United States Department of Labor
Employees' Compensation Appeals Board

F.E., Appellant	)	
and	)	**Docket No. 14-166**
	)	**Issued: May 12, 2014**
DEPARTMENT OF HOMELAND SECURITY, IMMIGRATION & CUSTOMS ENFORCEMENT, Irving, TX, Employer	)	

Appearances:
Debra Hauser, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 30, 2013 appellant, through counsel, filed a timely appeal from a May 23, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 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 established that he sustained a degenerative cervical or lumbar disc, bilateral shoulder or right knee conditions causally related to his employment injury of April 3, 2012.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On April 5, 2012 appellant, a 36-year-old special agent, filed a claim alleging that he injured his low back, middle back, neck and right knee on April 3, 2012 when the vehicle he was driving was struck from behind by another motor vehicle.

In an April 6, 2012 report, John W. East, an osteopath, examined appellant, related the history of injury and advised that he had complaints of neck, middle and lower back pain and bilateral leg pain, which he rated as an eight on a scale of one to ten. Appellant stated that the pain was aching, burning, and throbbing and was worsened with bending, standing or walking. Dr. East advised that appellant experienced this discomfort since the aftermath of the April 3, 2012 automobile accident. Appellant was at status post cervical flexion-extension injury and postmotor vehicle collision. Dr. East diagnosed bilateral L5 radiculopathy, bilateral L4-S1 facet arthritis, mechanical low back pain, bilateral splenius cervical trigger points, bilateral C4-6 facet arthritis and bilateral C5 radiculopathy.

On April 18, 2012 OWCP accepted the following conditions: thoracic or lumbosacral neuritis or radiculitis; brachial neuritis or radiculitis; displacement of lumbar intervertebral disc without myelopathy; and displacement of lumbar intervertebral disc without myelopathy.

In a June 12, 2012 report, Dr. East stated that appellant had complaints of severe pain, a nine on a scale of one to ten, in his neck, arms, shoulders, face, right knee, low back and both legs. He diagnosed cervical multilevel disc protrusions, unchanged; L4-5 and L5-S1 disc protrusions, unchanged; right knee medial meniscus tears, active; bilateral labral tears, active; bilateral temporomandibular joint (TMJ) subluxation, active; and nonrestorative sleep, active. Dr. East recommended that appellant be referred for an orthopedic consultation for his shoulders and right knee in order to determine if he would benefit from surgery. He recommended an orthodontic evaluation for the TMJ dysfunction. Dr. East advised that appellant underwent a magnetic resonance imaging (MRI) scan of his shoulders which demonstrated a superior labral, anterior to posterior (SLAP) lesion in the left shoulder and rotator cuff tendinopathy with mild partial thickness tearing, and osteoarthritis at the acromioclavicular (AC) joint. An MRI scan of the right shoulder showed labral degeneration and tear mild-to-moderate hypertrophic change of the AC joint. An MRI scan of the TMJ showed degenerative changes at the articular disc. Dr. East stated that the disc might be subluxed anteriorly in the closed position and reduced in the open position bilaterally. He advised that an MRI scan of the right knee revealed a radial tear of the medial meniscus.

Dr. East opined that, because appellant had no medical records or history of jaw, right knee, neck, or back pain, the symptoms he was experiencing were the result of the motor vehicle collision of April 3, 2013.

In a report received by OWCP on August 15, 2012, Dr. East stated that he began treating appellant on April 5, 2012 for several injuries incurred after being rear-ended in a motor vehicle accident on April 3, 2012. Appellant had complaints of headaches, clicking in his jaw, pain in the neck and back, pain in both shoulders, pain in his right knee and pain on the top of both feet. At the time of his initial visit, Dr. East's primary concern was to diagnose and treat appellant's neck and back. He subsequently addressed additional injuries. Appellant returned on May 21,

2012 for a follow-up visit, at which time Dr. East evaluated him for headaches, pain in his jaw, pain in both shoulders and pain in his right knee. Dr. East administered cortisone injections in both of appellant's shoulders in an attempt to relieve the pain. On May 30, 2012 appellant had MRI scans of his jaw, both shoulders and right knee. Dr. East recommended that the following conditions be accepted: headaches, occipital neuralgia caused by whiplash: other syndromes affecting cervical region; TMJ; left shoulder, possible SLAP tear; superior glenoid labrum lesion; rotator cuff tear; partial tear of rotator cuff; right shoulder, possible SLAP tear; superior glenoid labrum lesion; right knee, attenuated/torn; other tear of cartilage or meniscus of knee current; large radial tear in medial meniscus; tear of medial meniscus knee, current; possible inferior tear in posterior horn; derangement of posterior horn of medial meniscus.

