

1996 he was granted a schedule award for a 10 percent permanent impairment of the left upper extremity. Appellant stopped work on December 2, 1996 and returned to work for four hours a day on April 28, 1997. On June 25, 1997 he began working eight hours per day. Appellant voluntarily retired effective July 3, 1997 and received a \$25,000.00 separation incentive.

By decision dated July 6, 1998, the Office found that appellant's actual earnings fairly and reasonably represented his wage-earning capacity. On August 6 and September 15, 1998 and April 18, 2000 he requested reconsideration of the July 6, 1998 decision and in merit decisions dated August 25, 1998, April 13 and May 1, 2000, the Office denied modification of the July 6, 1998 decision.

On November 9, 2000 appellant was granted a schedule award for a 15 percent permanent impairment of the right upper extremity and an additional 12 percent for the left upper extremity. On January 23 and March 12, 2001 he requested reconsideration of the November 9, 2000 schedule award and, in decisions dated February 13 and May 26, 2001, the Office denied his reconsideration requests.

On November 14, 2002 the Office referred appellant to Dr. Dennis A. Ice, a Board-certified psychiatrist, for a second opinion evaluation. In a report dated December 12, 2002, Dr. Ice noted his review of appellant's medical history and current complaints of nonradiating neck and back pain. He provided examination findings and diagnosed fibromyalgia syndrome including chronic pain and disability syndrome, depression and poor sleep hygiene. Dr. Ice advised that appellant had a significant depressive overlay which could possibly cause fibromyalgia "due to loss of income or inability to work." On January 27, 2003 the accepted conditions were expanded to include aggravation of myalgia and myositis. On March 19, 2004 appellant filed a schedule award claim and on May 17, 2004 filed a Form CA-2a, recurrence claim, noting that his pay stopped on July 4, 1997.

Appellant came under the care of Dr. C. Michel Oliva, an anesthesiologist who practices pain management. He diagnosed low back pain with radiation, neck pain with radiation and fibromyalgia. A May 6, 2004 magnetic resonance imaging (MRI) scan of the cervical spine demonstrated cervical spondylosis with mild canal stenosis. Lumbar spine MRI scan demonstrated lumbar spondylosis with a tear at L4-5. On July 23, 2004 appellant requested compensation for his hands and depression. In support of this claim, he submitted a June 1, 2004 report in which Michael D. Boyd, a licensed social worker, reported a history that appellant had been depressed since 1996 when his fibromyalgia began. Mr. Boyd diagnosed alcohol dependence and depression, not otherwise specified, without anxiety. In a June 14, 2004 report, Dr. Eugene F. Luckstead, a Board-certified internist, diagnosed uncontrolled hypertension, asthma, chronic pain syndrome, depression and degenerative joint disease.

On July 6, 2004 the Office referred appellant to Dr. Don Leon Fong, Board-certified in orthopedic surgery, for a second opinion evaluation. A July 26, 2004 decision from the Department of Veterans Affairs (VA) indicated that appellant had a 30 percent service-related disability of his right shoulder. In a July 31, 2004 report, Dr. Fong noted his review of the medical record and statement of accepted facts. Upper extremity examination demonstrated no evidence of motor or sensory deficit, muscle atrophy or arthritic process. Dr. Fong diagnosed bilateral rotator cuff sprain and cervical strain caused by the employment injury, and low back

pain, fibromyalgia, chronic pain and depression and aggravation of myalgia and myositis which, he opined were not employment related.

By decision dated September 16, 2004, the Office denied appellant's claim that he sustained an employment-related depression or injury to his hands. On November 10, 2004 appellant requested reconsideration of the September 16, 2004 decision and submitted reports from Dr. Oliva who performed cervical facet injections on September 16, 2004. In reports dated September 28 and October 19, 2004, Dr. Oliva advised that appellant had a "significant amount of pathology" as seen on his MRI scan that caused debilitating radiculopathy to the upper extremity and into his hands, advising "I do feel that this is a secondary finding to the initial type of injury. These are related to each other." In an October 7, 2004 report, Mr. Boyd noted appellant's complaints of chronic pain and depression and his report that appellant had seen a psychiatrist for four to five months in the 1980s and was prescribed medication. He diagnosed depression.

On November 29, 2004 the Office proposed to terminate appellant's medical benefits for aggravation of myalgia/myositis and, by letter dated January 3, 2005, informed him that he would have to elect between a schedule award and VA benefits for his right upper extremity impairment. By decision dated January 12, 2005, the Office finalized the proposed termination of medical benefits for myalgia/myositis and noted that the claim remained open for treatment of appellant's bilateral sprain/strain of his shoulders, rotator cuffs and neck. On January 12, 2005 appellant elected VA benefits for his right shoulder condition.

