United States Department of Labor
Employees' Compensation Appeals Board

R.A., Appellant	)	
	)	**Docket No. 06-1482**
and	)	**Issued: June 14, 2007**
	)	
DEPARTMENT OF DEFENSE, DEFENSE LOGISTICS AGENCY, New Cumberland, PA, Employer	)	

Appearances:
Jeffrey P. Zeelander, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 12, 2006 appellant filed an appeal of a May 22, 2006 decision of the Office of Workers' Compensation Programs denying her claim for consequential injuries. Pursuant to 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 has established that she sustained consequential left carpal tunnel syndrome, a left rotator cuff tear and a torn right medial meniscus causally related to an accepted lumbosacral strain, herniated lumbar discs, cauda equina syndrome and ambulatory dysfunction.

FACTUAL HISTORY

The Office accepted that, on August 20, 1996, appellant, then a 41-year-old environmental protection specialist, sustained a lumbosacral strain and herniated discs at L4-5 and L5-S1 when she kicked open a door in attempting to free a coworker trapped in a room

filling with carbon monoxide. On April 3, 1997 she underwent a bilateral L5-S1 laminectomy and a left-sided L4-5 hemilaminectomy. Following a brief return to part-time work, the Office accepted that appellant sustained a second lumbar injury on June 11, 1997 when she tried to catch a falling file. Appellant continued to work until undergoing an anterior lumbar discectomy and fusion at L4-5 and L5-S1 on January 17, 1998. Following this surgery, she experienced neurologic complications of the spine, including cauda equina syndrome and paraplegia. Appellant did not return to work. She received total disability compensation on the daily and periodic rolls.

The Office subsequently accepted ambulatory dysfunction requiring use of a wheelchair beginning in 1999, cauda equina syndrome, major depression, neurogenic bladder[1] and urinary tract infections as causally related to the accepted injuries. Appellant moved to a skilled nursing facility in May 2000, authorized by the Office which also authorized a motorized wheelchair in May 2001.

On May 1, 2001 appellant underwent arthroscopic repair of a torn anterior glenoid labrum of the left shoulder with subacromial impingement and an open acromioplasty of the left shoulder. In April 22 and June 17, 2002 reports, Dr. Steven E. Morganstein, an attending osteopath and Board-certified physiatrist, diagnosed chronic left shoulder impingement syndrome, status postsurgical repair and paraplegia secondary to cauda equina syndrome. In a June 11, 2003 letter, he opined that appellant required a hospital bed as she had difficulty transferring due to post-traumatic cauda equina syndrome with chronic ambulatory dysfunction.

The Office accepted that, on June 14, 2003, while transferring from her wheelchair to a shower chair, appellant fell to a tile floor on her right knee and also hurt her left wrist when trying to break her fall. She claimed that she sustained a left carpal tunnel syndrome, a left rotator cuff tear and a torn right medial meniscus as a result of the June 14, 2003 fall. The Office initially denied appellant's claim by decision dated June 17, 2004, then vacated the decision on September 16, 2004 and remanded the case for further development. The Office again denied the claim by decision dated December 28, 2004, then vacated the decision on March 23, 2005 and remanded the case for further development.

Appellant submitted medical evidence in support of her claim for left carpal tunnel syndrome, left shoulder and right knee injuries.[2]

In an April 28, 2004 report, Dr. John Grandrimo, an attending osteopath Board-certified in orthopedic surgery, provided a history of injury and treatment. He observed a possible torn medial collateral ligament in the right knee.

[1] Appellant had several hospitalizations in 2004 for hemorrhagic cystitis. On August 24, 2004 she underwent an open suprapubic cystotomy due to neurogenic bladder and chronic urinary tract infections. Appellant also had an indwelling Foley catheter. The Office authorized skilled nursing, ostomy care and various therapies, first outpatient and then at appellant's nursing home, from January 2000 through December 31, 2007.

