

denied modification of the finding that the constructed position of hand packager represented appellant's wage-earning capacity.¹ In a December 29, 1994 order, the Board dismissed appellant's appeal of an Office decision.² The Board's February 15, 2000 order granted the Director of the Office's request to remand the case.³ The facts and the history relevant to the present issue are hereafter set forth.

On December 13, 1984 appellant, then a 31-year-old rigger, filed a traumatic injury claim alleging that on December 10, 1984 a heavy metal plate fell against his right leg while in the performance of duty. He stopped work on the date of injury.⁴ The Office accepted appellant's claim for internal derangement and anterior cruciate tear of the right knee. It authorized right knee surgeries which he underwent from December 1984 to June 1985.

In a September 30, 2002 medical report, Dr. Arnold S. Lincow, an attending family practitioner, stated that appellant had progressive disc herniations of the lumbar spine based on a September 18, 2002 magnetic resonance imaging (MRI) scan of his lumbar spine. He diagnosed the following conditions:

1. Chronic complex pain syndrome with reflex sympathetic dystrophy;
2. Unresolved progressive traumatic arthritis of [appellant's] cervical, thoracic and lumbar spine, bilateral knees, shoulders;
3. Bilateral carpal tunnel syndrome;
4. Bilateral shoulder sprains, unresolved with progressive traumatic rotator cuffs with impingement syndrome;
5. Unresolved right brachial plexopathy;
6. Severe chondromalacia of bilateral knees with multiple surgical procedures to the right knee;
7. Unresolved progressive traumatic hip sprains with progressive arthritis and tendinitis;
8. Post-traumatic stress syndrome with phobic ideation, panic attacks and moderate depression;
9. Post-traumatic cephalgia;

¹ Docket No. 95-270 (issued December 6, 1994).

² Docket No. 95-399 (issued December 29, 1994). The Board notes that the December 29, 1994 order is not contained in the case record.

³ Docket No. 99-1922 (issued February 15, 2000). The Board's February 15, 2000 order is not contained in the case record.

⁴ Appellant's traumatic injury claim is not contained in the case record.

10. Suspect fracture of the left ankle secondary to radiculopathy;
11. Unresolved bilateral cervical and lumbar radiculopathy, superimposed unresolved herniated cervical and lumbar discs.

Dr. Lincow opined that the diagnosed conditions “are directly and causally related to [appellant’s] severe trauma which took place at the [employing establishment] on December 11, 1984.” He further opined that appellant was totally disabled from any gainful employment.

In a February 3, 2003 letter, appellant, through his attorney, requested that the Office accept the conditions diagnosed by Dr. Lincow. Counsel contended that appellant’s upper extremity, emotional and cervical conditions were caused by the December 10, 1984 employment injuries.⁵

By decision dated May 7, 2003, the Office denied the expansion of appellant’s accepted conditions to include the conditions diagnosed by Dr. Lincow.⁶ In a letter dated May 16, 2003, appellant, through his attorney, requested an oral hearing before an Office hearing representative.

On June 20, 2003 the Office issued a decision, denying appellant’s hearing request under 5 U.S.C. § 8128(a) on the grounds that he had previously requested reconsideration and was therefore not entitled to a hearing as a matter of right. The Office also declined to grant a discretionary hearing, finding that the matter could be equally well addressed through the reconsideration process.

In a July 3, 2003 report, Dr. Lincow stated that appellant had unresolved cervical spondylosis with disc herniations and radiculopathy and progressive exacerbation of lumbar spondylosis with discogenic disease with new herniated disc disease at multiple levels from L3 to S1 with radiculopathy. He indicated that his multiple reconstructive surgeries of the right knee by Dr. John J. McPhilemy, an osteopath who specializes in orthopedic surgery, had failed. Dr. Lincow opined that appellant’s conditions were directly and causally related to his December 10, 1984 employment injuries. He stated that appellant sustained a severe crush injury of the right lower extremity, hips and lower back which had become progressively worse. Dr. Lincow reiterated his prior diagnoses of an emotional condition or conditions and opinion that appellant was totally disabled from any gainful employment.

