

In a report dated August 4, 2000, Dr. J. Ole Olsen, appellant's attending physician with a specialty in general practice, stated that appellant sustained a work-related injury on July 26, 2000 when he fell back on a chair. Dr. Olsen placed appellant on light sedentary work with no lifting, pushing or pulling over five pounds and referred him to a physiatrist. He assessed neck and upper back discomfort, noting that appellant had a preexisting history of chronic low back and knee discomfort. Dr. Olsen noted that appellant reported having several prior surgeries to the right knee, including a meniscectomy and reconstruction of the anterior cruciate ligament.

By decision dated September 25, 2000, the Office found that the July 26, 2000 incident occurred as alleged but denied appellant's claim on the grounds that he failed to submit sufficient medical evidence to establish that he sustained an injury. Appellant requested an oral hearing which was held on December 20, 2001. By decision dated March 18, 2002, the hearing representative affirmed the Office's September 25, 2000 decision denying benefits. On April 26, 2002 appellant requested reconsideration and, by decision dated July 18, 2002, the Office vacated the September 25, 2000 decision and accepted that on July 26, 2000 appellant sustained a cervical and back strain, and back abrasion.

In a report dated August 20, 2002, Dr. Stephen A. Slobodian, Board-certified in physical medicine and rehabilitation, stated that appellant had a cervical and thoracic contusion sustained on July 26, 2000, and a cervical hyperflexion and extension injury caused by a November 3, 2000 motor vehicle accident. He also noted chronic low back and knee pain. He evaluated appellant's cervical range of motion and found 50 degrees of forward flexion, 40 degrees of extension, 40 degrees of right lateral bending, 30 degrees of left lateral bending, 55 degrees of right-sided rotation and 35 degrees of left-sided rotation. The sensory examination was normal and reflex muscle testing was essentially normal with a decrease in triceps bilaterally. He stated that appellant's work-related injuries had resolved by November 3, 2000, and that appellant's motor vehicle accident likely superceded the fall at work as a cause of continuing symptoms.

On March 4, 2003 appellant filed a CA-7 claim for compensation and checked a box indicating that his claim was for wage loss from that date based on his July 26, 2000 work-related injury. He noted that his federal retirement annuity began in August 2002. The employing establishment stated that appellant had been approved for disability retirement through the Office of Personnel Management (OPM) and that he filed the current claim as an election of Office disability benefits. Appellant stopped work on March 4, 2003.¹

On March 18, 2003 the Office advised appellant that he needed to submit medical evidence in support of his claim for disability. It also advised him that if he claimed a recurrence of disability he would need to submit a CA-2a form and comply with the appropriate instructions. The Office further noted that the accepted conditions should have resolved no later than eight weeks from the July 26, 2000 date of injury and advised him that it considered the current claim to be for a recurrence of disability.

On June 6, 2003 appellant filed a claim for a schedule award. Appellant submitted physical therapy notes from June 30 to August 6, 2003.

¹ Appellant was on light duty until March 4, 2003. The record indicates that appellant retired on disability on March 4, 2003.

On August 5, 2003 the Office received an August 7, 2002 cervical magnetic resonance imaging (MRI) scan which revealed spondylosis at C3-4, C4-5, C5-6 and C6-7 and bone edema at C6 and C5. Appellant underwent a physical capacity evaluation on August 19, 2003 and, in a summary report dated August 20, 2003, a physical therapist stated that appellant could return to light-duty status. On November 5, 2003 he again filed a claim for a schedule award.

In a report dated October 27, 2003, an Office medical adviser stated that appellant was not entitled to a schedule award for any impairment of the upper or lower extremities based on the accepted injuries.² On November 12, 2003 the Office advised appellant that a schedule award for a back injury was payable only if an arm or leg were affected but that the medical evidence of record established degenerative disc disease, spondylosis and bulging discs did not support an impairment to any extremity.

By decision dated November 25, 2003, the Office denied appellant's claim for a recurrence of disability on March 4, 2003 finding that the evidence of record failed to support a causal relationship between his medical condition on March 4, 2003 and the accepted injury.

In a separate decision of November 25, 2003, the Office denied appellant's claim for a schedule award finding that the medical evidence failed to establish any impairment to either his upper or lower extremities.

In a report dated November 20, 2003, Dr. Louis B. Fowler, appellant's treating physician and a Board-certified family practitioner, stated that his cervical condition was causally related to the July 26, 2000 work-related injury and that his subsequent restrictions rendered him totally disabled. On December 8, 2003 Dr. Fowler stated that appellant was totally disabled from March 4, 2003 based on the work-related injury. He stated that appellant had degenerative disc disease as a result of the work-related injury and opined that this was work related because appellant had no prior complaints of neck pain or arm numbness.

Appellant requested reconsideration of the November 25, 2003 decisions and submitted x-rays obtained on November 3, 2000 of the chest, lumbar spine and left shoulder which were read as normal. A November 3, 2000 computerized tomography (CT) scan of the head was normal. Appellant's November 3, 2000 cervical spine x-ray revealed mild degenerative disc disease at C5-6. Appellant also submitted chiropractic treatment notes 2000 and 2001.

On November 30, 2001 Dr. Joseph G. Law, Jr., a consultant in disability testing, stated that appellant experienced from moderate, recurrent major depression and was totally disabled for employment. In an August 15, 2002 report received by the Office on February 5, 2004, Dr. Neela G. Mani, Board-certified in internal medicine, stated that appellant had bilateral degenerative joint disease of the knees and lumbar spine, and was currently taking medication for severe knee and back pain only. The record includes treatment notes from Dr. Fowler from May 29, 2003 to February 2, 2004 indicating follow-up treatment for stress and left arm

² On June 16, 2003 Dr. Collins determined that appellant had a 17 percent right lower extremity impairment based on a meniscectomy and joint space narrowing and noted August 21, 2002 as the date of maximum medical improvement. However, the Office had not accepted appellant's knee injury as work related.

numbness. On March 1, 2004 the Office asked Dr. Fowler to determine if appellant had an impairment of the upper extremities as a result of his July 26, 2000 work-related injury.