[2] A June 27, 2003 magnetic resonance imaging (MRI) scan of the right knee showed chondromalacia of the patella. April 25, 2005 nerve conduction velocity (NCV) studies were consistent with bilateral carpal tunnel syndrome.

In May 21 and June 4, 2004 reports, Dr. Morganstein diagnosed chronic left shoulder pain with a history of rotator cuff repair. In a July 2, 2004 report, he noted that an MRI scan showed rotator cuff tears of the left shoulder involving the supraspinatus and infraspinatus tendons. Dr. Morganstein recommended surgical repair.

In a July 14, 2004 report, Dr. Grandrimo diagnosed a possible labral retear and a left rotator cuff tear. In a February 11, 2005 report, he diagnosed internal derangement of the right knee with possible meniscal tear and left carpal tunnel syndrome.[3]

By decision dated June 1, 2005, the Office affirmed its denial of appellant's claim for a right knee sprain and left carpal tunnel syndrome on the grounds that causal relationship was not established. The Office found that the medical evidence lacked "a well-reasoned medical opinion relating these conditions to the fall on June 14, 2003." Therefore, there was insufficient medical evidence to establish that appellant "suffered a consequential injury to her left wrist and right knee as a result of the August 20, 1996 work injury residuals."

On June 13, 2005 appellant requested reconsideration. She requested that the Office schedule a second opinion examination at the nursing home where she lived as she was unable to travel independently. Appellant submitted additional evidence.

In a May 4, 2005 report, Dr. Grandrimo opined that the August 20, 1996 injury was "the initial event" that led to the right knee injury. He explained that appellants' left carpal tunnel syndrome and right knee conditions developed due to the June 14, 2003 fall and were therefore "definitely related" to the August 20, 1996 injuries. Dr. Grandrimo reiterated that appellant's internal derangement of the right knee as well as the left carpal tunnel syndrome developed due to that fall. He noted in a June 20, 2005 report that pivoting to transfer aggravated appellant's right knee pain.

In an October 31, 2005 report, Dr. Grandrimo explained that the January 1998 lumbar fusion and discectomy caused cauda equina syndrome and ambulatory dysfunction, confining appellant to a wheelchair. On June 14, 2003 "while transferring from her wheelchair to a shower chair [appellant] fell to the floor on her right knee and also hurt her left wrist trying to break her fall. [She] also began experiencing pain her left shoulder in 2000" and underwent surgery in 2001. Appellant continued to suffer from the previous injuries due to the June 14, 2003 fall from her wheelchair. Dr. Grandrimo opined that appellant's current injuries were "directly related to the initial … lumbar surgery which has started this whole snowball effect regarding her upper extremities as well as the need for her wheelchair" from which she subsequently fell.

In reports through December 31, 2005, Dr. Morganstein attributed appellant's upper extremity symptoms to the strain of transferring and an early October 2005 accident in which her wheelchair became dislodged in a transport van, throwing appellant to the floor. He also

[3] In an April 19, 2005 letter, the Office requested that Dr. Grandrimo submit additional opinion regarding whether appellant's "left wrist and right knee conditions were caused by residuals of her August 20, 1996 back injury." Dr. Grandrimo did not submit a report in response to the Office's request.

diagnosed "post-traumatic cervical/lumbar strains" caused by a fall from her bed in late December 2005.[4]

The Office determined that a second opinion examination was necessary. As the Office could not find a physician willing to examine appellant at her nursing home residence, the Office scheduled a December 20, 2005 second opinion examination in Hershey, Pennsylvania. However, as of December 19, 2005, the Office was still trying to arrange wheelchair transportation and suggested alternate methods of assessment other than having appellant attend the December 20, 2005 examination. Appellant did not attend the scheduled examination.