Dr. Lincow’s October 29, 2003 report stated that appellant sustained permanent and severe and irreversible injury to his right lower extremity and lumbar spine.

By letter dated December 12, 2003, the Office referred appellant, together with a statement of accepted facts, the case record and a list of questions to be addressed, to

⁵ In the February 3, 2003 letter, counsel also requested reconsideration of the Office’s March 21, 2002 decision which found that appellant was capable of earning wages as a parking lot attendant in light of Dr. Lincow’s September 30, 2002 medical report.

⁶ In the May 7, 2003 decision, the Office also rescinded the March 21, 2002 decision. It paid appellant appropriate compensation for total disability.

Dr. Anthony W. Salem, a Board-certified orthopedic surgeon, for a second opinion medical examination. In a January 15, 2004 report, Dr. Salem stated that appellant suffered from arthritis in the neck, back and shoulders based on his physical examination findings and review of the case record. However, he opined that these changes were not related to the December 10, 1984 employment injuries. Dr. Salem stated that MRI scans of record demonstrated rotator cuff tears in both shoulders which he believed were consistent with appellant's lifestyle and not the accepted employment injuries. In an accompanying work capacity evaluation (Form OWCP-5c) dated January 15, 2004, Dr. Salem opined that appellant could perform light-duty work with restrictions.

On May 3, 2004 the Office found a conflict in the medical opinion evidence between Dr. Lincow and Dr. Salem as to whether appellant sustained additional injuries related to the December 10, 1984 employment-related right knee injuries. To resolve the conflict, the Office, by letter dated May 3, 2004, referred appellant, together with a statement of accepted facts, the case record and a list of questions to be addressed, to Dr. Herbert Stein, a Board-certified orthopedic surgeon, for an impartial medical examination.

In a May 12, 2004 report, Dr. Stein provided a history of appellant's December 11, 1984 employment injuries and medical treatment. He also provided a detailed review of appellant's medical records including a trauma center report which indicated that appellant was admitted for a gunshot wound to the left knee on April 2, 1999. On physical examination, Dr. Stein reported tenderness to light touch from the cervical spine to the lumbar area and diffuse tenderness over the shoulders, front, back, top and upper arms down into the biceps area, the side posteriorly and down in the forearm on direct pressure. He further reported limited range of motion of appellant's shoulders and lower extremities and decreased strength in his wrists. Dr. Stein stated that on ambulation appellant walked with a slightly flexed lower back and a marked limp on the right lower extremity. Appellant was status post reconstruction of the acromioclavicular (AC) joint of the right shoulder. He had degenerative disc disease of the cervical and lumbar spines with a bulging disc of the lumbosacral spine and degenerative arthritis of both wrists and carpometacarpal joint of right thumb.

Dr. Stein stated that appellant demonstrated a significant degree of symptom magnification in any area that he examined. There was extreme exaggeration of local tenderness throughout the shoulders and complaint of severe pain on motion of the back despite the fact that his symptoms far outweighed x-ray reports and an MRI scan of the lumbar spine. Dr. Stein found a broad-based bulging disc and some disc degenerative disease, but noted that these were reported as not marked. He opined that his findings regarding the lumbar and cervical spines were not related to the December 11, 1984 employment injuries. Dr. Stein further opined that symptoms related to both shoulders were related to AC joint arthropathy and secondary to the right rotator cuff tear. He stated that it did not appear that a shoulder injury occurred as a result of the December 11, 1984 employment injury based on history. Dr. Stein also stated that the underlying changes in appellant's right knee may be the result of the accepted employment injury. He indicated that significant atrophy of the right quadriceps was related to his abnormal gait pattern secondary to his complaints of pain in the right knee. Dr. Stein concluded that, based on his review of the history, his findings on examination and review of records, appellant did not sustain an injury to the cervical and lumbar spines, upper extremities or left knee as a result of

the December 11, 1984 employment injury. In an OWCP-5c form dated May 12, 2004, Dr. Stein stated that appellant could work eight hours per day with restrictions.

By letter dated July 6, 2004, appellant's attorney requested that acceptance of appellant's claim be expanded to include his low back and neck conditions. He submitted Dr. Lincow's June 11, 2004 report which stated that appellant had unresolved progressive chondromalacia of the right knee that was caused by the December 10, 1984 employment injuries. Dr. Lincow opined that he was totally disabled for work.

