

FACTUAL HISTORY

On January 12, 1994 appellant, then a 40-year-old clerk, filed a traumatic injury claim alleging that on that date she fell in the performance of duty injuring her right leg, left knee and ankle as well as her right hand. The Office accepted her claim for severe right knee contusion. Appellant underwent right knee arthroscopy on September 21, 1994, due to chondromalacia of the patella with femoral trochlea disease.

Appellant fell on her left knee on October 5, 1995 when her right knee locked in the employing establishment parking lot. She also injured her left ankle at this time. The Office accepted that appellant sustained a bilateral knee contusion and left foot contusion.

Appellant fell again on December 11, 1995 at home when her knee locked. The Office requested that she file a claim.

In a brief note dated January 3, 1996, the Office stated that appellant had sustained a consequential injury due to the October 5, 1995 employment injury.

The Office authorized surgery due to her January 12, 1994 employment injury on January 29, 1996. Appellant underwent right knee arthroscopy on February 1, 1996 including a chondroplasty patella and Fulkerson procedure, a distal tibial tuberosity transfer.

By letter dated August 1, 1996, the Office authorized surgery on appellant's left knee due to her October 5, 1995 employment injury. On October 30, 1996 appellant underwent left knee surgery including chondroplasty of the patella and femoral trochlea as well as Fulkerson distal tibial tuberosity transfer. The screws from her right tibia were also removed.

By decision dated May 5, 1997, the Office determined that appellant's position as a modified aeronautical information clerk fairly and reasonably represented her wage-earning capacity and terminated her compensation benefits as her actual wages meet or exceeded the wages of the job she held when injured.

On February 3, 1998 appellant received a schedule award for seven percent permanent impairment of each leg. She requested reconsideration of this decision on March 19, 1998 and the Office denied modification of its prior decision on May 4, 1998.

Appellant filed a notice of recurrence of disability on February 18, 1999 causally related to her January 12, 1994 employment injury. The Office accepted this claim and authorized right knee surgery on March 3, 1999, which appellant underwent on March 9, 1999.

The Office authorized treatment of appellant's right ankle and foot on April 5, 2000 and approved bilateral orthotics for plantar fasciitis on July 13, 2000.

On July 14, 2000 appellant tripped on a piece of tile in the performance of duty twisting and bruising her knee. Appellant's physician stated that she had a bad bruise and had aggravated the arthritis in her knee. The Office accepted this claim for right knee contusion and aggravation of arthritis. The Office authorized a total knee replacement on the right on January 8, 2001. Appellant underwent this surgery on January 17, 2001. On July 10, 2001 the Office authorized

left knee arthroscopy and removal of screws. She underwent this surgery on September 24, 2001. Appellant received a schedule award for 68 percent impairment of her right lower extremity on December 13, 2002. She underwent a left knee total replacement on March 3, 2003.¹

Appellant filed a claim on November 4, 2002 alleging on October 31, 2002 she injured her left ankle and knee when her left knee collapsed. She stated that she was in her cubicle at the employing establishment when her injury occurred. The Office initially denied this claim by decision dated January 7, 2004. Appellant then requested an oral hearing and by decision dated April 1, 2004 the hearing representative accepted appellant's claim for left ankle sprain. On April 7, 2004 she underwent a resection of her torn peroneus brevis in the left ankle. The Office medical adviser found that this surgery was medically necessary on September 26, 2004.

In a letter dated October 21, 2004, appellant noted her October 31, 2002 employment injury to her left ankle, stated that she had sustained a consequential injury to her right shoulder and elbow and requested authorization for shoulder surgery. She submitted an incomplete notice of traumatic injury listing the date of injury as December 11, 2003. In an accompanying statement of December 16, 2003, appellant reported that on December 11, 2003 she was walking on her clean dry concrete driveway when her left ankle turned and she fell bruising her knees. She stated: "My right arm took the brunt of my fall and I landed on my right elbow." She stated that her right elbow was very painful.

Appellant also reported her fall to the employing establishment dispensary. In a note dated December 16, 2003, the history included a fall in her driveway landing on both knees and her right elbow. The note recorded that appellant had large contusions to both knees and her right elbow with good range of motion. She attributed her fall to her left ankle injury, which occurred on October 31, 2002. On March 11, 2004 the employing establishment dispensary reported that appellant had a scrape to her right palm.