In a January 11, 2006 letter, the Office advised that it was again "attempting to locate a specialist who will travel to [appellant's] residence" to perform a second opinion evaluation. In a February 16, 2006 letter, the Office advised appellant's attorney that it was unable to locate a physician to examine appellant at her residence. The Office requested that appellant's attorney respond within 30 days as to whether appellant wanted to reschedule a second opinion examination originally scheduled for December 20, 2005 or whether the Office should make a decision based on the evidence of record. The Office noted that it would authorize any specialized transportation necessary.[5] In a March 12, 2006 letter, appellant's attorney requested that the Office "make the arrangements for transporting her to and from" any scheduled second opinion examination. It is not clear from the record whether the Office actually scheduled a second opinion examination at any time after December 20, 2005.

On March 16, 2006 Dr. Grandrimo performed an arthroscopic repair of a torn right medial meniscus.

By decision dated May 22, 2006, the Office denied modification of the prior denial of appellant's claim for a right knee sprain, left shoulder injury and left carpal tunnel syndrome on the grounds that causal relationship was not established. The Office found that Dr. Grandrimo's opinion was insufficient to establish that the claimed shoulder, wrist and knee conditions were caused by effects of her accepted work injury. The Office noted that it attempted to assist appellant by requesting clarification from Dr. Grandrimo and by scheduling an examination with a Board-certified specialist. However, appellant did not attend the examination.

LEGAL PRECEDENT

The basic rule respecting consequential injuries, as expressed by Professor Larson in his treatise, is 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 likewise arises out of the

[4] January 25, 2006 x-rays showed a "remote ununited fracture extending through the base of the ulnar styloid process" in the left hand.

[5] The record demonstrates that, on the following dates, appellant used a wheelchair van service, paid for by the Office, to attend medical appointments: September 22 and November 27, 2003; January 13 and December 7, 2004; 40 appointments from February 14 to November 18, 2005; January 25, 26, February 20, 21, 23, 28, March 12, 16 and 24, 2006.

employment."[6] The subsequent injury "is compensable if it is the direct and natural result of a compensable primary injury."[7] With regard to consequential injuries, the Board has stated that where an injury is sustained as a consequence of an impairment residual to an employment injury, the new or second injury is deemed, because of the chain of causation, to arise out of and be in the course of employment.[8]

The claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or factors of employment. As part of this burden the claimant must present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, establishing a causal relationship.[9]

ANALYSIS

The Office accepted that, on August 20, 1996, appellant sustained herniated lumbar discs requiring laminectomies on April 3, 1997 and January 17, 1998. The Office also accepted that these surgeries caused ambulatory dysfunction and cauda equina syndrome such that appellant was confined to a wheelchair beginning in 1999. The Office authorized appellant to reside at a nursing home beginning in 2001 due to the extent of her work-related conditions. On June 14, 2003 while attempting to transfer from her wheelchair to a shower chair, appellant fell to a tile floor, landing on her right knee and injuring her wrist in trying to break her fall. The Office accepted this incident as factual. Appellant claimed that this fall caused left carpal tunnel syndrome, a left rotator cuff tear and a torn right medial meniscus. In its May 22, 2006 decision, the Office denied the claim on the grounds that the medical evidence submitted was insufficiently rationalized to establish causal relationship between the accepted June 14, 2003 fall and the claimed injuries.

In support of her claim, appellant submitted reports from Dr. Morganstein, an attending osteopath and Board-certified physiatrist, who treated appellant for chronic left shoulder impingement beginning in April 2002, noting that she had undergone left shoulder surgery in 2001. He diagnosed rotator cuff tears in July 2004. Dr. Morganstein also noted October and December 2005 traumatic incidents that worsened appellant's upper extremity symptoms. However, he did not provide medical rationale explaining how and why the June 14, 2003 fall would cause or aggravate any medical condition. Therefore, Dr. Morganstein's opinion is insufficient to meet appellant's burden of proof.[10]

Appellant also submitted reports from Dr. Grandrimo, an attending osteopath and Board-certified orthopedic surgeon, who began treating appellant in April 2004. Dr. Grandrimo

[6] A. Larson, *The Law of Workers' Compensation* § 13.00 (2000).