By report dated January 19, 2005, Dr. Oliva advised that he did not feel that appellant had fibromyalgia but rather had disc pathology in the lumbar and cervical spine, all of which began when he was injured at work. A May 16, 2005 MRI scan of the lumbar spine demonstrated disc bulges at L3-4, L4-5 and L5-S1.

On August 4, 2005 appellant was granted a schedule award for an additional four percent permanent impairment of his left upper extremity. In an August 5, 2005 decision, the Office denied modification of the September 16, 2004 decision. Appellant, through his congressional representative, requested reconsideration and submitted a December 28, 2005 treatment note in which Dr. Oliva noted upper extremity examination findings of good strength and no muscle wasting. Dr. Oliva reiterated his diagnosis of neck pain with upper extremity radiculopathy and recommended repeat facet injections. By decision dated August 3, 2006, the Office denied modification of the prior decisions regarding appellant's claimed hand and emotional conditions. On August 29, 2006 appellant requested reconsideration and submitted an August 14, 2006 treatment note in which Dr. Oliva again noted appellant's complaints of neck and upper extremity pain which he opined were "directly related to the pathology" seen on MRI scan. Appellant also resubmitted the May 6, 2004 MRI scan of the cervical and lumbar spine. In a November 21, 2006 decision, the Office denied modification of the prior decisions.

LEGAL PRECEDENT

In discussing the range of compensable consequences, once the primary injury is causally connected with the employment, 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 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.¹

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.² 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.³ Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁴

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that he has a hand or an emotional condition as a consequence of his accepted employment injuries, cervical sprain and bilateral rotator cuff sprains.

Regarding the claimed hand condition, Dr. Oliva opined that appellant had significant disc pathology in the cervical spine which began when appellant was injured at work and that this caused debilitating radiculopathy to his upper extremities and into his hands.⁵ Dr. Oliva, however, also made physical findings of good muscle strength and no muscle wasting of the upper extremities and provided no objective evidence to show that appellant had any hand injury caused by the employment injury of June 28, 1994. Furthermore, Dr. Oliva did not provide a rationalized explanation as to how the lifting incident of June 28, 1994 caused appellant's current condition. His opinion is therefore of diminished probative value.⁶ Dr. Fong, who provided a second opinion evaluation for the Office, found no evidence of motor or sensory deficit, muscle atrophy or arthritic process in his examination of appellant's upper extremities in July 2004. As appellant failed to submit sufficient probative medical evidence to establish that any hand

¹ Larson, *The Law of Workers' Compensation* § 1300; see *Charles W. Downey*, 54 ECAB 421 (2003).

² *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

³ *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

⁴ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

⁵ Dr. Oliva also opined that appellant had a lumbar condition caused by his employment injury. The Office, however, has not accepted any condition of the lumbar spine as employment related.

⁶ See *Leslie C. Moore*, *supra* note 3.

condition was a consequence of his accepted employment injuries, he failed to establish the requisite causal relationship, and the Office properly denied this claim.⁷

Appellant also claimed that he sustained a consequential emotional condition and submitted treatment notes from Mr. Boyd, a licensed social worker. The reports of a social worker do not constitute competent medical evidence, as a social worker is not a “physician” as defined by section 8101(2) of the Federal Employees’ Compensation Act.⁸ While Dr. Ice, who performed a second opinion evaluation for the Office in 2002, advised that appellant had a significant depressive overlay, he provided no rationale to explain if or why this condition was caused by the employment injury.⁹ In a June 14, 2004 report, Dr. Luckstead diagnosed depression. However, he did not provide a cause of the diagnosed depression and medical evidence that does not offer any opinion regarding the cause of an employee’s condition is of diminished probative value on the issue of causal relationship.¹⁰ Dr. Fong, who provided a second opinion evaluation in July 2004, advised that appellant’s depression was not employment related. The Board, therefore, finds the evidence of record insufficient to discharge appellant’s burden of establishing that his depression was a consequence of the accepted shoulder and neck strains.

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that he sustained an emotional condition or hand injury as a consequence of his accepted employment injuries.

⁷ See *Charles W. Downey*, *supra* note 1.

⁸ 5 U.S.C. § 8101(2); see *Phillip L. Barnes*, 55 ECAB 426 (2004).

⁹ *Leslie C. Moore*, *supra* note 3.

¹⁰ *Ellen L. Noble*, 55 ECAB 530 (2004).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated November 21 and August 3, 2006 be affirmed.

Issued: August 8, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board