In order to determine whether the diagnosed conditions related to the accepted April 3, 2012 work injury, OWCP referred appellant for a second opinion examination to Dr. Donald Mauldin, Board-certified in orthopedic surgery. In an October 9, 2012 report, Dr. Mauldin reviewed the medical history and the statement of accepted facts and listed findings on examination. He advised that appellant initially stated that he had neck and back pain and burning in his feet; however, he subsequently described pain to his shoulders and right knee. Dr. Mauldin noted that the records from the emergency center on the date of injury showed that appellant was diagnosed with a neck, back and bilateral foot strains, with no mention of any shoulder or right knee problems. He noted that Dr. East initially diagnosed cervical and lumbar spine strains, with lumbar radiculopathy and cervical radiculopathy but did not mention any problems referable to structural damage involving the feet, shoulders or right knee. Dr. Mauldin advised that a right knee MRI scan showed an attenuated or possible chronic ACL tear and a radial tear in the midbody of the medial meniscus. A left shoulder MRI scan revealed some tendinopathy in both shoulders without evidence of any significant acute rotator cuff tears.

Dr. Mauldin stated that appellant began having TMJ pain on the night of the April 3, 2012 work incident. He opined, however, that the only potential injury appellant sustained on that date was a minor soft tissue strain of the cervical and lumbar spine based on a review of the damage to his truck and his initial examination findings. Dr. Mauldin advised that there was nothing to indicate that the mechanism of injury caused any significant bilateral shoulder or right knee pain. He noted that appellant had prior ACL-type problems with his knee based on the MRI scan results and there was nothing to establish that the injury or the mechanism of injury resulted in any internal derangement to the right knee. Dr. Mauldin stated that the lack of any significant complaints of right knee, TMJ or shoulder pain some three days after the accident when he was seen by Dr. East would exclude those conditions as being related to the April 3, 2012 injury.

Dr. Mauldin found that the only conditions causally related to the April 3, 2012 injury were a soft tissue strain of the cervical and lumbar spine. He advised that he would not expect significant structural damage to those areas. The cervical and lumbar spine findings shown on the MRI scan were degenerative in nature, not secondary to any specific injury, and were not permanently aggravated by the April 3, 2012 incident. Dr. Mauldin advised that all other complaints referable to the shoulders, knees and feet were not related to appellant's accepted claim.

OWCP found that there was a conflict in medical opinion between Dr. East and Dr. Mauldin, the second opinion physician, as to the conditions causally related to the April 3, 2012 employment injury. On February 4, 2013 it referred her to Dr. O. Doak Raulston, Board-certified in orthopedic surgery, for a referee medical examination. When asked to identify any additional conditions or diagnoses which could have resulted and should be accepted as arising from the April 3, 2012 work incident, Dr. Raulston listed the following conditions: degenerative disc disease C3 through C5, mild; degenerative disc disease at L5 and L5-S1, mild; bilateral shoulder subluxation, by history; tendinopathy of both shoulders, chronic; tear of the posterior labrum, right shoulder; torn medial meniscus and anterior cruciate ligament right knee; and temporal mandible dysfunction. When asked to identify any additional conditions or diagnoses which did not result from the April 3, 2012 work incident, Dr. Raulston stated:

> "The degenerative disc disease found on the MRI [scans] of the cervical and lumbar spine measured [two] and at the most [three] millimeters in AP diameter, none of which seemed to be compressing any neural elements and no degenerative joint changes were described. In my opinion, in all reasonable probability, these bulges were not caused by the April 3, 2012 work incident.
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> "As far as the subluxation of the shoulders, it is possible but not probable, in my opinion, that the force involved, which as far as I can tell was not a high speed collision, would not be sufficient to tear the capsules and render the joints unstable. I think the tendinopathy in both shoulders is chronic in nature and no specifically caused by the accident.
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> "As far as the knee, the right knee sitting with the knee flexed hitting the dashboard, if the force was directed in the patellofemoral joint, I do not feel this would cause any ligamentous injury nor a meniscal tear. If the force was indeed borne primarily by the proximal tibia, the ligament involved would be the posterior cruciate ligament and not the anterior. Again, this would be unlikely to cause a meniscal tear. As far as the TMJ, it is possible that[,] when he was anticipating the accident, he had his jaws clenched. With the jolt, it is reasonable to assume that there might be some strain through the TMJ joints, which could have led to some dysfunction. However, on this, I think the oral surgeon would be in a much better position to relate any causal relationship of the collision with the TMJ dysfunction."

By decision dated May 23, 2013, OWCP found that appellant failed to establish injuries to his right knee or both shoulders due to the April 13, 2012 injury. It found that he had submitted sufficient medical evidence to further develop the claim for the TMJ condition. OWCP did not make any specific findings regarding the claimed cervical and lumbar degenerative disc conditions.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] has the burden of establishing that the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[3] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[4]

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[5]

An award of compensation may not be based on surmise, conjecture or speculation. Neither, the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.[6] Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.[7] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant,[8] must be one of reasonable medical certainty,[9] 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 claimant.[10]

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[2] 5 U.S.C. §§ 8101-8193.

[3] *Joe D. Cameron,* 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[4] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[5] *See Joe T. Williams,* 44 ECAB 518, 521 (1993).

[6] *Id.*

[7] *See Naomi A. Lilly*, 10 ECAB 560, 572-73 (1959).

[8] *William Nimitz, Jr.* 30 ECAB 567, 570 (1979).

