United States Department of Labor
Employees' Compensation Appeals Board

R.S., Appellant	)	
and	)	**Docket No. 09-588**
	)	**Issued: December 28, 2009**
DEPARTMENT OF THE ARMY,	)	
San Antonio, TX, Employer	)	

Appearances:
Amy Solano, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 31, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated September 29, 2008, which denied certain conditions as causally related to his accepted employment injuries. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that his cervical spine condition was due to his March 21, 2002 employment injury.

FACTUAL HISTORY

On March 21, 2002 appellant, then a 30-year-old unit administrator, stepped off a platform and his left foot slipped, causing him to lose his balance and twist his low back. He stopped work on March 21, 2002.

In a March 21, 2002 report, Dr. Vance E. Zachary, Board-certified in family medicine and a treating physician, diagnosed cervical and lumbar sprain/strain. In an April 19, 2002 attending physician's report, he diagnosed a cervical spine sprain/strain, myospasm and a lumbar

spine sprain/strain. Dr. Zachary checked a box "yes" on the form report to indicate that the diagnosed conditions were employment related.

The Office accepted the claim for a lumbar sprain, lumbar spondylosis with myelopathy, lumbosacral disc degeneration, aggravation of a preexisting condition, disorder of meninges, neurogenic bladder, cauda equine syndrome, impotence of organic origin, late effect to injury, spinal cord and chronic pain syndrome. On December 10, 2002 appellant underwent a posterior fusion at L4-5 with pedical instrumentation. On December 19, 2003 the Office authorized the insertion of a dual dorsal column stimulator. On January 2, 2004 appellant underwent a thoracic laminotomy implantation procedure for a dorsal column stimulator. He was placed on the periodic rolls and received wage-loss compensation.

Appellant received treatment from Dr. Fernando T. Avila, a Board-certified anesthesiologist, for ongoing pain management. On March 16, 2006 Dr. Avila diagnosed cervical radiculopathy. In an April 13, 2006 report, he opined that appellant's cervical pain was secondary to his March 21, 2002 employment injury. In a September 21, 2006 report, Dr. Avila noted that appellant was seen for treatment of his low back pain as well as cervical pain. Appellant related that there were "problems with the cervical spine being part of this compensable injury." Dr. Avila stated that to his knowledge, appellant "had that part of the injury since the beginning and that his treatment has been put on hold until he could have his lower back treated and then with the complication of the surgery occurring, it has been put on the back burner even further." In a February 22, 2007 report, Dr. Avila noted that appellant continued to complain of lumbar pain associated with numbness and weakness of the lower extremities. Appellant also had neck pain that radiated to the upper extremities to the level of the digits with numbness, tingling and weakness in the same distribution. Dr. Avila explained that the original mechanism of injury was that appellant fell from a height of five feet with forceful flexion of the neck while his head was turned to the right. He opined that "This makes the cervical spine a compressible area." Dr. Avila continued to treat appellant and submit reports.

A May 17, 2007 computerized tomography (CT) scan of the cervical spine read by Dr. John Black, a Board-certified diagnostic radiologist, revealed focal canal neural frontal compromise at C6-7. Dr. Black noted that this could be related to neural impingement of the C7 and C8 nerve roots bilaterally.

In a report dated July 2, 2008, Dr. Avila requested that the Office accept the cervical spine injury as a part of the work injury. He opined that appellant's mechanism of injury was consistent with the work injury and treatment of the cervical injury had been "put on hold and forgotten as a part of the injury."

In a letter dated July 30, 2008, the Office requested that Dr. Avila submit further rationale regarding the cervical spine and how it was related to the accepted condition. No response was received.

On August 8, 2008 the Office referred appellant to Dr. James Hood, a Board-certified orthopedic surgeon, for a second opinion. It requested that Dr. Hood provide a diagnosis of appellant's cervical condition and an opinion with regard to its relationship to the March 21, 2002 work injury.

In a September 9, 2008 report, Dr. Hood reviewed appellant's history of injury and medical treatment, which included a decompression and posterior spinal fusion at L4-5. During this procedure, a dural tear was encountered, identified and repaired and postoperatively, a catastrophic result was noted. Dr. Hood advised that appellant had postoperative paralysis of the left lower extremity with other neurological problems. He noted that appellant related that "during postoperative therapy he had injury to his cervical area." Dr. Hood advised that the cervical MRI scan was indicative of a C6-7 abnormality. Regarding the cervical spine, he noted a decreased range of motion, normal upper extremity strength bilaterally, including the deltoid, triceps, biceps, wrists, extensors, thenar muscles and intrinsics. Dr. Hood found that the lumbar sprain and mild degenerative disc disease were directly related to the 2002 employment injury. As a result of that lumbar sprain, appellant underwent discography which resulted in a catastrophic failed surgical procedure which resulted in a permanent and severe neurological impairment. Dr. Hood also noted complaints which were referable to the cervical spine. He advised "how these will be accepted in relationship to the effects of the injury to the lower back is an administrative issue." Dr. Hood opined that appellant was totally disabled.