[7] *Id*. at § 13.11.

[8] *Margarette B. Rogler*, 43 ECAB 1034, 1038 (1992).

[9] *Brian E. Flescher*, 40 ECAB 532 (1989).

[10] *Deborah L. Beatty*, 54 ECAB 340 (2003).

diagnosed a left rotator cuff tear, a torn right medial meniscus and left carpal tunnel syndrome. He opined in a May 4, 2005 report that the August 20, 1996 injuries led to the June 14, 2003 fall that caused the right knee injury and left carpal tunnel syndrome. Dr. Grandrimo elaborated in an October 31, 2005 report that the June 14, 2003 fall directly resulted in right knee and left wrist injuries. Thus, he supports a direct causal relationship between the original August 20, 1996 injuries, the June 14, 2003 fall and the claimed injuries. Dr. Grandrimo is a Board-certified specialist in the field of medicine germane to appellant's claim. His reports demonstrate a thorough, accurate knowledge of the factual and medical history of this case. Although Dr. Grandrimo's opinion is not sufficiently rationalized[11] to meet appellant's burden of proof in establishing her claim, it stands uncontroverted in the record and was, therefore, sufficient to require further development of the case by the Office.[12] The Office requested a supplemental report from Dr. Grandrimo, which he submitted on October 31, 2005. This report led the Office to schedule a second opinion examination. However, the Office's development of the medical evidence is incomplete, as the second opinion did not take place.

The Office denied appellant's consequential injury claim, in part, as she failed to attend a scheduled second opinion examination.[13] The Board finds, however, that there is insufficient evidence to support this contention. The Office originally scheduled a second opinion examination for December 20, 2005, but as late as December 19, 2005, the day before the examination, Office advised appellant's attorney that it had not arranged the wheelchair transportation necessary for appellant to attend the appointment. The Office also proposed alternative methods of assessing appellant other than having her attend the scheduled examination. On February 16, 2006 the Office gave appellant the option of rescheduling the second opinion examination. Appellant responded on March 12, 2006 that the Office should make necessary transportation arrangements. However, there is no indication of record that the Office then rescheduled the second opinion examination. The Office's finding that appellant did not attend the examination is not supported by the record.

Proceedings under the Act are not adversarial in nature and the Office is not a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility to see that justice is done.[14] Accordingly, once the Office undertakes to develop the medical evidence further, it has the responsibility to do so in a proper manner. The case will be remanded to the Office for further development regarding Dr. Grandrimo's opinion that the accepted June 14, 2003 fall caused the claimed left shoulder injury, left carpal tunnel syndrome and torn right medial meniscus. The Office shall refer appellant, the medical record and a statement of accepted facts to an appropriate specialist or

[11] *See Jimmie H. Duckett*, 52 ECAB 332 (2001); *Frank D. Haislah*, 52 ECAB 457 (2001) (medical reports lacking rationale on causal relationship are entitled to little probative value).

[12] *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 280 (1978).

[13] The Board notes that the Office did not find that appellant obstructed or refused to attend a scheduled examination under 5 U.S.C. § 8123(d) and 20 C.F.R. § 10.320.

[14] *Jimmy A. Hammons*, 51 ECAB 219 (1999); *Marco A. Padilla*, 51 ECAB 202 (1999); *John W. Butler*, 39 ECAB 852 (1988).

specialists for a second opinion examination. Following this and any other development deemed necessary, the Office shall issue an appropriate decision in the case.

CONCLUSION

The Board finds that the case is not in posture for a decision as the case must be remanded for further development regarding whether appellant sustained a consequential left shoulder injury, left carpal tunnel syndrome and a torn right medial meniscus causally related to accepted lumbar injuries, ambulatory dysfunction and cauda equina syndrome.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 22, 2006 is set aside, and the case remanded to the Office for further development consistent with this opinion.

Issued: June 14, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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