In a letter dated July 15, 2004, the Office denied appellant's July 6, 2004 request based on Dr. Stein's May 12, 2004 medical report. On August 12, 2004 counsel requested that the Office issue a formal determination regarding the expansion of appellant's accepted claim with appeal rights. In addition, he noted that contrary to Dr. Stein's statement, appellant was never treated for a gunshot wound.

By decision dated November 1, 2004, the Office denied the expansion of appellant's accepted conditions to include lumbar and cervical conditions. It determined that Dr. Stein's May 12, 2004 medical opinion was entitled to special weight accorded an impartial medical specialist. On November 3, 2004 appellant, through his attorney, requested an oral hearing.

In a May 2, 2005 report, Dr. Lincow opined that appellant had myofascial pain syndrome causally related to the December 11, 1984 employment injuries.

In a report dated November 10, 2005, Dr. Lincow determined that appellant had a 60 percent impairment of the whole person based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) (A.M.A., *Guides*). He stated that appellant was following the natural progression of a disease process stemming from the crush injury he sustained some 20 years ago at the employing establishment on December 11, 1984. Dr. Lincow opined that appellant was totally disabled and that his cervical, lumbar and bilateral shoulder conditions should be included as compensable injuries. He contended that Dr. Stein had difficulty figuring out that appellant was experiencing severe pain which he believed was symptom magnification. According to Dr. Lincow, this was normal activity of a patient in pain. He concluded that Dr. Stein's medical opinion was not entitled to any weight.

By decision dated January 31, 2006, an Office hearing representative affirmed the November 1, 2004 decision. She found that Dr. Lincow's reports were not sufficiently rationalized as they were not based on an accurate factual and medical background and they did not provide any medical rationale in support of his opinion that appellant sustained consequential lumbar, cervical and bilateral shoulder conditions causally related to the December 10, 1984 employment-related injuries.⁷

⁷ Following the issuance of the hearing representative's January 31, 2006 decision, the Office received additional evidence. The Board may not consider evidence for the first time on appeal which was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c). Appellant can submit this evidence to the Office and request reconsideration. 5 U.S.C. § 8128; 20 C.F.R. § 10.606.

LEGAL PRECEDENT

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that his condition was caused or adversely affected by his employment. As part of this burden he must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relation.⁸

Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.⁹ Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion 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 established incident or factor of employment.¹⁰

When there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.¹¹

ANALYSIS

The Board finds that the Office properly determined that a conflict existed in the medical opinion evidence between Dr. Lincow, an attending physician, and Dr. Salem, an Office referral physician, as to whether appellant sustained additional injuries causally related to his accepted December 10, 1984 employment-related internal derangement and anterior cruciate tear of the right knee. Dr. Lincow opined that appellant sustained cervical, lumbar, bilateral shoulder and emotional conditions due to the accepted employment injuries and that he was totally disabled. Dr. Salem opined that appellant did not sustain any additional injuries causally related to the accepted employment injuries and that he could perform light-duty work with restrictions.

The Board further finds that the Office properly referred appellant to Dr. Stein, selected as the impartial medical specialist. In a May 12, 2004 report, Dr. Stein stated that appellant

⁸ *Kimper Lee*, 45 ECAB 565 (1994).

⁹ See *Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on the issue of causal relationship must be based on a complete factual and medical background of the claimant. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and the claimant's specific employment factors. *Id.*

¹⁰ *John W. Montoga*, 54 ECAB 306 (2003).

