave out while he was walking down stairs at his home. He fell, injuring his right elbow and shoulder. Appellant asserted that the fall was a consequential injury due to prior work injuries on September 14, 1999 and January 14, 2000.

In a progress reports dated February 5, 2007, Dr. Franchetti noted that appellant’s right shoulder pain had improved following physical therapy. In a progress report dated March 5, 2007, he listed findings on examination and diagnosed a right shoulder sprain, a rotator cuff injury and right elbow sprain. Dr. Franchetti stated, “The above are related to his knees giving way from his previous work injuries.” In an April 16, 2007 report, he indicated that appellant’s right shoulder and elbow sprain and rotator cuff injury resulted from his knees giving out from a prior injury on January 14, 2000.

In a report dated November 19, 2007, Dr. Franchetti opined that appellant’s right elbow injury had resolved but that he continued to experience right shoulder pain with repetitive use or exertion. He provided range of motion measurements for the right shoulder. Dr. Franchetti diagnosed a chronic rotator cuff sprain/strain and rotator cuff injury due to the January 2000 employment injury. He stated, “As previously delineated, I feel to within a reasonable degree of medical certainty and probability that [appellant’s] permanent right shoulder injury is directly related to [the] January 14, 2000 injury due to his injured knee giving way due to the work injury of that date.” Dr. Franchetti opined that appellant had a 34 percent impairment of the right shoulder.

On December 17, 2007 appellant filed a claim for a schedule award. By letter dated January 25, 2008, OWCP noted that he was claiming a schedule award based on a consequential

² Docket No. 08-331 (issued August 15, 2008); *petition for recon. denied*, Docket No. 08-331 (issued May 5, 2009). OWCP accepted that appellant sustained left shoulder strain and bilateral knee sprain due to a January 14, 2000 work injury. Appellant had a prior injury to his leg on September 14, 1992. OWCP granted him schedule awards for a 32 percent permanent impairment of the left lower extremity and a 15 percent permanent impairment of the right lower extremity. By decision dated June 8, 2001, it granted appellant a schedule award for a nine percent permanent impairment of the left upper extremity. On June 27, 2003 OWCP granted him a schedule award for an additional 25 percent permanent impairment of the left upper extremity. In decisions dated March 23, 2004 and February 10, 2005, it denied modification of its June 27, 2003 decision. By decision dated October 26, 2007, OWCP denied appellant’s request for reconsideration of the June 27, 2003 decision as the evidence submitted was insufficient to warrant reopening the case for further merit review.

right shoulder injury. It requested that appellant submit rationalized medical evidence addressing the causal relationship between the work injury and the December 25, 2006 incident and resulting right shoulder condition. OWCP further requested that he explain in detail the circumstances surrounding his injury on December 25, 2006.

On April 26, 2008 an OWCP medical adviser reviewed the case record and advised that appellant had no ratable impairment of the right upper extremity as there were no diagnostic studies showing a rotator cuff injury.

By decision dated May 16, 2008, OWCP denied appellant's request for a schedule award for the right upper extremity. It found that the evidence was insufficient to show a permanent impairment of the right upper extremity.

On May 23, 2008 appellant requested reconsideration of the May 16, 2008 decision. He argued that Dr. Franchetti found a right upper extremity impairment and rotator cuff tendinitis based on a January 4, 2007 MRI scan study.

On September 12, 2011 appellant again requested reconsideration. He argued that he sustained a consequential injury to his right shoulder on December 25, 2006 and noted that he had described the injury in his January 22, 2007 letter. Appellant reviewed the medical evidence submitted from Dr. Franchetti and the actions taken by OWCP. He contended that OWCP failed to properly develop the medical evidence.

In a decision dated September 23, 2011, OWCP denied appellant's request for reconsideration after finding that it was untimely filed and did not demonstrate clear evidence of error. Appellant appealed to the Board. In an order dated August 15, 2012, the Board found that he had timely requested reconsideration and remanded the case for OWCP to apply the standard for timely reconsideration requests set forth at 20 C.F.R. § 10.606(b)(2).³

By decision dated September 11, 2012, OWCP denied modification of its May 16, 2008 decision. It found that the medical evidence was insufficient to show that he sustained a condition of the right upper extremity due to his January 14, 2000 employment injury.

On appeal appellant argued that OWCP did not address the evidence he submitted in September 2011. He maintained that OWCP erred in failing to consider whether he sustained a consequential injury.