On March 23, 2004 appellant completed a statement of events beginning with her October 31, 2002 injury during which her left knee collapsed resulting in her left ankle injury. She listed the December 11, 2003 fall at home and stated that she bruised and damaged her right elbow. Appellant indicated that she first sought treatment for her December 11, 2003 fall on January 13, 2004. She further indicated that she again fell in her driveway on March 7, 2004 when her left ankle gave way and sustained an abrasion to the palm of her right hand.

Appellant underwent a magnetic resonance imaging (MRI) scan of her right elbow on October 12, 2004, which demonstrated a suspected partial tear of the lateral collateral ligament complex adjacent to the lateral epicondyle. An MRI scan of her right shoulder on the same date demonstrated a rotator cuff tear.

Dr. Mitchell M. Mirbaha, a Board-certified orthopedic surgeon, completed a report on October 19, 2004 and noted that he first examined appellant on March 17, 2004. He stated that

¹ The Office has not yet issued a final decision regarding appellant's request for an additional schedule award for her left lower extremity. As there is no final Office decision on this issue, the Board may not address this issue on appeal. See 20 C.F.R. § 501.2(c).

appellant reported turning her left ankle in December 2003 resulting in a hard fall onto her right shoulder and elbow. Dr. Mirbaha stated:

“She stated [that] she fell down on the tip of the elbow, jamming the elbow, longitudinally against the shoulder and this could indeed cause a tear of the rotator cuff and injury to the elbow as well. The patient said the left ankle gave way and caused her to fall because of a previous injury to this ankle in a work[ers’] comp[ensation] injury in October 2002.”

On November 8, 2004 Dr. Mirbaha again provided appellant’s history of injury and reiterated that her December 11, 2003 fall could have resulted in a shoulder injury. He reviewed the right shoulder MRI scan and recommended shoulder surgery.

By letter dated November 18, 2004, the Office requested that appellant provide additional factual and medical evidence in support of her claim for a consequential injury. Appellant responded on December 13, 2004 and submitted an additional factual statement. She reported two falls as a consequence of her left ankle injury, the first on December 11, 2003 when she fell with her weight on her right elbow and shoulder. Appellant stated that after this fall she began to experience a great deal of pain in her right elbow and shoulder. On March 7, 2004 she again fell due to her left ankle. Appellant stated:

“This time when I fell my right [arm] extended straight out and I suffered an abrasion on the palm of my right hand.... In researching information after I was told I had a torn rotator cuff, I read that the rotator cuff can be damaged when a person falls and has their hand extended straight out in front to break the fall, which is exactly what I did.”

Appellant stated that her right elbow and shoulder condition began troubling her after both falls and had worsened.

Dr. John B. Weltmer, Jr., a Board-certified orthopedic surgeon, completed a report on March 9, 2004 and stated that appellant recently fell, injuring her right hand.

In a report dated December 8, 2004, Dr. Susan K. Reynolds, a Board-certified family practitioner, noted that appellant fell at home in December 2003, that x-rays of appellant’s right elbow, forearm and humerus were normal and that the fall was the result of appellant’s left ankle.

The Office requested that the Office medical adviser review the medical evidence and determine if appellant’s shoulder condition occurred as a consequence of her accepted left ankle injury. The Office medical adviser stated that Dr. Mirbaha was the only physician who supported a causal relationship between appellant’s ankle condition, resulting falls and her shoulder condition. He noted that Dr. Mirbaha had not examined appellant until March 17, 2004, after both falls. The Office medical adviser further noted that no medical evidence mentioned a shoulder injury until the October 12, 2004 MRI scan and that, due to the lack of evidence attributing appellant’s right shoulder condition to her alleged consequential falls, her right shoulder condition should not be accepted as employment related.

By decision dated February 22, 2005, the Office denied appellant's claim for a consequential right shoulder injury finding that she had not submitted the necessary medical evidence to establish a consequential injury causally related to her October 31, 2002 employment injury.

Appellant requested a review of the written record on March 21, 2005. She submitted documentation from on-line medical sources regarding rotator cuff tears. Appellant also submitted a statement regarding an additional fall on February 15, 2005, which she felt was a consequence of her accepted left knee condition. She noted that she had undergone surgical rotator cuff repair of the right shoulder on January 27, 2005. Appellant detailed her left ankle care noting that she fell in March 2004 and that she believed that this fall "more than likely damaged her right shoulder." She stated that her shoulders had been painful since she had her knees replaced. Appellant alleged that Dr. Forbes A. McMullin, a Board-certified orthopedic surgeon, informed her that patients with knee replacements developed shoulder pain due to pushing themselves up from a sitting position. She also attributed her right shoulder condition to the use of crutches, a walker and a cane on the right side following her left ankle surgery on April 7, 2004.