¹¹ *James F. Weikel*, 54 ECAB 660 (2003); *Beverly Grimes*, 54 ECAB 543 (2003); *Sharyn D. Bannick*, 54 ECAB 537 (2003); *Daniel F. O'Donnell, Jr.*, 54 ECAB 456 (2003); *Phyllis Weinstein (Elliot H. Weinstein)*, 54 ECAB 360 (2003); *Robert V. Disalvatore*, 54 ECAB 351 (2003); *Bernadine P. Taylor*, 54 ECAB 336 (2003); *Karen L. Yeager*, 54 ECAB 317 (2003); *Barry Neutuch*, 54 ECAB 313 (2003); *David W. Pickett*, 54 ECAB 272 (2002).

experienced tenderness on light touch from the cervical spine to the lumbar area and diffuse tenderness over the shoulders, front, back, top and upper arms down into the biceps area, the side posteriorly and down in the forearm on direct pressure. He reported limited range of motion of appellant's shoulders and lower extremities and decreased strength in his wrists. Dr. Stein stated that on ambulation he walked with a slightly flexed lower back and a marked limp on the right lower extremity. He opined that appellant demonstrated a significant degree of symptom magnification in any area that he examined. Dr. Stein stated that there was no objective evidence to support his extreme exaggeration of local tenderness throughout the shoulders and complaints of severe pain on motion of the back. He indicated that appellant was status post reconstruction of the AC joint of the right knee. Appellant also had degenerative disc disease of the cervical and lumbar spines with a bulging disc of the lumbosacral spine and degenerative arthritis of both wrists and carpometacarpal joint of the right thumb. Dr. Stein, however, stated that these conditions were reported as not marked. He opined that his findings regarding the lumbar and cervical spines were not related to the December 11, 1984 employment injuries. Dr. Stein further opined that appellant's bilateral shoulder symptoms were related to AC joint arthropathy and secondary to a right rotator cuff tear but it did not appear that he sustained a shoulder injury on December 11, 1984 based on history. He concluded that, based on his review of the history, his findings on examination and review of records, appellant did not sustain an injury to the cervical and lumbar spines, upper extremities or left knee as a result of his accepted employment injuries. Dr. Stein further concluded that he could work eight hours per day with restrictions.

The Board finds that Dr. Stein's May 12, 2006 report is sufficiently well rationalized and based upon a proper factual background such that it is entitled to special weight afforded an impartial medical examiner in establishing that appellant did not have any additional injuries causally related to his December 10, 1984 employment-related internal derangement and anterior cruciate tear of the right knee. Dr. Stein provided an extensive review of appellant's medical history. Although he stated that the date of injury was December 11, 1984 rather than December 10, 1984, the Board finds that he provided an accurate description of the accepted employment incident. Further, Dr. Stein did not rely on the alleged gunshot wound incident which was denied as having occurred by appellant in finding that appellant did not sustain additional injuries due to his December 10, 1984 employment-related conditions. Moreover, he reported his examination findings and gave a reasoned opinion that appellant's subjective complaints were not supported by objective findings of additional conditions he sustained due to his accepted employment injuries. For these reasons, the Board finds that Dr. Stein's report is entitled to special weight accorded to an impartial medical examiner.

Dr. Lincow submitted subsequent reports, prior to the hearing representative's January 31, 2006 decision, that are insufficient to overcome the weight given the impartial medical specialist's opinion that appellant did not sustain additional injuries causally related to the December 10, 1984 employment-related injuries. His May 2, 2005 report essentially reiterated his earlier diagnoses and opinion that appellant sustained cervical and shoulder conditions due to his accepted employment injuries. Dr. Lincow did not provide a reasoned medical opinion on the issue of causal relationship. While he opined in a November 10, 2005 report that appellant sustained a 60 percent impairment of the whole person based on the A.M.A., *Guides*, he did not provide any measurements or identify the tables and figures of the A.M.A., *Guides* he used to determine this impairment rating. In addition, Dr. Lincow did not provide any medical rationale in support of his opinion that appellant was totally disabled and

that he was following the natural progression of a disease process stemming from the December 10, 1984 employment injuries. Moreover, he was part of the original conflict in medical opinion and did not present any new findings or rationale to support his opinion.¹²

CONCLUSION

The Board finds that appellant has failed to establish that he sustained lumbar, neck, bilateral shoulder and emotional conditions causally related to his accepted employment-related injuries.

ORDER

IT IS HEREBY ORDERED THAT the January 31, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 18, 2007
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

¹² *Jaja K. Asaramo*, 55 ECAB 200 (2004) (submitting a report from a physician who was on one side of a medical conflict that an impartial specialist resolved is generally insufficient to overcome the weight accorded to the report of the impartial medical examiner or to create a new conflict).