By decision dated March 2, 2004, the Office denied modification of its November 25, 2003 decision denying appellant's claim for a recurrence of disability.

LEGAL PRECEDENT -- ISSUE 1

When an employee who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he or she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that she cannot perform such light duty. As part of this burden, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light duty requirements.³

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical 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, 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 claimant.⁴

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained cervical and back strain and back abrasion and he was released to return to light duty on August 4, 2000. Appellant stopped work on March 4, 2003, when he retired on disability. It is not alleged and there is no evidence indicating a change in the nature and extent of appellant's light duty requirements for the claimed period.

In support of his claim that he was disabled for work as of March 4, 2003 due to his employment injuries, appellant submitted reports dated November 20 and December 8, 2003 from Dr. Fowler, a treating physician, who opined that appellant was disabled as a result of the July 26, 2000 work-related injury. The record also includes treatment notes from Dr. Fowler from May 29, 2003 to February 2, 2004 regarding appellant's stress and left arm numbness. None of the reports from Dr. Fowler provide a rationalized medical opinion establishing that appellant's condition on March 4, 2003 was causally related to the July 26, 2000 work-related injury. Although the doctor opined that appellant's cervical condition and degenerative disc disease were causally related to his work-related injuries, he did not provide a rationalized opinion regarding the causal relationship between them and the accepted injuries. The only

³ *Ralph C. Spivey*, 53 ECAB ____ (Docket No. 01-263, issued December 4, 2001), *Terry R. Hedman*, 38 ECAB 222 (1986).

⁴ *Allen C. Hundley*, 53 ECAB ____ (Docket No. 02-107, issued May 17, 2002).

reasoning that he provided was that appellant did not have prior complaints of neck pain or arm numbness prior to his employment injury. However, 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 Dr. Fowler did not otherwise full medical reasoning to explain why appellant was rendered totally disabled as of March 4, 2004 due to the July 26, 2000 employment injury. Moreover, the Office did not accept stress or a left arm condition. It is appellant's burden to establish a causal relationship between his March 4, 2003 condition and the accepted injuries. As Dr. Fowler failed to provide a rationalized medical opinion explaining how appellant was disabled on March 4, 2003 as a result of the July 26, 2000 work-related injury, appellant has not met his burden of proof.

The other medical evidence of the record concerned appellant's condition prior to March 4, 2003 and thus does not address appellant's condition for the relevant period.⁶ As appellant has not submitted reasoned medical evidence explaining how appellant sustained a recurrence beginning on March 4, 2003 causally related to the July 26, 2000 employment injury, the Board finds that appellant did not meet his burden of proof in establishing that he sustained a recurrence of disability.

LEGAL PRECEDENT -- ISSUE 2

The schedule award provision of the Federal Employees' Compensation Act⁷ and its implementing regulation⁸ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁹

A schedule award is not payable for a member, function or organ of the body not specified in the Act or in the implementing regulation. As neither the Act, nor the regulation provide for the payment of a schedule award for the permanent loss of use of the back, no claimant is entitled to such an award.¹⁰

⁵ *Edward E. Olson*, 35 ECAB 1099 (1984).

⁶ The record contains some reports from physical therapists. However, physical therapists are not considered physicians under the Act, such that their opinions do not constitute probative medical evidence. See *Jennifer L. Sharp*, 48 ECAB 209 (1996).

⁷ 5 U.S.C. § 8107.

⁸ 20 C.F.R. § 10.404.

⁹ *Jacqueline S. Harris*, 54 ECAB ____ (Docket No. 02-303, issued October 4, 2002).

¹⁰ *George E. Williams*, 44 ECAB 530, 533 (1993).

ANALYSIS -- ISSUE 2

The Office accepted appellant's claims for cervical and back strain and back abrasion. As noted, the spine is not a scheduled member under the Act and appellant would be entitled to a schedule award due to his spine injury only to the extent it causes impairment to listed scheduled members.¹¹ The only evidence regarding appellant's claim for a schedule award consists of the Office medical adviser's reports which found no ratable impairment, attributable to appellant's the accepted employment injuries. Although the medical adviser initially calculated a 17 percent impairment attributable to appellant's preexisting right knee condition, the Office never accepted a right knee condition as arising from the accepted injury and there is no medical evidence indicating that the employment injuries aggravated the preexisting knee condition. Instead, the evidence indicates that any right knee impairment is solely due to the preexisting condition for which appellant had several surgical procedures.¹² The Office medical adviser ultimately found no ratable impairment to any extremity of the body attributable to the accepted employment conditions. The Board finds that there is no medical evidence establishing any permanent impairment in a schedule member of the body that was caused or aggravated by any of the conditions accepted by the Office.

CONCLUSION

The Board finds that appellant failed to establish that he sustained a recurrence of disability on March 4, 2003 causally related to his accepted July 26, 2000 employment injury. The Board also finds that appellant failed to establish entitlement to a schedule award.

¹¹ See *Tania R. Keka*, 55 ECAB ____ (Docket No. 04-177, issued February 27, 2004).

¹² See *Carolyn F. Allen*, 47 ECAB 240, 247 (1995).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated March 2, 2004 and November 25, 2003 are affirmed.

Issued: December 3, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member