[9] *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

[10] *See William E. Enright*, 31 ECAB 426, 430 (1980).

It is not necessary to provide a significant contribution of employment factors for the purpose of establishing causal relationship.[11]

Once OWCP starts to procure a medical opinion, it must complete the process.[12]

ANALYSIS

OWCP accepted appellant's claim for thoracic or lumbosacral neuritis or radiculitis; brachial neuritis or radiculitis; displacement of lumbar intervertebral disc without myelopathy; and displacement of lumbar intervertebral disc without myelopathy. The issue of whether he sustained a TMJ condition causally related to the April 3, 2012 injury was remanded for further development of the medical evidence and is not presently on appeal. Appellant also contends that he also sustained the following conditions due to the April 3, 2012 work incident: degenerative disc disease C3 through C5; degenerative disc disease at L5 and L5-S1; bilateral shoulder subluxation; chronic tendinopathy of both shoulders; tear of the posterior labrum, right shoulder; torn medial meniscus and anterior cruciate ligament, right knee. Appellant's representative argues that OWCP erred in finding that the opinion of Dr. Raulston merited the special weight of an impartial medical examiner. Rather, Dr. Raulston's opinion was not sufficient to resolve the conflict in the medical evidence regarding whether appellant's claimed additional conditions were causally related to the April 3, 2012 employment injury. Counsel argues that Dr. Raulston's opinion is equivocal and contradictory. Further, Dr. Raulston and Dr. East both indicated that the April 3, 2012 injury was at least partly responsible for the development of appellant's claimed conditions.

OWCP found that there was a conflict in medical opinion between Dr. East, appellant's treating physician, and Dr. Mauldin, the second opinion physician, as to whether the conditions of degenerative disc disease C3 through C5; degenerative disc disease at L5 and L5-S1; bilateral shoulder subluxation; chronic tendinopathy of both shoulders; tear of the posterior labrum, right shoulder; torn medial meniscus and anterior cruciate ligament, right knee were causally related to the April 3, 2012 work incident. When such conflicts in medical opinion arise, 5 U.S.C. § 8123(a) requires OWCP to appoint a "referee" physician, also known as an impartial medical examiner. Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.[13] When OWCP secures an opinion from an impartial medical specialist but the opinion of the specialist requires clarification or elaboration, it has the responsibility to secure a supplemental report from the specialist for the purpose of correcting the defect in the original report.

Dr. Raulston noted in his March 1, 2013 report that the conditions of degenerative disc disease C3-5, degenerative disc disease at L5-S1, bilateral shoulder subluxation, chronic bilateral

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[11] *See Richard E. Simpson*, 55 ECAB 490 (2004).

[12] *See Beth P. Chaput*, 37 ECAB 158 (1985); *William N. Saathoff*, 8 ECAB 769 (1956).

[13] *Regina T. Pellecchia,* 53 ECAB 155 (2001).

shoulder tendinopathy, tear of the posterior labrum, right shoulder, and torn medial meniscus and anterior cruciate ligament of right knee were conditions which should be accepted as work related and were clearly demonstrated to be the result of the April 3, 2012 motor vehicle accident. However, he also stated that the claimed degenerative disc conditions, as shown by bulges on MRI scans, were not caused by the April 3, 2012 work incident. Dr. Raulston advised that it was possible, but not probable, that with the minimal force involved in the April 3, 2012 incident the subluxation of the shoulders would not be sufficient to tear the capsules and render the joints unstable. With regard to the right knee, he opined that if the force was directed in the patellofemoral joint with a flexed knee it would not cause any ligamentous injury or meniscal tear; if the force was primarily born by the proximal tibia the ligament involved would be the posterior cruciate ligament and not the anterior, which was also "not likely" to cause a meniscal tear. The Board finds that Dr. Raulston's opinion is not sufficient to resolve the conflict in medical evidence and requires clarification. His responses to OWCP's questions were brief and speculative in nature. Accordingly, OWCP's May 23, 2013 decision is hereby set aside and remanded for further development. On remand, OWCP should request that Dr. Raulston submit a well-rationalized, supplemental, clarifying opinion to specifically determine the outstanding issue in the case, *i.e.*, whether the additional claimed conditions of degenerative disc disease C3-5, degenerative disc disease at L5-S1, bilateral shoulder subluxation, chronic bilateral shoulder tendinopathy, tear of the posterior labrum, right shoulder and torn medial meniscus and anterior cruciate ligament of right knee were conditions causally related to the April 3, 2012 motor vehicle accident and therefore should be accepted as work related.[14] After such development as it deems necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that the case is not in posture for decision. The decision dated May 23, 2013 is therefore set aside and the case is remanded to OWCP for further action consistent with this decision of the Board.

[14] The Board notes that OWCP did not make any findings pertaining to the claimed cervical and lumbar degenerative disc conditions in its May 23, 2013 decision. On remand, therefore, the Board instructs OWCP to consider whether these conditions were causally related to the April 3, 2012 work incident.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 23, 2013 is set aside and remanded.

Issued: May 12, 2014
Washington, DC

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

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

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