LEGAL PRECEDENT

A schedule award can be paid only for a condition related to an employment injury. The claimant has the burden of proving that the condition for which a schedule award is sought is causally related to his or her employment.⁴ The evidence generally required to establish causal relationship is rationalized medical opinion evidence. The claimant must submit a rationalized

³ *Order Remanding Case*, Docket No. 12-701 (issued August 15, 2012).

⁴ *See Veronica Williams*, 56 ECAB 367 (2005); *Annette M. Dent*, 44 ECAB 403 (1993).

medical opinion that supports a causal connection between his current condition and the employment injury.⁵ The medical opinion must be based on a complete factual and medical background with an accurate history of the claimant's employment injury and must explain from a medical perspective how the current condition is related to the injury.⁶

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. The subsequent injury is compensable if it is the direct and natural result of a compensable primary injury. 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 not related to employment, is deemed, because of the chain of causation to arise out of and in the course of employment and is compensable.⁷ A claimant bears the burden of proof to establish a claim for a consequential injury through the submission of rationalized medical evidence.⁸

ANALYSIS

OWCP accepted that appellant sustained left shoulder strain and bilateral knee strain as a result of a January 14, 2000 employment injury. On December 17, 2007 appellant filed a claim for a schedule award for the right upper extremity. He maintained that on December 25, 2006 he sustained a consequential injury to his right shoulder. Appellant related that he fell down and hurt his right shoulder and right elbow when his knees gave way while he was walking up the stairs at home. He attributed the failure of his knees to prior employment injuries, including his injury of January 14, 2000. As discussed, appellant has the burden to establish that he sustained a consequential injury to his right shoulder entitling him to a schedule award.⁹ He must submit rationalized medical evidence establishing a diagnosed condition as a direct and natural result of the accepted work injury.¹⁰

On December 25, 2006 appellant received treatment for pain in his right shoulder and elbow after he fell. On January 8 and March 5, 2007 Dr. Franchetti diagnosed a right shoulder sprain and strain, a rotator cuff injury and right elbow sprain. He found that an MRI scan study showed degeneration of the right shoulder and rotator cuff tendinitis. Dr. Franchetti, however, did not address the cause of the diagnosed condition. Medical evidence that does not offer any

⁵ *Manuel Gill*, 52 ECAB 282 (2001).

⁶ *Yvonne R. McGinnis*, 50 ECAB 272 (1999).

⁷ *See S.S.*, 59 ECAB 315 (2008); *Debra L. Dillworth*, 57 ECAB 516 (2006).

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

⁹ *Id.*

¹⁰ *See S.S.*, *supra* note 7.

opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.¹¹

In a progress report dated March 5, 2007, Dr. Franchetti attributed appellant's right shoulder sprain, rotator cuff injury and right elbow sprain to his knees giving way due to prior work injuries. On April 16, 2007 he indicated that appellant's knees gave out due to an employment injury on January 14, 2000. Dr. Franchetti did not discuss the history of the January 2000 employment injury or provide any rationale for his causation finding. Medical conclusions unsupported by rationale are of diminished probative value.¹²

On November 19, 2007 Dr. Franchetti evaluated appellant's continued right shoulder symptoms and measured range of motion. He determined that he had a 34 percent permanent impairment of the right shoulder. Dr. Franchetti found that appellant's right shoulder injury resulted from his January 14, 2000 employment injury as the January 2000 injury caused his knee to give out. He did not, however, provide a detailed medical history discussing the January 14, 2000 work injury or explain how appellant's knees giving way on December 25, 2006 resulted from the accepted employment injury. Causal relationship must be supported with affirmative medical rationale and be based upon a complete and accurate medical and factual background.¹³

As the weight of the evidence fails to establish that appellant sustained a consequential injury to his right upper extremity, he is not entitled to a schedule award.

On appeal appellant argued that OWCP did not discuss all the evidence and did not consider whether he sustained a consequential injury. OWCP, however, reviewed the medical evidence from Dr. Franchetti and found that it was insufficient to show that he sustained an employment-related right upper extremity injury.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128 and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant is not entitled to a schedule award for a permanent impairment of the right upper extremity causally related to his accepted employment injury.

¹¹ See *A.D.* 58 ECAB 149 (2006); *Conard Hightower*, 54 ECAB 796 (2003).

¹² See *Jacquelyn L. Oliver*, 48 ECAB 232 (1996).

¹³ See *A.D.*, *supra* note 11.

ORDER

IT IS HEREBY ORDERED THAT the September 11, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 7, 2013
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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