By decision dated August 4, 2005, the hearing representative affirmed the Office's February 22, 2005 decision finding that appellant had failed to submit the necessary medical evidence to support her claim that she sustained a consequential injury as a result of her accepted federal employment injuries.²

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. 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." However, a claimant bears the burden of proof to establish her 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.³ 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.⁴

² Following the Office's August 4, 2005 decision, appellant submitted additional new evidence. As the Office did not consider this evidence in reaching a final decision, the Board may not review the evidence for the first time on appeal. See 20 C.F.R. § 501.2(c).

³ *Charles W. Downey*, 54 ECAB 421, 422-23 (2003).

⁴ *Leslie C. Moore*, 52 ECAB 132, 134 (2000).

ANALYSIS

Appellant has sustained injuries to both knees and to her left ankle in the performance of duty. She has further alleged that, as a consequence of these injuries, she fell on December 11, 2003 and again on March 7, 2004. Appellant has alleged that due to these falls as well as a result of overuse of her shoulder through pushing herself up from a seated position and the use of ambulatory devices following left ankle surgery, she sustained a right shoulder rotator cuff tear requiring surgery.

In support of her claim, appellant has submitted several narrative statements. Initially, following her December 11, 2003 fall, she did not mention her right shoulder, but stated that her right elbow sustained injury. When appellant sought medical treatment for the December 11, 2003 fall, she reported contusions to her knees and right elbow, but did not mention a right shoulder condition. It is not clear whether appellant currently believes that her December 11, 2003 fall caused her right shoulder condition or whether she attributes this condition to the March 7, 2004 fall as mentioned in her more recent statements.

The only medical evidence addressing a relationship between appellant's right shoulder rotator cuff tear and her accepted employment injuries is the October 19 and November 8, 2004 reports from Dr. Mirbaha, a Board-certified orthopedic surgeon, who attributes appellant's right shoulder condition to her December 2003 fall. While Dr. Mirbaha explained how a shoulder injury could have occurred as a result of a fall onto the elbow, he did not offer an opinion with reasonable medical certainty that this fall did cause the injury. He merely stated that such a fall could have caused a rotator cuff tear. The Board has previously held that medical opinions which are speculative or equivocal in character have little probative value.⁵ Furthermore, Dr. Mirbaha did not discuss the additional fall on March 7, 2004, to which appellant attributes her condition or the overuse aspect of her claim. The Board notes that a medical opinion must be based upon a complete and accurate factual and medical history⁶ in order to be accorded probative value.⁷ As Dr. Mirbaha's reports do not offer a clear opinion regarding the causal relationship between appellant's accepted employment injuries and her alleged consequential injuries based on a complete and accurate factual background his report is not sufficient to meet appellant's burden of proof.

Appellant also submitted evidence from on-line medical periodicals and web sites in support of her claim. The Board has held that newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing the causal relationship between a claimed condition and an employee's federal employment as such materials are of general application and are not determinative of whether the specific condition claimed is related to the

⁵ *Jennifer L. Sharp*, 48 ECAB 209, 211-12 (1996).

⁶ *Joseph M. Popp*, 48 ECAB 624, 626 (1997).

⁷ *Patricia M. Mitchell*, 48 ECAB 371, 372-73 (1997).

particular employment factors alleged by the employee.⁸ This evidence submitted by appellant is not sufficient to meet her burden of proof.

Finally, although appellant asserted that her physician informed her that her shoulder condition could be related to overuse through pushing herself to rising from a seated position, appellant did not submit a signed report to this effect. Appellant's opinion that her condition is related to her employment is not sufficient to establish causal relationship.⁹ As appellant has not submitted the necessary rationalized medical opinion evidence based on a complete and proper factual background, concluding that, her right shoulder condition is due to her federal employment injuries, she has failed to meet her burden of proof and the Office properly denied her claim.

CONCLUSION

The Board finds that appellant has not submitted the necessary medical opinion evidence to meet her burden of proof and establish that her right shoulder condition is due to her accepted federal employment injuries.

ORDER

IT IS HEREBY ORDERED THAT the August 4 and February 22, 2005 decision of the Office of Workers' Compensation Programs are affirmed.

Issued: October 26, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

⁸ *George A. Johnson*, 43 ECAB 712, 718 (1992).

⁹ *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).