By decision dated September 29, 2008, the Office denied appellant's cervical spine condition as related to the accepted injury. It found that there was no substantive medical evidence to support a cervical injury that occurred or arose from the March 21, 2002 injury.

LEGAL PRECEDENT

Where an employee claims that a condition not accepted or approved by the Office was due to an employment injury, he bears the burden of proof to establish that the condition is causally related to the employment injury.[1] To establish a causal relationship between the condition claimed, as well as any attendant disability and the employment event or incident, an employee must submit rationalized medical evidence based on a complete medical and factual background supporting such a causal relationship.[2] Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.[3] Rationalized medical evidence is 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 rationalized medical evidence explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[4] Neither the 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.[5]

[1] *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[2] *Jennifer Atkerson*, 55 ECAB 317 (2004).

[3] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[4] *Leslie C. Moore*, 52 ECAB 132 (2000); *Douglas M. McQuaid*, 52 ECAB 382 (2001).

[5] *Ernest St. Pierre*, 51 ECAB 623 (2000).

ANALYSIS

The Office accepted the claim for a lumbar sprain, lumbar spondylosis with myelopathy, lumbosacral disc degeneration, aggravation of a preexisting condition, disorder of meninges, neurogenic bladder, cauda equine syndrome, impotence of organic origin, late effect to injury, spinal cord and chronic pain syndrome.

The record contains reports from appellant's treating physician, Dr. Zachary, who diagnosed cervical and lumbar sprains and strains. In an April 19, 2002 attending physician's report, Dr. Zachary advised that the cervical condition was work related. The Board notes that these sprains were diagnosed near the time of the work injury and provide contemporaneous support that appellant had a cervical sprain. However, only a lumbar sprain was accepted. Dr. Avila subsequently requested that the Office accept appellant's cervical spine injury as related to the work injury. In a September 21, 2006 report, he opined that the cervical spine was part of the original 2002 injury and that treatment had been put on hold until he had his lower back treated. However, the complications from surgery delayed treatment of the cervical condition. In a February 22, 2007 report, Dr. Avila noted that the original mechanism of injury was that appellant fell from a height of five feet with forceful flexion of the neck while his head was turned towards the right. He opined that his cervical spine was compressed in the employment injury.

On August 8, 2008 the Office referred appellant for a second opinion examination with Dr. Hood. In a September 9, 2008 report, Dr. Hood opined that appellant's lumbar sprain and degenerative disc disease were related to the 2002 employment injury. He noted appellant's cervical spine complaints, but did not provide an opinion on its relationship to the work injury. Dr. Hood deferred an opinion on causal relationship stating it was an administrative issue. The Board finds that his report is not responsive to the Office's request that the physician address whether appellant's cervical condition is due to the accepted employment injury.

As the Office undertook development of the medical evidence and referred appellant to Dr. Hood for a second opinion evaluation, it has an obligation to secure a report adequately addressing the relevant issue of the extent of appellant's accepted conditions.[6] The case will be remanded for the Office to obtain clarification of Dr. Hood's opinion with regard to whether appellant's cervical condition was causally related to or a consequence of his accepted employment injuries. If the Office is unable to obtain such clarification, then appellant should be referred to another Board-certified specialist for an examination and an opinion on this issue.

On appeal, appellant's representative contended that his cervical condition occurred on the same day as his lumbar injury and should be accepted. As noted, the case is not in posture for decision as additional development of the medical evidence is needed.

[6] *See Peter C. Belkind*, 56 ECAB 580 (2005) (where the opinion of the Office's second opinion physician was unclear on whether the claimant had any permanent impairment due to his accepted employment injury, the Board found that the Office should secure a report adequately addressing the relevant issue). *See also Melvin James*, 55 ECAB 406 (2004).

CONCLUSION

The Board finds that this case is not in posture for decision. The case shall be remanded for further development of the medical evidence, to be followed by an appropriate merit decision.

ORDER

IT IS HEREBY ORDERED THAT the September 29, 2008 decision of the Office of Workers' Compensation Programs is set aside and remanded.

Issued: December 28, 2009
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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